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080677-EI  
090130-EI

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**Sent:** Tuesday, August 11, 2009 2:13 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket Nos. 080677-EI and 090130-EI  
**Attachments:** City's Memorandum in Support of Proposed Hearing Issues.pdf

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Docket Nos.: 080677-EI and 090130-EI

In Re: Petition for Rate Increase by Florida Power & Light Company

In Re: 2009 Depreciation Study by Florida Power & Light Company

Name of Document: City of South Daytona's Memorandum in Support of Proposed Hearing Issues  
No. of Pages: 24

Party: City of South Daytona

DOCUMENT NUMBER-DATE

08338 AUG 11 09

FPSC-COMMISSION CLERK

8/11/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO.: 080677-EI

In re: 2009 depreciation study by Florida  
Power & Light Company.

DOCKET No. 090130-EI

FILED: August 11, 2009

**CITY OF SOUTH DAYTONA'S MEMORANDUM  
IN SUPPORT OF PROPOSED HEARING ISSUES**

The City of South Daytona ("City"), by and through its undersigned counsel submits its Memorandum in Support of Proposed Hearing Issues, and states as follows:

**Issues 1 and 4**

*Issue 1: Whether the FPSC has jurisdiction under Florida law at Sections 366.06(1) and 367.08(2) to consider FPL's petition for a rate increase based on FPL's projected 2010 test-year period of the 12 -months starting January 1, 2010 and ending December 31, 2010 supported by future speculative projections of costs and investments used and useful in the public service? (Proposed by Saporito)*

*Issue 4: Whether the FPSC has jurisdiction under Florida law at Sections 366.06(1) and 367.08(2) to consider FPL's petition for a rate increase based on FPL's projected 2011 test-year period of the 12-months starting January 1, 2011 and ending December 31, 2011 supported by future speculative projections of costs and investments used and useful in the public service? (Proposed by Saporito)*

Paragraphs 1 through 9 are responding to issues 1 and 4 of the Commission's Order Allowing Memoranda on Additional Issues, issued on August 6, 2009.

1. The City supports Intervener Saporito's request to include Issues 1 and 4 and as reasons therefore the City incorporates herein the City's Motion to Dismiss and the City's Reply to FPL's Response to the City's Motion to Dismiss, which are attached as Appendices A and B, respectively, to this memorandum.

2. The Florida Statutes do not authorize the Florida Public Service Commission to establish electric utility rates based on projections of costs and capital investments which are wholly speculative at the time of hearings.

3. Section 366.06(1), Florida Statutes, refers only to "actual legitimate costs..."; "actually used and useful..."; "keep a current record of the net investment..."; "money honestly and prudently invested..."; "shall not include any goodwill or going concern value or franchise value in excess of payment made therefor." Each of these clauses refer expressly to past, historic costs "actually" incurred or money paid or records kept establishing the "net" investment. Absolutely absent from this statute is any reference to projections, projected costs, or projected capital investments.

4. Where the Florida Legislature wishes to authorize the Commission's consideration of projected data to set rates, it has specifically done so, as evidenced in the rate making statutes in Chapter 367, Florida Statutes (addressed in the City's Motion to Strike). The ratemaking procedures referred to in Section 367.081(2), Florida Statutes, are inapplicable to Florida Power and Light's petition, as those procedures apply specifically to water or wastewater utilities. Rather, this explicit permission for the Commission to consider projected test years for water or wastewater utilities would better be read as further evidence that the Legislature did not intend for such test years to be used in ratemaking proceedings for electric utilities.

5. In Citizens v. Public Service Comm'n, 425 So.2d 534 (Fla. 1982) and Southern Bell Telephone and Telegraph Company v. Florida Public Service Comm'n, 443 So.2d 92 (Fla. 1983), the Florida Supreme Court has held that rates may be based on projections of costs and capital improvements in two cases where the "projections" were actual, historic costs and investments at the time hearings were held or an order issued by the Commission. In this proceeding, FPL suggests that these cases support its request that the Commission establish rates based on speculative costs and capital investments in some cases more than two years after hearings will have ended and a Commission order issued. Commission Staff appears to ignore this clear and unmistakable distinction between the Supreme Court's opinions in the cases cited above and FPL's Petition in this case, but the Commission should not be so ready to dismiss this obvious distinction and make a patent appealable error by authorizing rates on the two projected test years of data suggested by FPL.

