

Dorothy Menasco

From: Greene, Angela [agreene@ngn-tally.com]
Sent: Friday, June 26, 2009 4:53 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080677-EI
Attachments: Motion to Compel.pdf

Angela Greene

Legal Assistant for Brian Armstrong
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Phone: (850) 224-4070
Fax: (850) 224-4073
agreene@ngnlaw.com

Docket No.: 080677-EI

In Re: Petition for Increase in Rates by Florida Power & Light Company

Party: City of South Daytona

No. of Pages: 35

Name of Document: The City of South Daytona's Motion to Compel Responses to its First Set of Interrogatories (Nos. 1-11, 16 and 17) and its First Request for Production of Documents (Nos. 1-6 and 8) from Florida Power & Light Company

DOCUMENT NUMBER-DATE

06460 JUN 26 3

FPSC-COMMISSION CLERK

6/29/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by)
Florida Power & Light Company)
)
)
_____)

DOCKET NO. 080677-EI
FILED: June 26, 2009

**THE CITY OF SOUTH DAYTONA'S MOTION TO COMPEL RESPONSES TO ITS
FIRST SET OF INTERROGATORIES (NOS. 1-11 16 AND 17) AND ITS FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-6, AND 8) FROM
FLORIDA POWER & LIGHT COMPANY**

The City of South Daytona ("City") in accordance with Rule 28.106-206, Florida Administrative Code, and Rule 1.380(a), seeks an order compelling Florida Power & Light Company (FPL) to respond to the City's First Set of Interrogatories (Nos. 1-11, 16 and 17) and First Request for Production of Documents (Nos. 1-6, and 8), and as grounds therefor states:

The City served its First Set of Interrogatories (Nos. 1-17) and its First Request for Production of Documents (Nos. 1-9) on FPL on May 4, 2009. (Attachment 1). FPL served its objections to the City's discovery requests on May 26, 2009, in which it objected to interrogatories 1-11, and 16, and requests for production 1-6 and 8. On June 3, 2009, FPL responded to interrogatories 12-15. Through this Motion to Compel, the City seeks responses to all the discovery requests to which FPL objected.

Much of the City's discovery relates to work done in the City under FPL's pole inspection, feeder/lateral cable, and storm hardening programs. These programs are described in the direct testimony of FPL witness Michael Spoor. The City also requests documents relating to the depreciation of plant in the City and costs incurred to replace plant in the City. In addition, the City asks for information on a system-wide basis, such as the costs and benefits of the various programs Mr. Spoor describes.

DOCUMENT NUMBER-DATE

06460 JUN 26 09

FPSC-COMMISSION CLERK

FPL objects to all of the City's discovery requests except Production Request 7 and Interrogatories 12-15. However, FPL's arguments do not justify its failure to respond to all the remaining discovery – the arguments only pertain to those requests seeking information on FPL's facilities in the City, which include Production Requests 1-6 and 8, and Interrogatories 1, 4, 8, 9, 10 and 16. FPL makes no specific argument against or objection to responding to Interrogatories 2, 3, 5, 6, 7, 11 and 17 which ask general, system-wide questions about the programs discussed in Mr. Spoor's testimony, the names of individuals who have knowledge of these programs, and the names of all people who responded to the interrogatories. These interrogatories should be answered because they are well within the scope of discovery and FPL gives no reason for its failure to respond. The remainder of this Motion to Compel pertains to Requests for Production 1-6 and 8 and Interrogatories 1, 4, 8, 9, 10, and 16.

FPL argues that the City's requests are beyond the scope of discovery because the City intends to use the information in a civil court proceeding, City of South Daytona v. Florida Power & Light, Co., Case No. 2008-30441-CICI, 7th Circuit, Volusia County, Florida. The lawsuit, which is currently in abeyance, pertains to the franchise agreement between the City and FPL and the City's plans for municipalization. FPL further argues that the discovery is not allowed because it would violate the stay in the circuit court case. FPL makes a general objection that the City's discovery requests are unduly burdensome because of the effort that would be required for FPL to find property records of its assets in the City.

