

**Diamond Williams**

080677-EI

**From:** Butler, John [John.Butler@fpl.com]  
**Sent:** Wednesday, December 08, 2010 3:47 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing / Docket 080677-EI / FPL's Motion to Strike  
**Attachments:** 12.8.10 FPL Motion to strike Smith response (Question 3 Motion).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

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 Robert H. Smith's Response to Florida Power & Light Company's Response to Robert H. Smith's Motion for Florida Power & Light Company to answer question 2 to Staff's Data Request No. 1 in order to inspect and examine the answer to question 3

Thank you for your attention and cooperation to this request.

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12/8/2010

FPSC-COMMISSION CLIENT

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of Florida Power & Light Company's earnings ) Docket No. 100410-EI  
In re: Nuclear cost recovery clause ) Docket No. 100009-EI  
In re: Petition for rate increase by Florida Power & Light Company ) Docket No: 080677-EI  
Filed: December 8, 2010

**FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE ROBERT H. SMITH'S RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO ROBERT H. SMITH'S MOTION FOR FLORIDA POWER & LIGHT COMPANY TO ANSWER QUESTION 3 TO STAFF'S DATA REQUEST NO. 1 IN ORDER TO INSPECT AND EXAMINE THE ANSWER TO QUESTION 3**

Pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), Florida Power & Light Company ("FPL") hereby moves to strike the response that was filed by Robert H. Smith on December 7, 2010 (the "Smith Response") to FPL's response in opposition to Mr. Smith's Motion for Florida Power & Light Company to Answer Question 3 to Staff's Data Request No. 1 in Order to Inspect and Examine the Answer to Question 3 (the "Smith Motion"). The grounds for this motion to strike are as follows:

1. Rule 28-106.204 governs motion practice before this Commission. Subsection (1) of the rule provides for a party to file a response in opposition to a motion. Pursuant to that provision, FPL filed its response in opposition to the Smith Motion on December 6, 2010 (the "FPL Response"). Rule 28-106.204 does not provide, however, for moving parties such as Mr. Smith to file a reply or sur-response to a response in opposition to their motion.<sup>1</sup>

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<sup>1</sup> 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, e.g., 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*

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FPSC-COMMISSION CLERK

2. Nothing in the Smith Response refutes the reasons given in FPL's Response for denying the Smith Motion. Rather, the Smith Response is simply an unauthorized attempt to protract improperly and unnecessarily the Commission's ruling on the Smith Motion. Allowing the Smith Response to be filed without objection could promote additional unauthorized filings and increase the associated administrative burden for FPL and the Commission.

WHEREFORE, FPL respectfully requests that the Smith Response be struck.

Respectfully submitted,

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and General Counsel  
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*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).

**CERTIFICATE OF SERVICE**  
**Dockets 100410-EI, 100009-EI and 080677-EI**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished electronically this 8<sup>th</sup> day of December, 2010, to the following:

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