6. Not long ago, FPL planned to build a generating plant in Glades County, Florida. Despite FPL's plans, and substantial investments consistent with such plans, the plant will never be built. Ratepayers should not be forced to pay today for projections of capital investments, including speculative investments in additional plants to be made two years or more into the future when they might suffer the same fate as the Glades plant.

7. Projected test years may be available to electric utilities in other states where authorized by statute or applicable law to address "regulatory lag" concerns. In Florida, based on current rate adjustments authorized and utilized by FPL, the majority of FPL revenue is obtained outside of its base rates. The Generation Base Rate Adjustment (GBRA), nuclear cost adjustment, environmental cost adjustment, conservation cost adjustment and fuel cost adjustment each serve to reduce FPL exposure to regulatory lag. These "adjustments" also deny

the ratepayer the opportunity to address the revenue obtained by FPL through these adjustments in a rate proceeding such as this one. Instead, FPL asserts that revenue obtained through these adjustments can only be analyzed in "true up" activities allegedly performed for each adjustment. This "true up" activity, if actually performed, is no substitute for consideration of such revenue recovery through a general rate proceeding such as this one so that FPL's full revenue requirements may be analyzed comprehensively and in one proceeding.

8. The Florida Legislature has amended applicable Florida ratemaking statutes addressing electric utility ratemaking a number of times, often affording FPL additional means of obtaining expedited rate relief as with the "adjustments" referred to above. However, the Legislature has never chosen to amend the section of the principal rate making statute (section 366.06(1), FS) which expressly limits the Commission to consideration of historic costs and investments when setting rates in proceedings such as this one. These clear demonstrations of legislative intent were not available to the Florida Supreme Court when it decided the Citizens and Southern Bell cases more than twenty-five years ago. The Commission now can see the Legislature's intent to permit electric utilities to recover specifically identified types of costs in recurrent rate adjustments and based on some speculative data, but the basic ratemaking authority of the Commission is limited to establishing rates based upon historic data. Commission Staff ignores these facts but the Commission must be advised of them and consider them before making egregious errors in this proceeding.

9. FPL has requested that the Commission permit it to implement the numerous adjustments, thereby limiting its exposure to regulatory lag, limiting its risk of operations, ensuring FPL's recovery of associated revenue requirements, and ensuring that customer rates adjust periodically to provide FPL near certainty of cost recovery. For all of these reasons, FPL's

request to obtain the further protections afforded by the requested projected test year and subsequent projected test year is unreasonable and unjust for ratepayers.

**City Issues 74 to 78**

*Issue 74: Has the fuel adjustment clause decreased FPL's cost of equity and, if so, by how many basis points? (Proposed by CSD)*

*Issue 75: Has the nuclear cost recovery clause decreased FPL's cost of equity and, if so, by how many basis points? (Proposed by CSD)*

*Issue 76: Has the conservation cost recovery clause decreased FPL's cost of equity and, if so, by how many basis points? (Proposed by CSD)*

*Issue 77: Has the environmental cost recovery clause decreased FPL's cost of equity and, if so, by how many basis points? (Proposed by CSD)*

*Issue 78: Has the Generation Base Rate Adjustment reduced FPL's cost of equity and, if so, by how many basis points? (Proposed by CSD)*

Paragraphs 10 through 16 are responding to issues 74 through 78 of the Commission's Order Allowing Memoranda on Additional Issues, issued on August 6, 2009.

10. As noted in the paragraphs above, FPL currently enjoys many rate relief mechanisms which, taken together, virtually eliminate the risk of under recovering the majority of FPL's revenue requirements.

11. Each of the rate adjustment mechanisms have been authorized by statute or by Commission action in response to utility arguments that such mechanisms will reduce their operating risks and thus the returns they would expect to recover from ratepayers.