FPL's objections cannot support a finding that the City's discovery requests are beyond the scope of discovery, unduly burdensome, or are otherwise objectionable. As a matter of law, whether discovery is applicable to more than one pending case, assuming none are criminal, is not grounds for an objection. Discovery of information in one case, which may be relevant to another pending case, must be permitted so long as it falls within the scope of discovery of the

case in which it is sought. See Buckley Towers Condominium, Inc. v. QBE Insurance Corp., 2008 U.S. Dist LEXIS 49305*5-6 (S.D. Fla. June 26, 2008)(finding that when a statute requires one claim to be resolved before another related claim can be brought, discovery relevant to both types of claims is allowed in a trial on the claim that had to be resolved first); Milinzazo v. State Farm Insurance Co., 247 F.R.D. 691, 696 n. 5(S.D. Fla. 2007)(same). Whether the City's discovery requests are relevant to the circuit court case has absolutely no bearing on whether it should be provided in response to discovery served in this Docket.

More important, however, is the fact that FPL raised its objections in the wrong forum. The Commission lacks jurisdiction to determine whether the City's discovery in this rate case violates the stay in the circuit court case. Because the Commission is not positioned address FPL's objections regarding the circuit court case, those objections must fail.

Contrary to FPL's assertions, the City's discovery is within the scope of discovery because it goes to the accuracy of the calculation of rate base. Information on the cost and depreciation rate of plant in the City is directly related to the value of the rate base in the City, and determination of rate base is an integral part of this proceeding. If FPL cannot provide documentation of the cost of its facilities in the City and the depreciation of those facilities, then it cannot prove up its rate base in the City. An inability to do this places the accuracy of FPL's record keeping at issue, not only in the City, but anywhere else.

The Commission has denied rate increases when utilities have been unable to prove up the value of their assets. In Docket No. 900329-WS, an application for a rate increase by Southern States Utilities, Deltona and United Florida, the information underlying the value of property included in rate base was found to be flawed, and the Commission denied the rate increase. See Order No. 24715, in Docket No. 900329 issued on June 26, 1991, also at 91 FPSC 6:509 and 1991 Fla. PUC LEXIS 1017. The Commission found the underlying data to be

unreliable for a variety of reasons. For example, after the record had been developed, it showed that parcels of land categorized as property for future use were in utility service when they were acquired. The utility could not explain whether the asking price for the parcels conformed with the original cost when the land was first put into utility service, among other things. The Commission emphasized the importance of the data underlying rate base calculations, as follows:

Rate base is to ratemaking what a foundation is to a house since it is the basis upon which the utility's earnings are determined. If the utility's own forecasts are so severely in error, it casts a deep shadow on the credibility of the data submitted and makes it very difficult to build a house that will remain standing.

1991 Fla. PUC LEXIS 1017*9. See also Order No. PSC-07-1029-SC-WS, issued in Docket No. 060262 on February 14, 2007 (denying rate increase because data on water consumption was unreliable).

FPL relies on Oppenheimer Fund, Inc., v. Sanders, 437 U.S. 340 (1978) to support its position that the discovery sought in this case does not have to be produced if it is also relevant to the circuit court case. Oppenheimer Fund did not involve the question of whether discovery can be sought in one case for use in a different case.

Oppenheimer Fund involved a class action and the issue was how the plaintiffs should go about obtaining the names and addresses of each class member – should they obtain that information through discovery, under Fed. R. Civ. P. 26 or under authority of Fed. R. Civ. P. 23 which requires that notice of the class action be sent to all members of the class. The Court determined that Rule 23 applied because the class representative specifically stated that the information sought was for notice. The Court concluded that because the information was not sought “for any bearing it might have on issues in the case,” the names and addresses were properly sought under Rule 23. However, as explained above, the information the City seeks in this docket does have bearing on the issues in the case, specifically the calculation of rate base.

FPL claims that the discovery is unduly burdensome because it does not maintain records of the assets located in the City. However, FPL filed sworn testimony in its 2005 rate case, Docket No. 050045-EI, stating that it maintains records by geographic location. As the City stated in its Interrogatory No. 16 and Request for Production No. 1:

In Docket No. 050045-EI, FPL's 2005 rate case, Geisha Williams' testimony on distribution infrastructure informed the Commission that customer service was being enhanced by the new Asset Management System. She explained that the Asset Management System:

houses records of all existing and proposed facilities with their precise location and other relevant information displayed in a geographical format. Besides daily operational benefits, direct savings are expected from reduced drafting labor costs.

See Docket No. 0500045, Petition for rate increase by Florida Power & Light Company, Document No. 02775-05 at page 14, lines 12-16.

In response to Staff's Interrogatory 182, in Docket No. 050045-EI, FPL informed the Commission that:

FPL utilizes a work management system to estimate the scope of work to be performed on a work order. The work management system interfaces with FPL's fixed assets system nightly to provide retirement unit number, description, asset location, in-service year, quantity, and original cost. The project engineer responsible for the work scope identifies the assets that are to be removed and retired as part of the work order estimating process.

