

State of Florida



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Public Service Commission

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COMMISSION
CLERK

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

DATE: August 20, 2009
TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk
FROM: Kay Posey, Executive Secretary to Commissioner McMurrrian *KP*
RE: Communication Received in Docket No. 090001-EI

This office has received the attached letter from Brian Kelley, Edmund Har, and Dean Fox of Paradigm Investment Group, LLC, regarding the above-noted docket.

The correspondence has not been viewed or considered in any way by Commissioner McMurrrian. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as CEO 91-31-July 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of section 350.042, Florida Statutes. However, in such cases Commissioner McMurrrian has requested that a copy of the correspondence be placed in the docket file.

cc: Lisa Bennett

Attachment

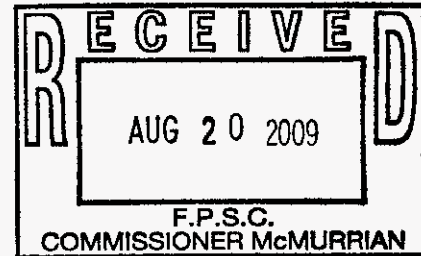
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PARADIGM INVESTMENT GROUP, LLC

(DBA Hardee's)

August 18, 2009

Katrina J. McMurrian, Commissioner
 Florida Public Service Commission; Energy Division
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850
 850.413.6040



RE: Gulf Power a subsidiary of Southern Companies: NYSE: SO)

We would like to articulate our concern on Gulf Power, a subsidiary of Southern Companies, and their consistent request for rate increases. When commodity prices spiked in 2008 Gulf Power was able to pass those costs along to its customer through rate increases approved by the Florida Public Service Commission (PSC). This approval procedure brings to the table two questions, (1) is Gulf Power effective in their fuel purchasing? (2) Who is responsible for evaluating Gulf Power's purchasing performance?

Paradigm investment Group is one of the largest franchisees of CKE, Inc. (NYSE: CKR) and has a portfolio of 88 restaurants located in the southeastern region of the United States. Our restaurant portfolio includes 70 units in Alabama, 11 units in Florida, 5 units in Mississippi and 2 units in Tennessee. As our company continues to maintain and grow its operation we have become increasingly focused on the energy sector and have conducted several projects, analyses and evaluations to curtail our energy usage, demand and costs. Over the past few years, we have installed several energy management panels, upgraded HVAC units and lighting to more energy efficient alternatives, and installed motion sensors in our bathrooms all to the tune of several hundred thousand dollars.