12. As a result of these rate mechanisms, a majority of FPL's revenue requirements are recovered and monitored outside of general rate proceedings. While alleged "true ups" can

occur, none of these true ups permit the thorough analysis historically performed in full blown rate proceedings of a utility's full revenue requirements. Rather, FPL is permitted to provide limited information, the scope of review is limited to specific costs, the time periods for review of each of the adjustments differ, so FPL's full revenue requirements are no longer placed before the Commission or customers in one proceeding for analysis and appropriate adjustment. For instance, the City attempted to raise the issue of GBRA over/under recovery for consideration in this proceeding only to be informed that such a determination is made in another "true up" proceeding. The City has been informed that such true ups occur with respect to the legion of other adjustments identified above as well. This scenario denies the City and customers the ability to investigate FPL's full revenue requirements appropriately resulting in the violation of the City's and all customers' due process rights.

13. The specific issues identified by the City with respect to each of the rate adjustment mechanisms utilized by FPL are intended to address the current failing in the process now in place which never requires FPL to substantiate the assertion that each adjustment mechanism reduces its cost of equity.

14. FPL should be required to establish the validity of such assertion by presenting evidence in this proceeding showing that each mechanism in fact has reduced its cost of equity. With five adjustment mechanisms currently in place, is it to be believed that without such mechanisms FPL would require a return on equity above the 12.5% ROE requested in this proceeding (with a corresponding allowance under Commission policy to earn up to 13.5% without fear of an over-earnings investigation)?

15. To the City's knowledge, FPL has not yet responded to a Staff interrogatory requesting FPL to identify whether the state agencies regulating utilities in the ROE proxy group

authorize such utilities to recover rates through each of the rate adjustments currently used by FPL. On the basis of FPL's assertions that these mechanisms reduce required returns (and thus benefit ratepayers), and in light of FPL's opposition to the City's specific issues addressing these mechanisms, if the utilities in the proxy group do not enjoy each of these adjustment mechanisms then the "proxy ROE" claimed by FPL must be adjusted downward (since the proxy utilities would have higher operating risks and thus higher return requirements than FPL).

16. FPL argues that if these issues are included, then a separate issue must be included asking whether the location of FPL's service territory in Florida increases its operating risk and, if so, by how many basis points. This is pure sophistry as neither the Legislature nor the Commission authorizes hurricanes or other natural disasters. In contrast, the Legislature and/or the Commission have authorized the rate making mechanisms addressed in each of the City's issues, at the request of the utilities such as FPL and on the basis that FPL's required returns would decrease. FPL should be required to prove its assertions and its return on equity should be decreased accordingly. The City further notes that Florida is not unique in its exposure to hurricanes and other natural disasters, i.e., utilities serving areas in tornado alley, hurricane prone Louisiana and earthquake prone California to name only a few.

17. FPL consistently argues that the number of issues should be limited in this proceeding, at times with concurrence from Commission Staff. The suggestion that issues should be limited in number (thereby also limiting the scrutiny of such issues by Commissioners) coming from a utility which filed a petition for a rate increase incorporating (a) a projected test year, (b) with a subsequent projected test year, (c) with a continued GBRA, (d) with up to a 13.5% return on equity, (e) while enjoying limited scrutiny of the majority of its revenue requirements, (f) which are recovered through several rate mechanisms thus avoiding regulatory



lag, is incredible. The City urges the Prehearing Officer to consider each of the arguments raised herein and include the issues addressed by the City so that the City and FPL's customers can be assured a full and fair hearing, consistent with due process, and in recognition of the enormous complexity which FPL has created in this proceeding as a result of its various requests.

18. The City further supports each of the issues raised by the Office of Public Counsel and the other interveners in this proceeding as the Commission and FPL's customers can only benefit from the most specific delineation possible of the host of issues raised by FPL's unprecedented, complex and unreasonable Petition.

Respectfully submitted this 11th day of August, 2009.

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 11th day of August, 2009.

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*/s/ Brian P. Armstrong*  
\_\_\_\_\_  
BRIAN P. ARMSTRONG

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by )  
Florida Power & Light Company )  
 )  
 )  
\_\_\_\_\_ )

DOCKET NO.: 080677-EI  
FILED: July 2, 2009

**MOTION TO DISMISS**  
**FLORIDA POWER & LIGHT COMPANY'S**  
**PETITION FOR RATE INCREASE**

The City of South Daytona, Florida, by and through its undersigned counsel, hereby moves that the Florida Public Service Commission ("Commission" or "PSC") dismiss the petition of Florida Power & Light Company ("FPL") in this docket and in support of this motion states as follows:

