

Ruth Nettles

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Sent: Monday, July 20, 2009 4:43 PM
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Subject: Electronic Filing for Docket No. 080677-EI / Docket No. 090130-EI / FPL's Motion to Strike
Attachments: 7.20.09.FPL.motion to strike CSD reply.pdf

ELECTRONIC FILING

a. Person responsible for this electronic filing:

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b. Docket No. 080677-EI; In re: Petition for rate increase by Florida Power & Light Company
Docket No. 090130-EI; In re: 2009 Depreciation and Dismantlement Study by Florida Power & Light Company

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Motion to Strike City of South Daytona's Reply to Florida Power & Light Company's Response in Opposition to City of South Daytona's Motion to Dismiss.

Sincerely,

Kenneth M. Rubin
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DOCUMENT NUMBER-DATE

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7/20/2009

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for increase in rates by)	Docket No. 080677-EI
Florida Power & Light Company)	
)	
In Re: 2009 depreciation and dismantlement)	Docket No. 090130-EI
study by Florida Power & Light Company)	
_____)	Filed: July 20, 2009

FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE CITY OF SOUTH DAYTONA'S REPLY TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO CITY OF SOUTH DAYTONA'S MOTION TO DISMISS

Florida Power & Light Company (FPL), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby moves to strike the City of South Daytona's Reply to Florida Power & Light Company's Response to Motion to Dismiss and states:

1. On July 2, 2009, with complete disregard for the filing deadlines clearly enunciated in both the Florida Rules of Civil Procedure and the Commission Rules, the City of South Daytona (CSD) filed its Motion to Dismiss the FPL Petition that has been pending in this case since March 18, 2009. On July 9, 2009, FPL filed its Response in Opposition to CSD's Motion to Dismiss. On July 17, 2009, CSD filed what it has styled as a "Reply" to FPL's Response in Opposition to the CSD Motion to Dismiss, a filing completely unauthorized by the applicable law.

2. Rule 28-106.204(1), F.A.C., only authorizes the filing of a single response to a motion, and does not provide for the party that files that initial motion to have the last word after receiving the response (here, filed by FPL) authorized by Rule 28-106.204(1). Simply put, 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

DOCUMENT NO. DATE
07345-09 07/20/09
FPSC - COMMISSION CLERK

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-TL, Docket No. 031038-TL (July 1, 2004) at 2 (“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 25, 2001) at 7, (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-PCO-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).

3. The “Reply” should also be stricken from the record in this case as it contains assertions and allegations against both the Commission and FPL that are impertinent, inflammatory, accusatory, offensive and scandalous, all of which are intended to do nothing other than inflame passions and inject inappropriate issues into this proceeding. For example, CSD’s analogy of the Commission to a bank robber that has succeeded with 5 prior robberies but is apprehended on the 6th attempt (see paragraph 6 of CSD’s “Reply”), and CSD’s references to

FPL stock prices, Florida unemployment rates, and assertions that “Florida’s schools and universities, many of which do not have the funds to pay their current bills from FPL, are removing phones from professors’ offices” (see paragraph 9 of CSD’s “Reply”) are so inappropriate and so far afield from any possible legal issue in this case that they call into question the motivation and intent of the author of this “Reply”. A document like this “Reply” that serves no useful or appropriate purpose in the litigation and whose intent, judging from the CSD discovery, may have more to do with the ongoing franchise litigation than with this litigation, should be stricken from the record of this case.

For the foregoing reasons, the CSD “Reply” to FPL’s Response In Opposition to CSD’s Motion to Dismiss should be stricken and disregarded in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 20th day of July, 2009, to the following:

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