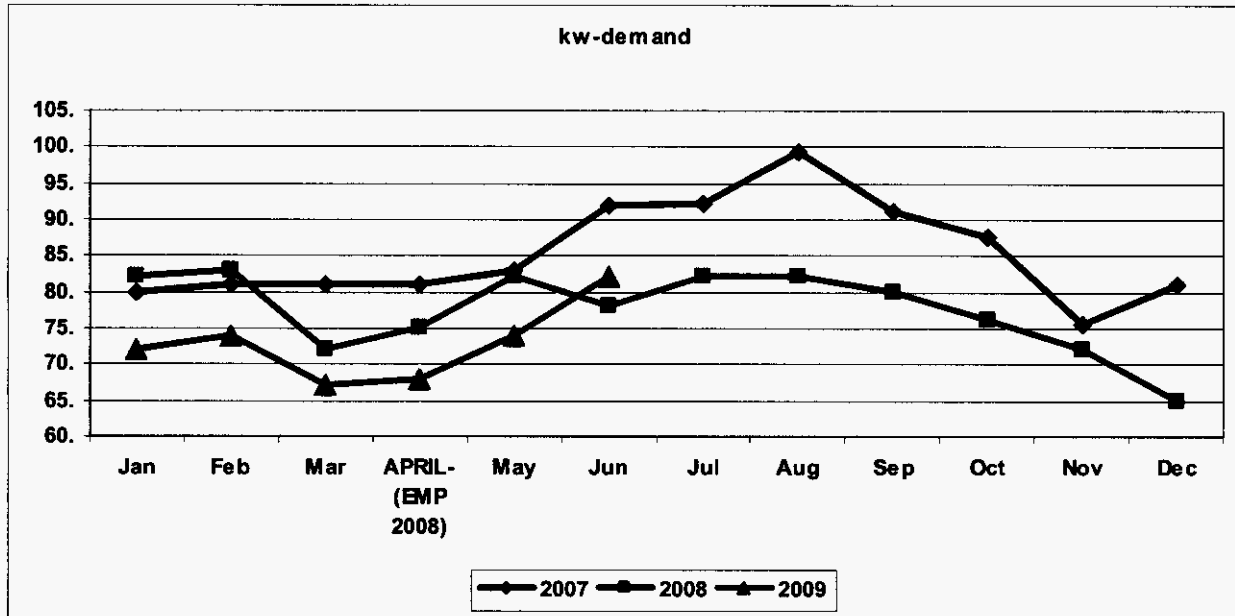
Paradigm is doing its part to reduce demand and usage which has declined 4.9% over the last three months v. the prior year yet we are still subjected to the rising rate environment influenced by, among other things, Gulf Power's ability to effectively purchase fuel and deliver energy at a reasonable cost. Gulf Power has the ability to pass increases in fuel cost onto their customers through their "Rate Structure and Cost Recovery Plans." This provision, approved by the PSC, gives Gulf Power the ability to adjust for fuel cost recovery annually.¹ However, the Florida PSC approved two rate increases 2008. On June 20th 2008 Gulf Power requested a rate increase which was subsequently approved by the Florida PSC at an astounding 11.3%. Less than 5 months later, on November 12th 2008, Gulf Power was granted yet another rate increase of 9% by the Florida PSC begging the question as to how 2 rate increases can be approved inside a 12 month period? These back to back rate increases translated into an effective 21.3% increase in less than a year. How is it remotely reasonable for a small business to absorb such a significant increase during the worst economic crisis in 80 years? For the year 2009 Paradigm paid Gulf Power \$40,864 over 2008. If we keep on the current trend in total we will have paid \$81,727 more (or 23%) than 2008. Why does the PSC change their policy to assist Gulf Power and allow the burden to fall so egregiously on the backs of your business constituents? Additionally, it is our understanding that yet another rate increase is scheduled for Q3 of 2009 for a clean coal scrubber. This rate

¹ Southern Companies 10-K Annual Report 2008: <http://investor.southerncompany.com/sec.cfm>

