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Subject: CITY OF SOUTH DAYTONA'S RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE
Attachments: Response to Motion to Strike.doc

- a. The full name, telephone number, and e-mail address of the person responsible for the electronic filing:

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- b. The docket number and title if filed in an existing docket:
 - (1) In Re: Petition for increase in rates by Florida Power & Light Company; Docket No.: 080677-EI; and
 - (2) In Re: 2009 depreciation and dismantlement study by Florida Power & Light Company; Docket No.: 090130-EI
- c. The name of the party on whose behalf the document is filed: City of South Daytona
- d. The total number of pages in each attached document: 6 pages
- e. A brief but complete description of each attached document: City Of South Daytona's Response To Florida Power & Light Company's Motion To Strike

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by Florida Power & Light Company) DOCKET NO.: 080677-EI
In Re: 2009 depreciation and dismantlement study by Florida Power & Light Company) DOCKET NO.: 090130-EI
Filed: July 21, 2009

CITY OF SOUTH DAYTONA'S RESPONSE
TO FLORIDA POWER & LIGHT COMPANY'S
MOTION TO STRIKE

The City of South Daytona (the "City"), by and through its undersigned counsel, hereby responds to the Motion to Strike filed by Florida Power & Light Company ("FPL"), and states as follows:

1. FPL's motion to strike South Daytona's motion once again cites "deadlines" in Commission rules and suggests similar provisions in Florida's Rules of Civil Procedure apply to South Daytona's motion. It is simply unconscionable for a mammoth, multi-billion dollar electric utility to even suggest that a party which intervenes to challenge a petition for a \$1.3 Billion rate increase can be prevented from filing a motion to dismiss such petition if the motion is not filed within ten (10) days of the utility's filing. As the Florida Public Service Commission (the "Commission") is aware, FPL's petition consists of reams of testimony, minimum filing requirements and associated data and documents constituting hundreds, if not thousands, of pages of information. FPL obviously spent many months orchestrating its filing, paying a myriad of consultants, engineers, cost of equity experts, etc., not to mention spending tens if not hundreds of thousands (millions?) of dollars in the process. To invoke such a procedural

rule, and certainly should the Commission apply such a procedural rule, to South Daytona's motion would constitute an egregious violation of South Daytona's constitutional right to due process. Assuredly, South Daytona would preserve its right to appeal such an unconscionable act, should it occur.

2. The Commission's procedural rule is subject to waiver by the Commission and replies to motions have been entertained by the Commission in past proceedings. Commission consideration of a reply in this instance surely is justified by FPL's misrepresentation of the decision in Southern Bell Telephone and Telegraph Co. v. Florida Public Service Commission, 443 So. 2d 92 (Fla. 1983) as dispositive of the projected test year issues raised in South Daytona's motion. Southern Bell involved a telephone ratemaking process wherein the "projected" test year included three months of historic information before the rate petition was even filed. 443 So. 2d at 92. The facts in Southern Bell are clearly distinguishable and FPL's assertion that the Court's holding was dispositive of the issues raised by South Daytona was a misrepresentation of law.

3. Unemployment rates, mortgage foreclosures, the threat to the jobs of municipal police, fire fighters and other workers as well as other travesties are record evidence in this proceeding which suggest that FPL's requested rates are unjust and unreasonable. South Daytona will not permit FPL to bully the City into limiting the portions of the record evidence in this proceeding which can be cited by the City.

4. FPL's protestations concerning South Daytona's reference to recent FPL stock appreciation similarly provides no basis for striking South Daytona's motion. As the Commission is well aware, and the testimony of FPL's own witnesses confirms, stock prices, volatility in stock prices, earnings, etc., play an integral part in FPL's ability to

attract equity investors and also in the Commission's determination of a just and reasonable return on equity for FPL. FPL may desire that the Commission and FPL's customers ignore the fact of the recent dramatic escalation of FPL's stock, and FPL may wish to prevent such fact from becoming common knowledge as the Commission considers an appropriate return on equity for FPL, but recitation of such facts and their consideration in this proceeding is very much relevant and in no way justifies the striking of South Daytona's motion to dismiss.

5. A review of events during the past two years in the electric industry confirms the speculative nature of forecasting what costs FPL will incur and investments FPL will need more than two years after hearings are concluded later this year. Two years ago, a number of electric utilities in this State were rushing to secure authority to build coal plants; now renewables, conservation and nuclear plants appear to be the focus. It would be unreasonable to establish rates based on speculative costs and investments more than two years into the future when the electric industry is experiencing changes almost daily.

6. The Commission should be assured that the "motivation and intent of the author of the Reply" is to see that the law is applied in these proceeding, that South Daytona's constitutional rights are not abridged and that FPL's dilatory tactics and other actions are presented for the Commission's consideration, for instance, through South Daytona's pending Motion to Compel, which the Commission has yet to act upon.

FOR THE FOREGOING REASONS, the City of South Daytona requests that the Commission waive application of any rule which may abridge South Daytona's

constitutional right to present legal arguments to the Commission and dismiss FPL's motion to strike.

Respectfully Submitted,

s/ Brian P. Armstrong

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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 21st day of July, 2009.

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