It should not be unduly burdensome for FPL to retrieve documents related to its assets in the City from the asset management system or work management system, in light of the fact that they can be displayed in geographical format. This would be especially true for the newer programs such as pole inspection, upgrading of feeders and laterals, upgrading of underground distribution facilities, and storm hardening.

Additional evidence that FPL should have information on some assets available by location comes from Docket No. 931231-EI, In re: Request for change in depreciation rates by Florida Power & Light. After receiving the depreciation study, PSC Staff conducted an audit of

FPL's continuing property records ("CPRs"). The information on the CPRs was insufficient to allow Staff to match specific CPRs with plant on the ground. See Order No. PSC-95-0863-FOF-EI issued on July 17, 1995 in Docket No. 931231-EI, 1995 Fla. PUC LEXIS 991*2, 95 FPSC 7:170; see also Order No. PSC-94-1173-FOF-EI in Docket No. 931231-EI, 1995 Fla. PUC LEXIS 1193*6. An example of the problem was provided in Order No. PSC-94-1173-FOF-EI:

[A]t one switchyard location, out of 166 entries 56 (over one third) could not be identified. FPL's CPRs contain the description of "Air Conditioner Unit Portable." There is no manufacturer's name, no serial number or any other type of additional information that would allow the Commission to physically locate the air conditioner or to verify that a located air conditioner was, in fact, the one shown on the CPR.

1995 Fla. PUC LEXIS 1193*6.

In response to this criticism, FPL stated that its records were in compliance with the requirements of the Federal Energy Regulatory Commission, and Rule 25-6.014(4), Florida Administrative Code. The Commission noted that Rule 25-6.014(4) also required the CPRs or supplemental records to "contain such detailed description and classification of property record units that will permit their ready identification and verification." 1994 Fla. PUC LEXIS 1193*7. The Commission determined that the CPRs "should also include the location of each unit within the CPR site." Order No. PSC-95-0863-FOF-EI, 1995 Fla. PUC LEXIS 991*6. As a result, FPL was required to put more identifying information on its CPRs, such that

any item installed in a substation that is labeled and tracked by Substation Engineering for its own internal use, will be tagged and uniquely identified within the CPR. This should capture approximately 75% of the investment in the substations and, will provide for ready identification and verification of the booked retirement units. This investment includes such items as transformers, regulators, capacitor banks, breakers, automatic throe over panels, master panels, and A/C load center panels. The remaining investment represents mass asset type items such as pipe foundations and conduit systems, which are difficult for the Company to tag. For these assets, it will be the responsibility of the Company to provide the required documents, such as work orders and/or drawings, and any other information necessary to complete a physical verification.

Order No. PSC-95-0863-FOF-EI, 1995 Fla. PUC LEXIS 991*5-6.

Accurate record keeping is needed for purposes other than for conducting audits and rate cases. Accurate information is needed to evaluate territorial disputes and asset transfers. The rules applicable to territorial agreements state that the Commission may consider “the reasonableness of the purchase price of any facilities being transferred.” Rule 25-6.0440, Florida Administrative Code. Similarly when petitioning to resolve a territorial dispute, each utility is required to “provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of electric facilities . . . to be provided within the disputed area.” Rule 25-6.0441(1), Florida Administrative Code. To satisfy these requirements, utilities must have accurate information on the value of their facilities in specific areas.

Utilities typically value assets as original cost of the asset less depreciation. This was the measure used for the 1992 Sebring Utility Commission/Florida Power Corporation transfer and the 1998 Jacksonville Electric Authority/FPL transfer. See e.g. Order NO. PSC-92-1468-FOF-EU issued in Docket No. 920949-EU on December 17, 1992, 92 FPSC 12:270, 1992 Fla. PUC LEXIS 1856.

Utilities, including FPL, have the ability to provide this information by geographic area, as demonstrated in the above referenced dockets. In Docket No. 920949-EU, in which the Commission approved Florida Power Corporations purchase of certain assets of the Sebring Utilities Commission, the Commission criticized Sebring for its failure to keep adequate records on the values of its assets. The Commission explained:

In 1991, when Sebring decided that its financial difficulties required it to sell its remaining electric system assets, it retained an independent consultant . . . to conduct a valuation of those assets. The valuation was necessary, because over many years, contrary to the repeated advice of its accountants, Sebring had not

kept its books and records in compliance with the Federal Energy Regulatory Commission's Uniform System of Accounts.

