

**Ruth Nettles**

080677-EI  
090130-EI

**From:** WELLS, KATHY [Kathy Wells@fpl.com]  
**Sent:** Friday, August 21, 2009 10:53 AM  
**To:** Filings@psc.state.fl.us  
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**Subject:** FPL's Response in Opposition to Attorney General's Motion in Limine / Docket No. 080677-EI  
**Attachments:** 8.21.09.FPL Response in opposition to AG's M.Limine.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. Document is 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 Response in Opposition to Attorney General's Motion in Limine

Thank you for your attention to this request.

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DOCUMENT NUMBER-DATE  
 08741 AUG 21 8  
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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 and dismantlement )  
study by Florida Power & Light Company )

Docket No. 090130-EI  
Filed: August 21, 2009

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO  
ATTORNEY GENERAL'S MOTION IN LIMINE**

Florida Power & Light Company ("FPL"), hereby files this Response in Opposition to the Attorney General's ("AG's") Motion In Limine, and states:

1. On August 14, 2009, the AG filed a Motion in Limine requesting that the Commission enter an order specifying that any late-filed exhibits should be limited to the information requested or approved by the Commission, and that if any late-filed exhibit is allowed, it should not be admitted as an exhibit unless and until the other parties have reviewed the exhibit, cross-examined the witness who prepared the exhibit, and had the opportunity to file testimony and exhibits in opposition to the late-filed exhibit.

2. The AG's Motion in Limine is premature, in that it prejudices the question before it is even contemplated, and might unduly limit the record in this proceeding. See In re: Joint petition of US FLEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITCDeltaCom Communications objecting to and requesting suspension of proposed CCS7 Access Arrangement tariff filed by BellSouth Telecommunications, Inc Order No. 02-0876-PCO-TP, Docket No. 020129-TP, June 28, 2002. No late-filed exhibits have, or even could have been offered at this point. It would be improper to limit at this time what may be relevant evidence prior to a party actually seeking to offer it into the record. Farley v. Magnum Marin Corp., 9 Fla. L. Weekly Fed. D639 (S.D. Fla. 1995), 12-13. If

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and when a party seeks to admit the evidence, the Commission can rule on it at that time. Neal v. Cassidy, 2009 U.S. Dist. LEXIS 24811 (N.D. Fla. 2009), 1-2. Each late-filed exhibit should be assessed on a case by case basis.

3. Late-filed exhibits are routinely accepted, and even requested, by this Commission. *See, e.g.*, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc., Order No. PSC-02-0111-PCO-WU, Docket No. 010503-WU, January 24, 2002; In re: Investigation into pricing of unbundled network elements (BellSouth track), Order No. PSC-02-0307-CFO-TP, Docket No. 990649A-TP, March 8, 2002; In re: Joint petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC DeltaCom Communications objecting to and requesting suspension of proposed CCS7 Access Arrangement tariff filed by BellSouth Telecommunications, Inc., Order No. PSC-02-0876-PCO-TP, Docket No. 020129-TP, June 28, 2002; In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc., Order No. PSC-05-0748-FOF-EI, Docket No. 041272-EI, July 14, 2005.

4. Late filed exhibits can be filed both before and after the close of hearing. When they are filed before the close of hearing, late filed exhibits are little different than exhibits attached to rebuttal testimony. In both instances, opposing parties are given an opportunity for cross examination; and in neither instance is there an opportunity for responsive testimony. For late filed exhibits that are filed after close of hearing, live cross as well as filing opposing testimony would be entirely unworkable from a logistics and scheduling perspective. However, though there is less opportunity for challenges to

exhibits filed after the hearing, parties can address the exhibits in their briefs, which still provides a significant avenue for criticism, and a significant degree of the protection that the AG says is needed

WHEREFORE, Florida Power & Light Company respectfully requests that this Commission deny the AG's Motion in Limine, and determine the issue on a case by case basis for late-filed exhibits.

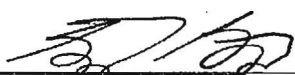
Respectfully submitted this 21<sup>st</sup> day of August, 2009.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 21<sup>st</sup> day of August, 2009, to the following:

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