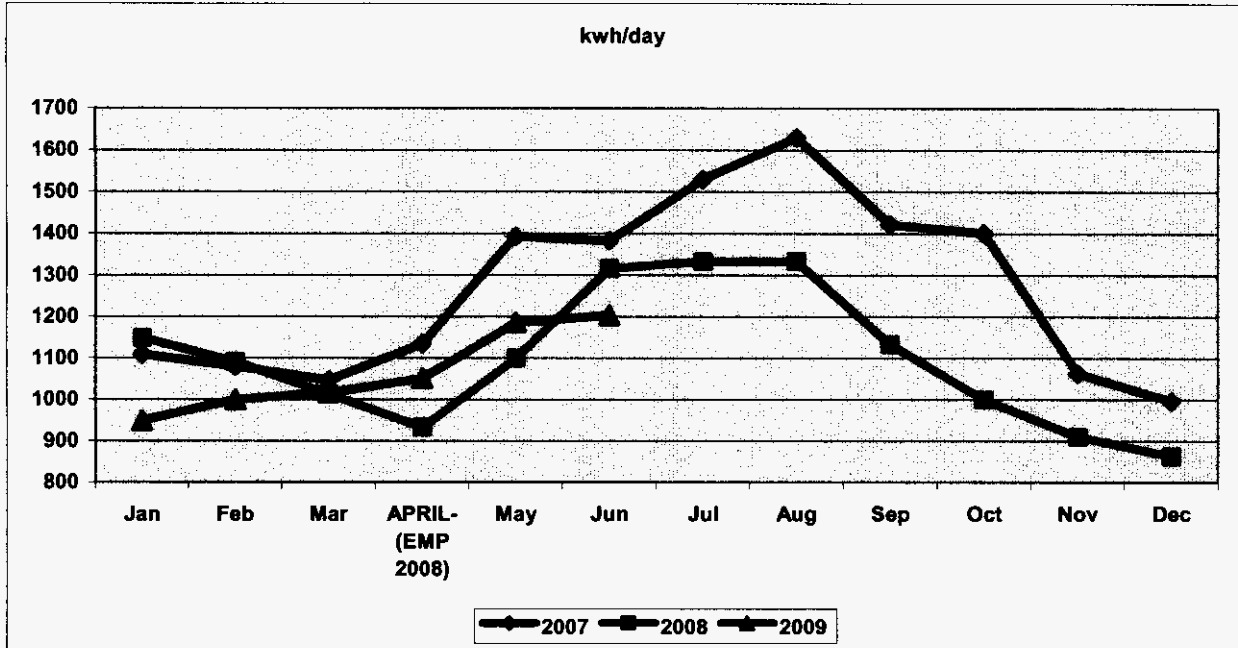
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increase for the clean coal scrubber could be catastrophic to our 11 restaurant units operating in your jurisdiction. One has to wonder if anyone has considered the financial impact to all the other small to medium sized businesses that will be directly impacted by these perpetual rate increases. Paradigm Investment Group has done its part to limit/control the demand side. As mentioned above, we have installed Energy Management Panels into 19 of our restaurants with plans to add another 10-20 in the next 6 months. The various steps we have taken significantly lowered our peak demand along with our usage. The below charts are from our restaurant located 701 D'Olive St. Bay Minette, AL 36507_which is serviced by Southern Companies.

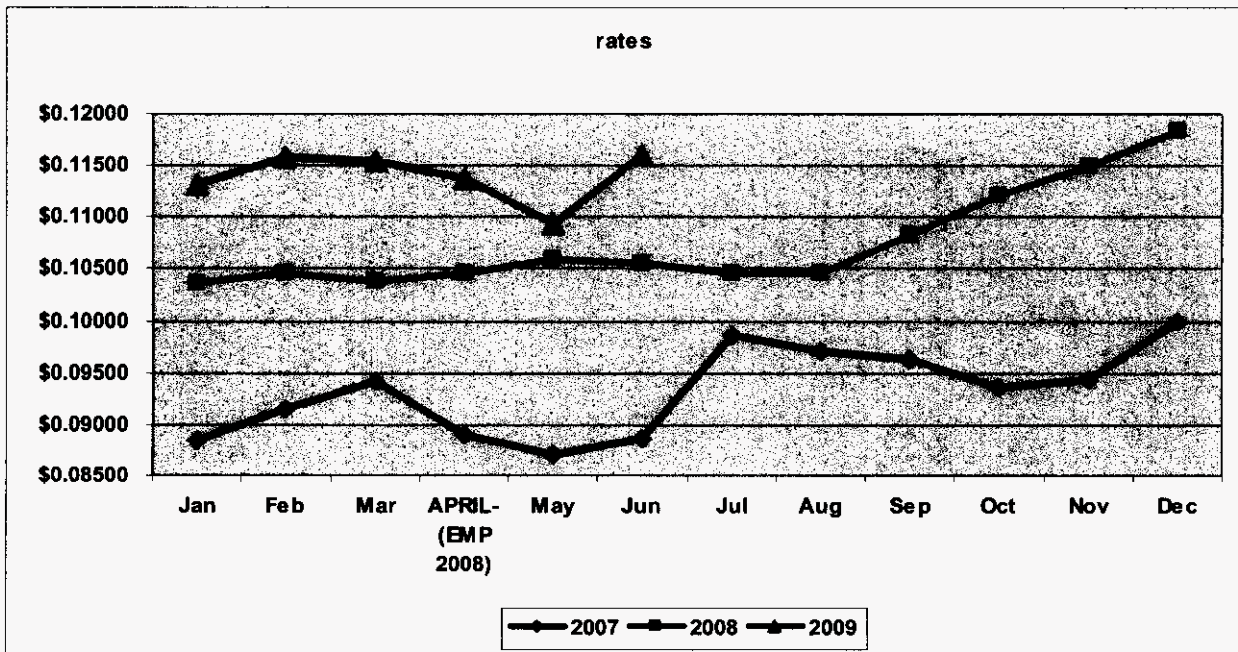
As you can see below (kw-demand), since installing our EMP panel we have significantly lower our demand in 14 of the last 15 months with the only exception being Jun of 2009 v. Jun 2008.