Order NO. PSC-92-1468-FOF-EU issued in Docket No. 920949-EU on December 17, 1992, 92 FPSC 12:270, 1992 Fla. PUC LEXIS 1856*17. FPL asserts that it has complied with applicable Commission requirements concerning depreciation of continuing property records. The Commission must order FPL to respond to the City's discovery requests or face reduction of its requested rate base associated with its assets within the political borders of the City.

Given FPL's Asset Management System, Work Management System, the tracking requirements of Order No. PSC-95-0863-FOF-EI, and the basic record keeping requirements of the Uniform System of Accounts, FPL's production of cost and depreciation information by geographic area imposes no undue burden on FPL. FPL's claims, in this Docket and in correspondence with the City (Attachment 2), that it cannot produce such information should therefore raise concerns about its testimony in the 2005 rate case and this Docket, as well as its compliance with the record keeping requirements of Docket No. PSC-95-0863-FOG-EI. Furthermore, if FPL cannot produce the type of information requested by the City, then it cannot produce the information needed for audits to establish rate base in this Docket or for any other verification purpose. For these reasons, FPL should be required to respond to the City's Requests for Production 1-6 and 8 and Interrogatories 1, 4, 8, 9, 10, and 16.

For the foregoing reasons, the City respectfully requests that FPL be compelled to respond to all of the City's Requests for Production 1-6 and 8 and Interrogatories 1, 4, 8, 9, 10, and 16.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B.P.A.', is written over a horizontal line.

Brian P. Armstrong
Florida Bar No. 888573
Nabors, Giblin & Mickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Telephone
(850) 224-4073 Facsimile

Attorney for the City of South Daytona

CERTIFICATE OF GOOD FAITH CONFERENCE

I HEREBY CERTIFY, as required by Rule 1.380(a)(2), Fla. R. Civ. P., that I have conferred/attempted to confer in good faith with Florida Power & Light Co. in an effort to obtain the information sought through discovery without the involvement of the Florida Public Service Commission.



BRIAN P. ARMSTRONG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic and U.S. Mail to the service list below, on this **26th** day of **June 2009**.

Florida Power & Light Company
Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Wade.Litchfield@fpl.com

Florida Power & Light Company
John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420
John.Butler@fpl.com

Florida Power & Light Company
Ken Hoffman, Vice President of
Regulatory Relations
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Ken.Hoffman@fpl.com

J. R. Kelly
Joseph A. McGlothlin
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Kelly.jr@leg.state.fl.us
Mcglathlin.joseph@leg.state.fl.us

Saporito Energy Consultants
Thomas Saporito
Post Office Box 8413
Jupiter, FL 33468
support@saporitoenergyconsultants.com

Lisa Bennett
Anna Williams
Martha Brown
Jean Hartman
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-1400
lbennett@psc.state.fl.us
anwillia@psc.state.fl.us
mbrown@psc.state.fl.us
jhartman@psc.state.fl.us

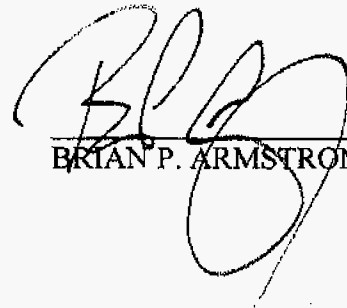
Robert A. Sugarman
D. Marcus Braswell, Jr.
c/o Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300
Coral Gables, FL 33134
sugarman@sugarmansusskind.com
mbraswell@sugarmansusskind.com

Kenneth Wiseman
Mark F. Sundback
Jennifer L. Spina
Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
kwiseman@andrewskurth.com
msunback@andrewskurth.com
jenniferspina@andrewskurth.com
lisapurdy@andrewskurth.com
Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
Attorneys for FIPUG
swright@yvlaw.net
jlavia@yvlaw.net

Jon C. Moyle, Jr., Esquire
Vicki Gordon Kaufman, Esquire
Keefe Amchors Gordon & Moyle, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
Attorneys for FIPUG
jmoyle@kagmlaw.com
vkaufman@kagmlaw.com

John W. McWhirter, Jr., Esquire
c/o McWhirter Law Firm
P.O. Box 3350
Tampa, FL 33601
Attorneys for FIPUG
jmewhirter@mac-law.com

Cecilia Bradley
Senior Assistant Attorney General
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050
cecilia.bradley@myfloridalegal.com



