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Sent: Tuesday, March 24, 2009 10:48 AM
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Subject: Electronic Filing / Dkt #080677-EI / FPL's M/Strike Saporito Reply to FPL Response in Opposition to Saporito Petition to Intervene
Attachments: Motion to Strike Saporito Reply FINAL.doc; Motion to Strike Saporito Reply FINAL.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080677-EI
In Re: Application for an Increase in rates by Florida Power & Light Company

c. The Document is 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 Motion to Strike Thomas Saporito's reply to Florida Power & Light Company's Response in Opposition to Saporito Petition to Intervene

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DOCUMENT NUMBER-DATE

02564 MAR 24 8

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Increase in Rates by)
Florida Power & Light Company)

Docket No. 080677-EI
Date: March 24, 2009

**FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE THOMAS
SAPORITO'S REPLY TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN
OPPOSITION TO SAPORITO PETITION TO INTERVENE**

Florida Power & Light Company (FPL), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby moves to strike the reply of Thomas Saporito to FPL's Response in Opposition to Petition to Intervene of Thomas Saporito and Saporito Energy Consultants, and states:

On March 9, 2009, Mr. Saporito filed his Petition seeking to intervene both as an individual and as a representative of Saporito Energy Consultants (SEC). On March 16, 2009, FPL filed its Response in Opposition to Mr. Saporito's Petition. On March 23, 2009, Mr. Saporito filed what he styled as a "reply" to FPL's Response in Opposition.¹

There is simply no place under the applicable procedural rules for Mr. Saporito to file further pleadings arguing his Petition to Intervene. The Commission treats petitions to intervene as motions under Rule 28-106.204(1), F.A.C. See, *In re: Tampa Electric Company's Petition for Approval of its Plan to Bring its Generating Units into Compliance with the Clean Air Act*, ORDER NO. PSC-00-0413-PCO-EI, DOCKET NO. 992014-EI (February 24, 2000), applying Rule 28-106.204(1) to Attorney General's Petition to Intervene. Rule 28-106.204(1), F.A.C.,

¹ The Reply was filed and served electronically on Saturday, March 21, 2009, so it is treated under the Commission's procedures for electronic filing as having been filed on the first subsequent business day, which is March 23, 2009. FPL acknowledges that Saporito Energy Consultants was registered by Mr. Saporito as a Florida corporation in February 2009, but all other arguments in FPL's Response in Opposition apply and the Petition to Intervene should be denied.

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FPSC-COMMISSION CLERK

only authorizes the filing of a single response to a motion. The movant is allowed no right of reply. Consistent with this limitation, in ruling upon motions, the Commission has routinely refused to allow attempts by a movant to have the last word in contravention of the rules. See, *In re: Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc.*, Order No. PSC-04-0636-FOF-TLI, Docket No. 031038-TL (July 1, 2004) at 4 (“the Uniform Rules of the Administrative Procedure Act do not expressly authorize replies.”); *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies*, Order No. PSC-04-0511-PAA-TP, Docket No. 000121A-TP (May 19, 2004) at 2 (“we do not have rules which allow for a Reply to a Response”); *In re: Review of Florida Power & Light Company’s Proposed Merger with Entergy Corporation, the Formation of a Florida Transmission Company (“Florida Transco”), and Their Effect on FPL Retail Rates*, Order No. PSC-01-1930-PCO-EI, Docket No. 010944-EI, (September 4, 2001), (Commission struck an answer to FPL’s response to the South Florida Hospital and Healthcare Association’s request for clarification/reconsideration holding that “The Uniform Rules of Procedure do not authorize the movant to reply to a response.”); *In re: Adoption of Numeric Conservation Goals by Florida Power & Light Company*, Order No. PSC-98-1435-PC-EG, Docket No. 971004-EG (October 26, 1998) at 3, (Commission struck a reply to a response to a motion for a procedural order, holding that “the pleading cycle must stop at a reasonable point” and “unequivocal precedent” prohibited such replies).

FPL has contacted the Office of Public Counsel, which is the sole party of record other than FPL at this time. OPC has advised FPL that it takes no position on FPL’s motion to strike.

For the foregoing reasons, the Reply by Thomas Saporito to FPL's Response In Opposition to Mr. Saporito's Motion to Intervene should be stricken and disregarded in its entirety.

Respectfully submitted,

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By: /s/ John T. Butler
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 24th day of March, 2009, to the following:

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