1. This proceeding commenced on March 18, 2009, with the filing of a petition for a permanent rate increase by FPL.
2. FPL is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes, and is subject to the jurisdiction of this Commission.
3. FPL provides electric service to approximately 4.5 million retail customers in all or part of 35 Florida Counties.
4. FPL has requested an increase in base retail rates and charges to generate \$1.044 Billion in additional gross annual revenues, effective January 4, 2010. This increase would allow FPL to earn a return on shareholder equity of up to 13.5%.
5. FPL based its request on a projected test year ending December 31, 2010. This projected test year necessarily includes speculative forecasts of cost increases as well as billions of dollars of plant which FPL alleges shall be placed into service by December 31, 2010.

Appendix A

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6. FPL also has requested a \$247.4 Million (for a total of \$1.3 Billion) increase in base retail rates and charges for a subsequent test year with such requested rates to be effective January 2011. Again, this increase would allow FPL to maintain a return for its shareholders equity of up to 13.5%.

7. FPL's subsequent test year will not end until December 31, 2011. This projected test year on top of the first projected test year necessarily includes speculative forecasts of cost increases as well as billions of dollars of plant which FPL alleges shall be placed into service by December 31, 2011.

8. Florida law does not authorize the Florida Public Service Commission to establish rates for Florida Power & Light Company (FPL), an electric utility, on the basis of test years projecting costs and investments more than two years out into the future.

9. Florida law unambiguously authorizes the Florida Public Service Commission to establish rates for water utilities on the basis of test years projecting costs and investments two years or more out into the future.

10. Section 367.081(2), Florida Statutes, which establishes the PSC's ratemaking process for water utilities states as follows: *"For purposes of [water utility rate] proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service..."*

11. Thus, section 367.081(2) expressly authorizes the PSC to set water utility rates based on a projected test year.

12. Section 367.081(3) must be contrasted with Section 366.06(1), which establishes the PSC's ratemaking process for electric utilities.

13. Section 366.06(1) states as follows: *“The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public...”*

14. Thus, section 366.06(1) expressly authorizes the PSC to set electric utility rates based only on an historic test year using “actual” costs and investments, “actually” used and useful in the public service and honestly and prudently “invested” by the public utility.

15. Sections 366.06(1) and 367.081(2) are clear and unambiguous. In fact, by reading the two sections together, it is beyond credulity to argue that the Legislature intended to allow electric rates to be set based upon projected costs and investments. Section 366.06(1) refers only to “actual” costs “invested” and “actually” used and useful in the public service. The term “actual” has only one common meaning and thus can only be construed as referring to historic, known costs and investments.

16. It has been suggested that the Florida Supreme Court authorized the PSC to use projected test years for electric utilities in Public Counsel v. FPSC and Florida Power Corporation, 425 So.2d 534 (Fla. 1982). However, this suggestion lacks merit.

17. In Florida Power, the Supreme Court noted, “[i]nasmuch as Public Counsel has not challenged the projected test year concept generally and the Commission has concluded that an adequate basis has been provided for analysis of the projected test year, we find this portion of his argument to be without merit.” 425 So.2d at 537.

18. **Unlike the Public Counsel’s challenge in Florida Power, this Motion challenges the projected test year concept as specifically applied by FPL in this proceeding.**

19. FPL's Petition requests a \$1.3 Billion rate increase on the basis of projected costs and investments which may be made by FPL over a period of more than two years into the future. When the evidentiary hearing is concluded in this proceeding, more than two years of projected and speculative costs and investments will still remain in the projected test year used by FPL.

20. These facts are clearly distinguishable from the facts in Florida Power, where the "projected" test year approved by the PSC and upheld by the Supreme Court had already become an "historic" test year by the time that evidentiary hearings were held. As noted by the Supreme Court, "[t]he projected test year 1980 in the case sub judice had become an historic test year by the time the full hearings were commenced in January of 1981."

21. In fact, when read in its entirety, the Florida Power decision invites the Public Counsel or other interested party, like the City of South Daytona, to challenge the use of a projected test year where projections have not become historic "actual" costs and investments by the time hearings are held.