BRIAN P. ARMSTRONG

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by)
Florida Power & Light Company)
)
)
_____)

DOCKET NO. 080677-EI
FILED

THE CITY OF SOUTH DAYTONA'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-9)
TO FLORIDA POWER & LIGHT COMPANY

The City of South Daytona ("City"), pursuant to Rule 28-106.206, Florida Administrative Code, and Florida Rules of Civil Procedure 1.350, hereby requests that Florida Power & Light Company ("FPL") produce for inspection and copying the documents described below, during regular business hours at the office of the City's attorneys at 1500 Mahan Drive, Suite 200, Tallahassee, Florida, 32308 or at such other time, place and manner as the parties mutually agreed upon, within thirty (30) days of service.

INSTRUCTIONS FOR USE

The terms "document" and "writing" are used interchangeably and mean any written or graphic matter of any kind whatsoever, however produced or reproduced, any electronically or magnetically recorded matter of any kind or character, however produced or reproduced, and any other matter constituting the recording of data or information upon any tangible thing, including but not limited to, the original and any non-identical copy of any of the following: books, records, reports, memoranda, notes, letters, speeches, telegrams, e-mails, diaries, calendar or diary entries, schedules, graphs, charts, contracts, opinions, studies, analysis, summaries, magazines, booklets, pamphlets, circulars, brochures, bulletins, instructions, minutes, photographs, drafts, certificates,

questionnaires, films or tapes, surveys, messages, correspondence, letters, records (of meetings, conferences and telephone or other conversations or communications), drawings, financial statements, computer data (including e-mail or other information or programs stored in a computer, whether or not ever printed out or displayed), as well as any other tangible thing on which information is recorded in writing, sound, electronic or magnetic impulse. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to respond to each request as fully as possible.

The phrase "relating to" means containing, showing, pertaining, relating to or referring in any way, directly or indirectly, to, and is meant to include matters that are or were supporting or connected.

"Property" means that real property located in Seminole County, Florida, as described in Exhibit A of Plaintiffs' Verified Amended Complaint, including each individual parcel that makes up the property that is the subject of this action.

DOCUMENTS TO BE PRODUCED

1. In Docket No. 050045-EI, FPL's 2005 rate case, Geisha Williams' testimony on distribution infrastructure informed the Commission that customer service was being enhanced by the new Asset Management System. She explained that the Asset Management System:

houses records of all existing and proposed facilities with their precise location and other relevant information displayed in a geographical format. Besides daily operational benefits, direct savings are expected from reduced drafting labor costs.

See Docket No. 0500045, Petition for rate increase by Florida Power & Light Company, Document No. 02775-05 at page 14, lines 12-16. In response to Staff's Interrogatory 182, in Docket No. 050045-EI, FPL informed the Commission that:

FPL utilizes a work management system to estimate the scope of work to be performed on a work order. The work management system interfaces with FPL's fixed assets system nightly to provide retirement unit number, description, asset location, in-service year, quantity, and original cost. The project engineer responsible for the work scope identifies the assets that are to be removed and retired as part of the work order estimating process.

- a. Please provide all documents, as that term is defined above, from the asset management system relating to, as that term is defined above, all of FPL's assets located in the City of South Daytona.
 - b. Please provide all documents, as that term is defined above, from the work management system relating to, as that term is defined above, all of FPL's assets located in the City of South Daytona.
 - c. Please describe what the "other relevant information" stored in the Asset Management System consists of. See Response to Staff Interrogatory No. 182 in Docket No. 050045-EI.
2. Please provide all documents, as that term is defined above, relating to, as that term is defined above, FPL's activities in the City under the Pole Inspection Program described in Mr. Michael G. Spoor's testimony starting at page 12, line 19, to the extent those documents have not been provided in response to Request for Production No. 1.
 3. Please provide all documents, as that term is defined above, relating to, as that term is defined above, FPL's activities in the City under the Feeder/Lateral Cable Program described in Mr. Michael G. Spoor's testimony starting at page 13, line 8, to the extent those documents have not been provided in response to Request for Production No. 1.
 4. Please provide all documents, as that term is defined above, relating to, as that term is defined above, FPL's storm hardening activities in the City, to the extent those documents have not been provided in response to Request for Production No. 1.
 5. Please provide all documents, as that term is defined above, relating to, as that term is defined above, installation of new feeders and laterals in the City within the past five (5) years, to the extent those documents have not been provided in response to Request for Production No. 1.
 6. Please provide all documents, as that term is defined above, relating to, as that term is defined above, the depreciation of assets located in the City.