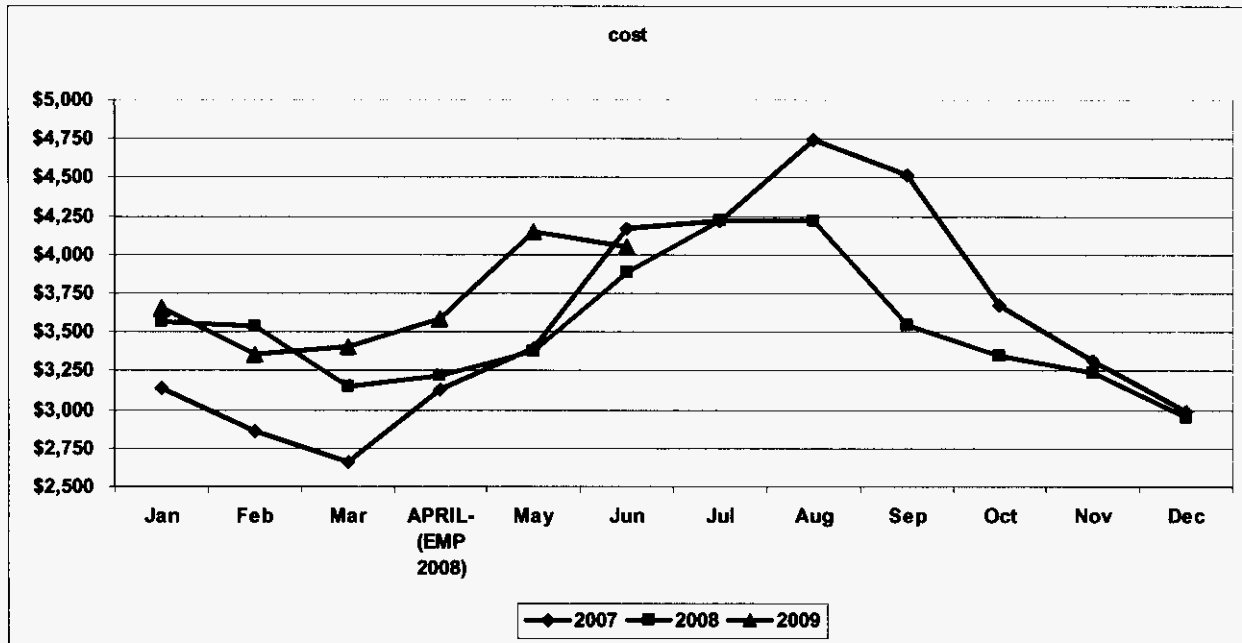
In the below graph (kwh/day), Paradigm has decreased our usage/day for 12 out of 15 months.



In the below graph (rates) you can see effective rates charged since January 2007 and the dramatic increase year over year.



When one considers all of the above information the result is a higher cost/day as shown in the below graph (cost).



The above charts are great examples of how Paradigm is doing its part to reduce demand and usage against a runaway inflationary environment on the supply side of energy by a "for profit" utility company. What is Gulf Power's motivation for purchasing fuel at the lowest possible price if they are allowed to pass the cost onto the customer without a challenge? Who is responsible for analyzing Gulf Power's ability to effectively deliver the most economical energy solution to your constituents?