22. Citing Carson v. Miller, 370 So.2d 10 (Fla. 1979), the Supreme Court instructed that the "rule in Florida is that where the language of the statute is so plain and unambiguous as to fix the legislative intent and leave no room for construction, the courts should not depart from the plain language used by the legislature." Florida Power, 425 So.2d at 541-42. The Court continued, "[i]n addition, another controlling tenet of statutory construction is the rule that words of common usage, when used in a statute, should be construed in their plain and ordinary sense." *Id.* at 542, *citing* Tatzel v. State, 356 So.2d 787 (Fla. 1978). These rules of statutory construction remain in place to this day.

23. As noted above, a comparison of the language used by the Legislature in Section 367.081(2) specifically authorizing rates to be established using projected costs and investments

to the language in section 366.06(1), expressly limiting the PSC's authorization to set electric rates using only "actual" and "invested" costs clearly and unambiguously establishes the Legislature's knowledge of the difference between the historic and projected test year concepts.

24. In fact, the legislative history of section 367.081(2) confirms that prior to the amendment of the section in the early 1990s, the Legislature limited the PSC's rate setting authority to historic test years for water and wastewater utilities. This fact is confirmed from a review of PSC water and wastewater rate proceedings prior to amendment of the statute wherein it appears that only historic test years were authorized.

25. The Legislature never has amended section 366.06(1) to authorize the PSC to set electric rates based on a projected test year.

26. These facts are not to suggest that the Legislature has been draconian to electric utilities. To the contrary, instead of authority to receive rates based on a projected test year, the Legislature has provided the PSC with authority to provide electric utilities expedited rate increases in a number of ways without the necessity of even filing a rate petition with the PSC. These rate "clause" adjustments have been viewed across the United States as favorable to Florida's electric utilities. With each rate "clause" adjustment appearing on Floridian's bills has been the same justification put forth by FPL that expedited rate relief reduces its risk of utility operations and thus reduces FPL's costs of securing capital from lenders and shareholders.

27. Rate clauses authorized by the Legislature and appearing on FPL's bills include the fuel cost clause, the environmental cost recovery clause, the conservation cost recovery clause and the nuclear capacity cost recovery clause. In addition, as noted in FPL's petition in this proceeding, FPL is authorized by the PSC to make additional adjustments to its rates through a Base Rate Adjustment approved to settle FPL's last rate request in Docket No. 050045.



28. The legislative changes made to section 367.081(2) authorizing projected test years for water utilities and the Legislature's addition of various sections to the Florida Statutes authorizing electric utilities to raise rates through a number of rate clauses without having to file a rate petition and without having to undergo an evidentiary hearing, establishes that the Legislature is capable of making its intent very clear when it comes to detailing how the PSC is authorized to set utility rates.

29. The Legislature has never authorized the PSC to set electric rates based upon projected costs and investments.

30. FPL's entire rate petition is premised on an alleged need for a \$1.3 Billion rate increase allegedly to compensate the utility for alleged costs and investments that it might make in projected test years 2010 and 2011 and to provide FPL shareholders up to a 13.5% return on their investment in FPL stock.

31. Unlike the Supreme Court decision in Florida Power, where the "projected" test year used was an "historic" year by the time hearings were concluded, when the evidentiary hearing scheduled for this proceeding is concluded, FPL's projected costs and investments will still be forecast for more than two years into the future.

FOR THE FOREGOING REASONS, THE CITY OF SOUTH DAYTONA moves that the Public Service Commission dismiss the petition filed by FPL in this docket.

Respectfully Submitted,

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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 2nd day of July, 2009.

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s/ Brian P. Armstrong

BRIAN P. ARMSTRONG

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by )  
Florida Power & Light Company )  
)  
In Re: 2009 depreciation and dismantlement )  
study by Florida Power & Light Company )  
)  
\_\_\_\_\_ )

DOCKET NO.: 080677-EI

DOCKET NO.: 090130-EI

Filed: July 17, 2009

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

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The City of South Daytona ("City"), by and through its undersigned counsel, files this Reply to Florida Power & Light Company's ("FPL") Response to the City's motion to dismiss, and states as follows:

1. FPL basically makes three arguments in opposition to the City's motion to dismiss. FPL argues that:

(1) a party's alleged non-compliance with a Public Service Commission ("Commission") procedural rule permits the Commission to act in a manner not authorized by Florida law;

(2) the Supreme Court opinion in Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission, 443 So.2d 92 (Fla. 1983) authorizes the Commission to establish new FPL rates based upon speculative costs and investments which FPL alleges it will experience more than two years after hearings in this matter are concluded; and

Appendix B

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(3) prior Commission actions not authorized by Florida law permit the Commission to act contrary to Florida law in this proceeding. None of FPL's arguments have merit.