7. Please provide all documents, as that term is defined above, relating to, as that term is defined above, FPL's plans to install Smart Meters in Miami or Miami-Dade County.
8. Please provide all documents, as that term is defined above, related to, as that term is defined above, any FPL costs incurred to replace any FPL assets in the City in the past ten (10) years, to the extent those documents have not been provided in response to Request for Production No. 1.
9. Please provide all documents, as that term is defined above, that FPL utilized in its analysis of the used and useful levels of its plant in service, by asset category, pursuant to Section 366.06, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic and U.S. Mail to the service list below, on this 4th day of May, 2009.

Florida Power & Light Company
Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Wade.Litchfield@fpl.com

Florida Power & Light Company
John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420
John.Butler@fpl.com

Florida Power & Light Company
Ken Hoffman, Vice President of
Regulatory Relations
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Ken.Hoffman@fpl.com

J. R. Kelly
Joseph A. McGlothlin
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Kelly.jr@leg.state.fl.us
Mcglotthlin.joseph@leg.state.fl.us

Saporito Energy Consultants
Thomas Saporito
Post Office Box 8413
Jupiter, FL 33468
support@saporitoenergyconsultants.com

Lisa Bennett
Anna Williams
Martha Brown
Jean Hartman
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-1400
lbennett@psc.state.fl.us
anwillia@psc.state.fl.us
mbrown@psc.state.fl.us
jhartman@psc.state.fl.us

Robert A. Sugarman
D. Marcus Braswell, Jr.
c/o Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300
Coral Gables, FL 33134
sugarman@sugarmansusskind.com
mbraswell@sugarmansusskind.com

Kenneth Wiseman
Mark F. Sundback
Jennifer L. Spina
Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
kwiseman@andrewskurth.com
msunback@andrewskurth.com
jenniferspina@andrewskurth.com
lisapurdy@andrewskurth.com

Marlene K. Stearns for
BRIAN P. ARMSTRONG

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by)
Florida Power & Light Company)
)
)
)
)

DOCKET NO. 080677-EI
FILED

THE CITY OF SOUTH DAYTONA'S
FIRST SET OF INTERROGATORIES (NOS. 1-17) TO
FLORIDA POWER & LIGHT COMPANY

The City of South Daytona, ("City"), pursuant to Rule 28-106.206, Florida Administrative Code, and the Florida Rules of Civil Procedure 1.340, propounds the following interrogatories to Florida Power & Light Company ("FPL") , to be answered under oath within thirty (30) days after service hereof.

DEFINITIONS

"Document" or "documents" means, without limitation, all tangible things, whether handwritten, typed, printed or otherwise visually reproduced, taped, photographic or graphic matter, however produced or reproduced, originals, copies and drafts, including, but not limited to, any letter, correspondence, cable, wire, memoranda, interoffice or personal communication, e-mail, telegram, handbook, manual, report, periodical, note (including any made during the review or preparation of work papers), statement, forecast, summary or transcript of any telephone conversation or personal conversation or interview, work papers, diary (formal or informal), business or personal calendar, personal files and notes, sketches, charts, assignments, agreement (including any modification or revision thereof), invoice, application, shipping order, purchase order, summary of negotiations, press release, promotional or advertising material, patent, photograph, motion picture, computer input or output, microfilm, work assignments and

any other writing, including drafts, revisions or translations of any of the foregoing, within the possession or custody or under the control of you personally or your business or employer.

"Identify", when applied to a document, means that you should identify:

- A. the date of the document;
- B. the general nature of the document;
- C. the subject matter of the document; and
- D. the author or originator of the document.

To the extent that the attachment of the document would provide all or part of the information identifying the document, you may attach a copy thereof to your interrogatory response.

"Identify", when applied to a person, means that you should identify:

- A. the name of the person;
- B. the address of the person; and
- C. the current position of the person.

"Relating to" means containing, showing, pertaining to, or directly or indirectly referring to in any way, and is meant to include matters that are or were supporting or connected.

3. Please describe all analyses that FPL conducts using information gathered from the Pole Inspection Program in order to assess the costs and/or benefits of the program.

Interrogatory questions 4-9 address Mr. Michael G. Spoor's testimony on FPL's Feeder/Lateral Cable Program at page 13, lines 8-17.

4. Has FPL inspected, replaced or rehabilitated any direct buried feeder or lateral cable in the City of South Daytona?
 - a. If so, when were inspections conducted, where were they conducted, and what were the costs of inspection and rehabilitation or replacement at each site?
 - b. If not, when are inspections expected to be conducted?