	3 MONTHS ENDING 7/31/2008					3 MONTHS ENDING 7/31/2009					VARIANCE				
	Average Usage/Day	Avg. kw	Cost	Cost/Day	Rate	Average Usage/Day	Avg. kw	Cost	Cost/Day	Rate	Average Usage/Day	Avg. kw	Cost	Cost/Day	Rate
1507	1,380	84	\$ 11,322	\$ 124	\$ 0.090	1,327	80	\$ 14,003	\$ 151	\$ 0.113	-3.8%	-4.8%	23.7%	21.0%	25.9%
1525	1,167	72	\$ 9,063	\$ 100	\$ 0.085	1,109	72	\$ 11,572	\$ 123	\$ 0.111	-5.0%	0.0%	27.7%	23.6%	30.1%
1530	1,243	79	\$ 9,927	\$ 107	\$ 0.086	1,113	75	\$ 11,145	\$ 122	\$ 0.110	-10.5%	-5.1%	12.3%	14.7%	28.1%
Totals	1,263	78	\$ 30,312	\$ 110	\$ 0.087	1,183	76	\$ 36,720	\$ 132	\$ 0.112	-6.4%	-3.4%	21.1%	19.8%	28.0%

The above chart represents 3 Hardees Restaurants located in Gulf Powers service area for the 3 months ending 7/31/2009 v. prior year. As you can see our Avg. Usage/Day has decreased in all 3 of our units. Additionally, our peak demand (kw) has decreased in 2 units while remaining flat in our 1525 unit. If one was to compare our decreases in usage and peak demand with our increase in cost and rate it logically does not make sense. Based on our ability to control our usage and demand Gulf Powers increases can not be justified.

By design, we have no choice but to purchase energy from the utility company authorized by the PSC. With no competition, Gulf Power maintains monopolistic control over this service. Therefore, we look to the corresponding public utility commission (PSC in this case) to govern the performance. Gulf Power is a "for-profit" entity with its sole mission to deliver profits to its shareholders. As a result, we are wholly dependent upon the PSC's ability to control/limit the requests for rate increases by Gulf Power. Given the current economic environment we do not have the luxury of passing 100% of these costs onto our customers (and your constituents).

Due to the numerous requests of Gulf Power for rate increases an assumption can be made that Gulf Power was ineffective in their purchasing efforts and their ability to hedge against rising commodities prices. Gulf Power does not have to suffer its monetary mistakes; its customers must endure the consequences. The Florida PSC has the responsibility to evaluate, approve and report on Gulf Powers purchasing performance.

These increases, approved by the Florida PSC, have outpaced all other utility companies that service our portfolio of restaurants.

Top Electric Utility Providers by total number of accounts

<u>UTILITY PROVIDER</u>	<u># OF ACCOUNTS</u>
Alabama Power Company	32
Gulf Power Company	11
Huntsville Utilities	8
Mississippi Power Company	4
Decatur Utilities	3

Alabama Power, also a subsidiary of Gulf Power's parent, Southern Companies, has only been able to increase their rates on January 1, 2008 by 6.15% and October 8, 2008 by 9%, resulting in a 15.7% increase over the last 12 months. While still very high, the increase granted Alabama Power remained well below the 21.3% increase for Gulf Power approved by the Florida PSC. Additionally, to get the approval from the Alabama PSC the utility agreed not to pursue a rate increase or an increase due to environmental cost until the year 2010.² The Florida PSC did not include a similar clause in the latest rate increase. In fact, Gulf Power is currently seeking an additional rate increase as mentioned above.

Huntsville Utilities, Paradigm's 3rd largest electricity supplier, purchases its fuel from the Tennessee Valley Authority (TVA). In October of 2008, the TVA and Huntsville Utilities were able to pass through to customers a record 17% increase after years of steady rates. However, unlike Southern Companies and its subsidiary, Gulf Power, TVA has decreased their rates for the 3rd consecutive quarter by 4.4% thus far in 2009 following the declines realized in natural gas and other energy related commodities. Shouldn't the Florida PSC request a rate reduction from Gulf Power since commodity prices have decreased substantially after peaking in the late summer 2008? Furthermore, why would the Florida PSC even consider an additional request for rate increase given the dramatic decline in energy commodities this year? Shouldn't we expect the Florida PSC to respond in like-kind behavior to other public utility commissions who work with "not-for-profit" utilities such as the TVA?