2. A Commission procedural rule does not trump the clear absence of statutory authority for the Commission to provide rate relief based on projected costs and investments more than two years into the future. The City has clarified for the Commission that it does not possess statutory authority to grant FPL's request. Without such authority, it does not matter when a party raises this issue of law, or whether the Commission raises the issue itself. The timing of a motion or Commission action dismissing FPL's petition upon recognition that there is no statutory authority for the Commission to grant the relief requested by FPL is irrelevant.

3. The Commission has entertained motions to dismiss, and dismissed petitions for rate relief, after the expiration of ten (10) days from the filing of a petition in various rate proceedings. See, for example, Order No. 24715 in Docket No. 900329-WS issued June 26, 1991, also at 91 FPSC 6:509 and 1991 Fla. PUC Lexis 1017; see also Docket No. 060368; Docket No. 950495.

4. The events recited by FPL which occurred after FPL's filing of the request that the Commission unlawfully set rates based on FPL's pure speculation as to costs and investments which allegedly will be experienced more than two years after evidentiary hearings would be concluded in this proceeding also provide no support for denying South Daytona's motion. FPL's Response clearly establishes FPL's knowledge that the Commission has not approved FPL's request for projected test years two years and more into the future. FPL quotes Chairman Carter's letter to FPL which states "approval of the test year is interim in nature and will be an issue subject to deliberation during the evidentiary proceeding."

5. Clearly, the Commission can reject FPL's request for such a speculative basis for setting rates after evidentiary hearings have been concluded. Surely, no prejudice can be worked upon FPL or other parties to this proceeding if the Commission recognizes that it does not possess statutory authority to grant FPL's request now, before the waste of all parties' time, effort and money on further discovery, hearings and post-hearing activities, including likely appeals.

6. FPL suggests that the Commission may act unlawfully by setting rates based on speculative costs and investments more than two years from now because the Commission may have acted in this unlawful manner in the past. A person who robs a bank five times, but is apprehended on the 6th attempt while holding a gun to the bank teller's head, is not innocent because he got away with his unlawful acts five times previously.

7. FPL relies upon the Florida Supreme Court's opinion in Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission, 443 So.2d 92 (Fla. 1983), as support for FPL's request to set rates based on costs and investments allegedly to be made more than two years after evidentiary hearings in this proceeding are concluded. Southern Bell involved a "projected test year" which included three months of historic information. 443 So.2d at 92. It is likely that most, if not all, of the nine months of cost and investment projections in that proceeding were historic before the proceeding was concluded. This is virtually the identical situation in Citizens of the State of Florida v. Public Service Commission, 425 So.2d 534 (Fla. 1982), which is so easily distinguishable from the current FPL petition (as discussed in the City's Motion to Dismiss).

8. Moreover, Southern Bell provides further support for the City's Motion in that the Supreme Court upheld the Commission's refusal to use an end of test year rate base to set Southern Bell's rates. 443 So.2d at 98. If the Commission can refuse to use an end of test year rate base in a proceeding when the projected test year (or most of the projected test year) has

become "historic" by the time evidentiary hearings are completed, surely the Commission can dismiss a utility's petition requesting rate base and operating costs be recovered in rates for a projected period more than two years after the conclusion of a hearing.

9. FPL stock has risen from \$33.81 on October 10, 2008 to \$56.98 on July 16, 2009 (nearly a 70% increase in 9 short months, see "FP&L's Bid to Build Nuclear Reactors Made Public," South Florida Business Journal, July 17, 2009). FPL has requested rates which will enable FPL to earn up to a 13.5% return for the same shareholders who have enjoyed this amazing stock appreciation. At the same time, Floridians are unemployed in record numbers, Florida ranks among the top states in mortgage foreclosures, and 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.

For all of the foregoing reasons, the Commission must dismiss FPL's petition to allow it to charge current customers rates today based on costs and investments which FPL alleges it will make years into the future.

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 17th day of July, 2009.

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