5. Please describe all the measures FPL takes to identify direct buried feeder or lateral cable in need of inspection, replacement or rehabilitation as part of the Feeder/Lateral Cable Program.

6. Please describe each type of information that is recorded in association with inspection, rehabilitation and replacement under the Feeder/Lateral Cable Program, including information put into the Asset Management System and the Work Management System.

7. Please describe all analyses that FPL conducts using information obtained from the Feeder/Lateral Cable Program to assess the costs and/or benefits of the program.

8. Has FPL undertaken any storm hardening activities in the City of South Daytona?

a. If so, please describe each measure taken, when it was taken, where it was taken, and the cost incurred.

b. If not, when will FPL undertake storm hardening in the City of South Daytona?

9. If storm hardening has occurred in the City of South Daytona, please describe each type of information that was recorded in association with the activity, including information put into the Asset Management System and the Work Management System.

10. Where, in the City of South Daytona, has FPL installed new feeders and laterals within the past five (5) years?

11. Please identify the individuals responsible for maintaining the records for work conducted under the Pole Inspection Program, the Feeder/Lateral Program, the Storm Hardening Program and the installation of new feeders and laterals in the City.

12. FPL recently announced that it is undertaking a \$200 million program to install Smart Meters and other conservation-related equipment.

- a. Where is this \$200 million accounted for in the rate case filings?
- b. How will FPL decide who will get the Smart Meters and other conservation equipment?
- c. If FPL has already decided how to distribute this \$200 million dollars worth of equipment, please identify the recipients.
- d. If South Daytona will not be getting any of the Smart Meters and other conservation-related equipment, please explain why.

13. Please identify the rate classes that currently use or are authorized to use inverted block rate structures and the rate classes for which FPL proposes inverted block structures in this docket.

14. Is FPL proposing that the commercial/industrial rate classes offset the cost to serve the residential rate classes in any way?

15. Please describe the method used by FPL to determine the used and useful level of its plant in service, by asset category pursuant to Section 366.06, Florida Statutes.

16. In Docket No. 050045-EI, FPL's 2005 rate case, Geisha Williams' testimony on distribution infrastructure informed the Commission that customer service was being enhanced by the new Asset Management System. She explained that the Asset Management System:

houses records of all existing and proposed facilities with their precise location and other relevant information displayed in a geographical format. Besides daily operational benefits, direct savings are expected from reduced drafting labor costs.

See Docket No. 0500045, Petition for rate increase by Florida Power & Light Company, Document No. 02775-05 at page 14, lines 12-16.

In response to Staff's Interrogatory 182, in Docket No. 050045-EI, FPL informed the Commission that:

FPL utilizes a work management system to estimate the scope of work to be performed on a work order. The work management system interfaces with FPL's fixed assets system nightly to provide retirement unit number, description, asset location, in-service year, quantity, and original cost. The project engineer responsible for the work scope identifies the assets that are to be removed and retired as part of the work order estimating process.

Please explain why FPL informed the City of South Daytona that it did not maintain records of any existing facilities, with their precise location and other relevant information, despite the fact that it included the cost for the Asset Management System in its base rates paid by the City and its residents.

17. Please identify the persons, other than attorneys, who assisted in preparing the responses to these interrogatories, specifying as to each such person, which interrogatories he or she assisted in answering and what specific information that person provided.

By: _____

As representative of

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, states that he/she has read the foregoing interrogatories and the answers thereto, and that the answers are true and correct to the best of his/hers knowledge and belief.

DATED this __ day of _____, 2009.

(Signature)

(Printed Name)

Notary Public, State of Florida

My Commission Expires: __/__/__

Commission No: _____

Affiant personally known _____

or produced Identification _____

Type of identification Produced: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic and U.S. Mail to the service list below, on this 4th day of May, 2009.