The below chart shows the financial performance of Gulf Power through FYE 2008. Gulf Power reported an increase in Operating Revenue of 10.1% and an increase in Net Income (After Dividends on Preferred and Preference Stock) of 16.9% from 2007 to 2008. These figures are astonishing given the financial crisis that hit the entire world in Q3 and Q4 of 2008. These results are achievable since Gulf Power does not have to bare the risks associated with fuel purchasing performance. The company can simply pass the cost along to its customer (with the PSC approval of course). Naturally, one would have to question why the Florida PSC would allow an exception to Gulf Power's annual adjustments with an additional rate increase when Net Income reported a positive 16.9% increase for the FYE 2008 while other "for-profit" businesses reported record losses over the same period?

² Southern Companies Form 8-K October 8, 2008:

<http://investor.southerncompany.com/secfiling.cfm?filingID=92122-08-56&CIK=092122>

Gulf Power Company

Statements of Income

For Years Ended December 31, 2008, 2007

(select financial and operating data outlined) *

<i>(in thousands)</i>	2008		2007		% Change
Operating Revenues	\$ 1,387,203	100.0%	\$ 1,259,808	100.0%	10.1%
Operating Expenses	\$ 1,194,514	86.1%	\$ 1,083,892	86.0%	10.2%
Depreciation and Amortization	\$ (84,815)	-6.1%	\$ (85,617)	-6.8%	-0.9%
TOTAL OPERATING EXPENSES	\$ 1,109,699	80.0%	\$ 998,275	79.2%	11.2%
OPERATING INCOME	\$ 277,504	20.0%	\$ 261,533	20.8%	6.1%
Other Income and (Expense)	\$ (34,038)	-2.5%	\$ (40,834)	-3.2%	-16.6%
Earnings before Income Taxes	\$ 243,466	17.6%	\$ 220,699	17.5%	10.3%
Income Taxes	\$ 54,103	3.9%	\$ 47,083	3.7%	14.9%
Net Income	\$ 189,363	13.7%	\$ 173,616	13.8%	9.1%
Dividends on Preferred and Preference Stock	\$ 6,203	0.4%	\$ 3,881	0.3%	59.8%
Net Income After Dividends on Preferred and Preference Stock	\$ 183,160	13.2%	\$ 169,735	13.5%	7.9%
Net Income After Dividends on Preferred and Preference Stock (as reported)	\$ 98,345	7.1%	\$ 84,118	6.7%	16.9%

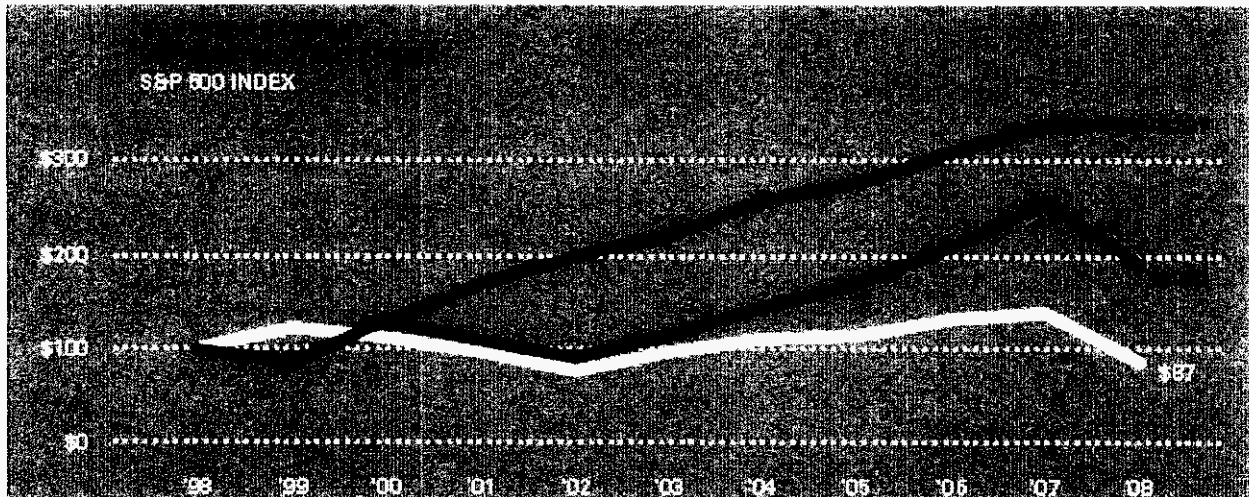
* The selected data should be used for illustrative purposes only. All data has been verified and preserved, as reported and presented by Deloitte & Touche LLP; dated February 25, 2009.

