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Sent: Monday, September 24, 2012 2:27 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing / Dkt 120015-EI / FPL's Response to Thomas Saporito's Motion to Strike Post Hearing Brief and Statement of Issues and Positions
Attachments: Docket 120015 - FPL's Response to T. Saporito's Motion To Strike FPL's Post Hearing Brief.pdf
Electronic Filing

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b. Docket No. 120015 – EI
In re: Petition for rate increase by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages

e. The document attached for electronic filing is Florida Power and Light Company's Response to Thomas Saporito's Motion To Strike Post Hearing Brief and Statement of Issues and Positions.

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DOCUMENT NUMBER-DATE

06422 SEP 24 2012

9/24/2012

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company

Docket No. 120015-EI
September 24, 2012

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO THOMAS SAPORITO'S MOTION TO STRIKE
POST HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS**

Pursuant to Rule 28-106.204, Florida Administrative Code (2011), Florida Power & Light Company ("FPL") responds in opposition to Thomas Saporito's Motion To Strike FPL's Post Hearing Brief and Statement of Issues and Positions. Contrary to Mr. Saporito's assertions, FPL's Post Hearing Brief and Statement of Issues and Positions do not exceed the page limit set forth in the Florida Public Service Commission's ("Commission") prehearing order. Accordingly, Mr. Saporito's motion should be denied. In further support, FPL states:

FPL's Post Hearing Brief complies with the 150-page limitation set forth in the Commission's Prehearing Order, No. PSC-12-0428-PHO-EI. FPL's Post Hearing Brief consists of pages 1-113, and its Statement of Issues and Positions consists of pages 113-150. This complies with the Prehearing Order's directive that "a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief shall together total no more than 150 pages"

Mr. Saporito's statement that FPL's Post Hearing Brief consists of 189 pages reflects an apparent misunderstanding about the requirements of the Prehearing Order. The portion that exceeds the 150 allotted pages consists of (1) the table of contents, (2) signature page and certificate of service and (3) FPL's appendices. None of those pages comprise FPL's "proposed findings of fact and conclusions of law, if any, statement of issues and positions, [or] brief." They may not be properly counted toward the 150-page limit. Consistent with this approach, the Brief and Statement of Issues and Positions in FPL's last rate case (Docket 080677-EI) satisfied

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the 150-page limitation; the table of contents, signature page, certificate of service and appendix were excluded from the page count.

Florida Rule of Appellate Procedure 9.210(a)(5) serves as persuasive authority with respect to page limits for briefs. With regard to briefs, it states that “[t]he tables of contents and citations of authorities, and certificates of service and compliance, shall be excluded from the [page] computation.” Excluding those portions of a brief document from the page count makes sense because, by their nature, they do not contain substantive argument.

FPL’s appendices also should be excluded from the page count for the same reason. The appendices were separately attached and simply show how certain figures reflected in FPL’s original filings were affected by the adjustments subsequently made in Exhibit 399 (FPL witness Ousdahl’s Exhibit KO-16) and Exhibit 470 (FPL witness Deaton’s RBD-11). They are for Staff’s and the parties’ convenience only and contain no substantive argument.

In sum, FPL’s Post Hearing Brief and Statement of Issues and Positions fall within the 150-page limitation. However, to the extent the Commission wishes to exclude the portion that exceeds 150 pages, that portion would consist of only the table of contents, signature page and certificate of service, and the appendices provided for Staff’s convenience.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission deny Thomas Saporito’s Motion To Strike FPL’s Post Hearing Brief and Statement of Issues and Positions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Response to Thomas Saporito's Motion To Strike FPL's Post Hearing Brief and Statement of Issues and Positions has been furnished via Electronic Mail this 24th day of September, 2012, to the following:

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