Florida Power & Light Company
Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Wade.Litchfield@fpl.com

Florida Power & Light Company
John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420
John.Butler@fpl.com

Florida Power & Light Company
Ken Hoffman, Vice President of
Regulatory Relations
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Ken.Hoffman@fpl.com

J. R. Kelly
Joseph A. McGlothlin
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Kelly.jr@leg.state.fl.us
Mcglathlin.joseph@leg.state.fl.us

Saporito Energy Consultants
Thomas Saporito
Post Office Box 8413
Jupiter, FL 33468
support@saporitoenergyconsultants.com

Lisa Bennett
Anna Williams
Martha Brown
Jean Hartman
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-1400
lbennett@psc.state.fl.us
anwillia@psc.state.fl.us
mbrown@psc.state.fl.us
jhartman@psc.state.fl.us

Robert A. Sugarman
D. Marcus Braswell, Jr.
c/o Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300
Coral Gables, FL 33134
sugarman@sugarmansusskind.com
mbraswell@sugarmansusskind.com

Kenneth Wiseman
Mark F. Sundback
Jennifer L. Spina
Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
kwiseman@andrewskurth.com
msunback@andrewskurth.com
jenniferspina@andrewskurth.com
lisapurdy@andrewskurth.com

Marlene H. Stern for
BRIAN P. ARMSTRONG

September 4, 2008

Scott E. Simpson, P.A.
Korey, Sweet, McKinnon, Simpson & Vukelja
Suite A, Granada Oaks Professional Building
595 West Granada Boulevard
Ormond Beach, FL 32174

In re: City of South Daytona v. Florida Power & Light Company

Dear Scott:

This is intended to sort out where we stand on the information requested by the City or its consultants to support the City's acquisition analysis.

FPL has provided substantial information to date. This letter will address the items as to which there has not yet been a complete response.

1. **FPL's Purchase Price Calculations**. As I indicated in my previous letter, FPL and its consultants are completing their analysis on the price of the acquisition. We hope to have that to you in the near future.

2. **Peak Annual Customer Load Data** FPL does not maintain this data for five years, which was the period in the City's request. We will be providing data for two years, including kilowatt demand, not kilowatt hours, which is the way the information is maintained. Bob Coleman will provide that information directly to the City.

3. **Pole Line Inspection and Replacement Program Reports** These data are not retained at the City-level. Accordingly the data we do have would not appear to be relevant to the City's calculations. If you have a different view, let me know.

4. **Total Miles of Overhead and Underground Lines by Voltage Class and Size of Conductor** These data are not retained at the City-level, so again, not germane to the City's calculations. We believe these can be manually calculated from the primary maps which have been provided.

5. **Operation and Maintenance Costs – Overhead and Underground Distribution Lines** These data are not retained at the City-level, so would have no relevance here.

6. Right-of-Way and Tree Re-clearing Policies and Practices A document memorializing FPL's most current vegetation management practices for its service area will be provided. It is not clear how this relates to the cost issue, but it will be provided.

7. Costs Associated with Right-of-Way Tree Trimming and Re-Clearing Practices These are not retained at the City-level, so would have no relevance here.

8. Joint Use Agreements It is our understanding that this request is intended to provide information as to pole ownership within the City. These agreements do not contain that information and are otherwise regarded as highly proprietary. If the City has a different purpose in mind, please let me know.

9. Outage Data All of this information, with the exception of cost data, is contained in a study dated November 11, 2005, which we believe was previously provided. Nonetheless, another copy will be furnished. Cost data is not retained at the City-level and, in any event, would not seem relevant to the City's system cost analysis.

10. Major Storm Data These are not retained at the City-level.

11. Conductor Loading Analysis These are not retained at the City-level.

12. Copy of Feeder Rankings These will be provided to the City by Bob Coleman.

13. Copies of FPL's Construction Improvement Plan, Capital Improvement Plan and Operation and Maintenance Plan These are not retained at the City-level and do not appear germane to the cost calculation at issue here.

14. Expansion Plans These are not retained at the City-level and would also not seem pertinent to cost calculations.

15. Hourly Load Data These are not retained at the City-level.

16. Continuing Property Records These records are not retained at the City-level.

Scott, we have done the best we can to sift through the requests and our records/materials to provide the information required by the City to fully and fairly analyze a potential purchase price for the system. If I have omitted or misunderstood any of the City's open requests, please let me know. Similarly, if you believe system-wide data rather than City-level data is somehow relevant or could be made relevant to the City's analysis, we would be willing to hear further from you on that issue.

SQUIRE, SANDERS & DEMPSEY L.L.P.
Including
STERL HECTOR & DAVIS LLP

As you noted in your letter, both parties have agreed to work in good faith and with reasonable diligence to permit the City to evaluate its purchase option. FPL believes it has done so and is continuing to do so. The additional information identified above will be provided shortly. FPL's own calculation is in process and we expect it to be completed relatively soon. We expect to be able to resume negotiations with the City at that time.

Please advise if you have any questions or require information in addition to that which is discussed in this letter.

Very truly yours



Alvia B. Davis