In 2Q 2009, Southern Companies (parent) reported a consolidated NET INCOME of \$478MM up from \$417MM for 2Q 2008. No doubt the back to back increase in rates approved by the PSC in 2008 contributed to this gain. Southern Companies also announced "a regular quarterly dividend of 43.75 cents per share."³ This will be the 247th consecutive dividend paid by this "for-profit" utility company. How much of this consistent performance can be attributed to the fact that this "for-profit" utility has the ability to request and receive rate increases from each corresponding governing entity without serious opposition or challenge?

Gulf Power and Southern Companies have been able to outperform the industry with these perpetual rate increase approvals from the respective Public Service Commissions. The below chart compares Southern Companies ("SO") versus the S&P Electric Utility Index and the S&P 500 Index in terms of "shareholder" return. Clearly SO is outperforming both indices by a significant margin. What is so significant about SO's management/operations to warrant such results? Clearly, the company's ability to capture rate increases on a frequent basis has something to do with the bottom-line financial performance? Unfortunately, their success is coming at the direct expense of the businesses they ultimately serve.

³ Southern Companies Second Quarter 2009 Earnings Package:

[http://files.shareholder.com/downloads/SO/692580012x0x309388/e2d37941-1b5f-4231-b24d-d1f600017b48/Southern Company Earnings Package 2Q2009.pdf](http://files.shareholder.com/downloads/SO/692580012x0x309388/e2d37941-1b5f-4231-b24d-d1f600017b48/Southern%20Company%20Earnings%20Package%202Q2009.pdf)



- SO performed better in 2008 than 94% of stocks on the S&P 500⁴

The affects of these perpetual rate increases will change how all businesses in your community operate. Paradigm Investment Group considers utility costs when opening/closing restaurants. We have already elected to open 2 new restaurants outside of areas controlled by Southern Companies because of the utility environment. Unfortunately, such a decision means a continued decline in jobs and tax revenue for the state of Florida.

Paradigm Investment Group would like to work with the Florida PSC to ensure a more practical solution is achieved going forward. Please feel free to contact us at the below information.

Sincerely,

Brian Kelley
Managing Partner/CFO
858.458.9748
brian@paradigminvest.com

Edmund Har
Sr. Financial Analyst
858.458.9749
edhar@paradigminvest.com

Dean Fox
Financial Analyst
858.458.9925
dean@paradigminvest.com

CC: Matthew M. Carter; Chairman – Florida Public Service Commission
Lisa Polak Edgar; Commissioner – Florida Public Service Commission
Nancy Argenziano; Commissioner – Florida Public Service Commission
Nathan A. Skop; Commissioner – Florida Public Service Commission
Charlie Christ; Governor – State of Florida
Mike Wiggins; Mayor – City of Pensacola

⁴ Southern Companies 2008 Complete Summary Annual Report: [2008 Complete Summary Annual Report: http://files.shareholder.com/downloads/SO/692580012x0x286261/F4B91EC9-43CB-45F2-A549-5261C9763981/SoCo_08_Summary_AR_1.pdf](http://files.shareholder.com/downloads/SO/692580012x0x286261/F4B91EC9-43CB-45F2-A549-5261C9763981/SoCo_08_Summary_AR_1.pdf)