

**Ruth Nettles**

080677-EI  
090130-EI

**From:** Goorland, Scott [Scott.Goorland@fpl.com]  
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**Cc:** Butler, John; Cano, Jessica; Leon, Jack  
**Subject:** Electronic Filing / Docket #080667-EI / FPL's Response to Thomas Saporito's Motion Withdrawing Prior Motion to Withdraw  
**Attachments:** 10.7.09.FPL.Response to Saporito's M to Withdraw.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Scott A. Goorland, Esq.  
700 Universe Boulevard  
Juno Beach, FL 33408  
561-304-5639  
scott.goorland@fpl.com

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 Response to Thomas Saporito's Motion Withdrawing Prior Motion to Withdraw.

Scott A. Goorland  
Principal Attorney  
Florida Power & Light Company  
(561) 304-5639  
(561) 691-7135 Fax  
scott.goorland@fpl.com

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**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: October 7, 2009
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**FLORIDA POWER & LIGHT COMPANY’S RESPONSE TO THOMAS SAPORITO’S  
MOTION WITHDRAWING PRIOR MOTION TO WITHDRAW**

Florida Power & Light Company (“FPL”) hereby responds to Thomas Saporito’s Motion to Withdraw his prior Motion to Withdraw of August 12, 2009, and states:

1. FPL opposes Mr. Saporito’s Motion. His original Motion to Withdraw was filed on August 12, 2009. He ceased participation as a party thereafter, effectively withdrawing at that point. In order for Mr. Saporito to again intervene in this docket, he must file a new Petition to Intervene. However, Rule 25-22.039, F.A.C., provides that “Petitions for leave to intervene must be filed at least five (5) days before the final hearing,…” The final hearing in this case began on August 24, 2009. Thus, Mr. Saporito was required to file a new Petition to Intervene by August 19, 2009. Mr. Saporito clearly did not timely petition to intervene, and therefore his request for renewed intervention should be denied.

2. Furthermore, should the Commission permit Mr. Saporito’s renewed participation as a party, his participation should be limited as discussed below. Mr. Saporito’s original Motion to Withdraw was filed prior to a number of procedural deadlines in this docket. Those include deadlines for the conduct of discovery and participation in the pre-hearing conference. Mr. Saporito did not conduct discovery after his Motion to Withdraw, nor did he participate in the Prehearing Conference which included issue identification, nor has he participated in the

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evidentiary hearing. Additionally, the Prehearing Order issued August 21, 2009 provided the schedule for testimony of witnesses at the evidentiary hearing. (Order No. PSC-09-0573-PHO-EI; reaffirmed by Order No. PSC-09-0627-PHO-EI, Issued Sept. 16, 2009). The testimony of most witnesses has been completed.

3. Rule 25-22.039, F.A.C., provides that “[i]ntervenors take the case as they find it.” Accordingly, Mr. Saporito should not be permitted to “go backwards.” Panda Energy International v. Jacobs, 813 So.2d 46 (Fla. 2002). *See also* Order No. PSC-09-0602-PCO-EI in this docket, denying intervenor City of South Daytona’s late filed Motion to Dismiss based on Rule 25-22.039. (Issued Sept. 4, 2009). Accordingly, his participation must be limited by the consequences of the deadlines he has missed.

4. The Commission’s Order Establishing Procedure in this docket mandates that “Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the Prehearing Conference. Failure of a party (or that party’s representative) to appear shall constitute waiver of that party’s issues and positions, and that party may be dismissed from the proceeding.” (Order No.PSC-09-0159-PCO-EI, issued March 20, 2009).

5. For the reasons stated above, FPL respectfully requests that the Commission deny Mr. Saporito’s Motion and that he not be permitted to commence participating as a party at this late date. However, if Mr. Saporito is permitted to participate as a party in the remainder of this proceeding, FPL respectfully requests that the Commission find as follows:

- a. Mr. Saporito takes the case as he finds it;
- b. Mr. Saporito has waived his right to assert any new issues and may not take any position that has not been identified already by another party; and

- c. Mr. Saporito should not be permitted to conduct any discovery, testify, or examine any witness whose testimony has already been completed.

Respectfully submitted,

R. Wade Litchfield, Vice President of  
Regulatory Affairs and Chief Regulatory Counsel  
John T. Butler, Managing Attorney  
Scott A. Goorland, Principal Attorney  
Attorneys for Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: (561) 691-7101  
Facsimile: (561) 691-7135

By: /s/Scott A. Goorland  
Scott A. Goorland  
Florida Bar No. 0066834

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 7th day of October, 2009, to the following:

Lisa Bennett, Esquire  
Anna Williams, Esquire  
Martha Brown, Esquire  
Jean Hartman, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-1400  
[LBENNETT@PSC.STATE.FL.US](mailto:LBENNETT@PSC.STATE.FL.US)  
[ANWILLIA@PSC.STATE.FL.US](mailto:ANWILLIA@PSC.STATE.FL.US)  
[mbrown@psc.state.fl.us](mailto:mbrown@psc.state.fl.us)  
[JHARTMAN@PSC.STATE.FL.US](mailto:JHARTMAN@PSC.STATE.FL.US)

J.R. Kelly, Esquire  
Joseph A. McGlothlin, Esquire  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
Attorneys for the Citizens of the State  
of Florida  
[Kelly.jr@leg.state.fl.us](mailto:Kelly.jr@leg.state.fl.us)  
[mcglothlin.joseph@leg.state.fl.us](mailto:mcglothlin.joseph@leg.state.fl.us)

Kenneth L. Wiseman, Esquire  
Mark F. Sundback, Esquire  
Jennifer L. Spina, Esquire  
Lisa M. Purdy, Esquire  
Lino Mendiola, Esquire  
Meghan Griffiths, Esquire  
Andrews Kurth LLP  
1350 I Street, NW, Suite 1100  
Washington, DC 20005  
Attorneys for South Florida Hospital and  
Healthcare Association ("SFHHA")  
[kwiseman@andrewskurth.com](mailto:kwiseman@andrewskurth.com)  
[msundback@andrewskurth.com](mailto:msundback@andrewskurth.com)  
[jspina@andrewskurth.com](mailto:jspina@andrewskurth.com)  
[lisapurdy@andrewskurth.com](mailto:lisapurdy@andrewskurth.com)  
[linomendiola@andrewskurth.com](mailto:linomendiola@andrewskurth.com)  
[mcghangriffiths@andrewskurth.com](mailto:mcghangriffiths@andrewskurth.com)

Robert A. Sugarman, Esquire  
D. Marcus Braswell, Jr., Esquire  
c/o Sugarman & Susskind, P.A.  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134  
Attorneys for I.B.E.W. System Council  
U-4  
[sugarman@sugarmansusskind.com](mailto:sugarman@sugarmansusskind.com)  
[mbraswell@sugarmansusskind.com](mailto:mbraswell@sugarmansusskind.com)

Robert Scheffel Wright, Esquire  
John T. LaVia, III, Esquire  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
Attorneys for the Florida Retail  
Federation  
[swright@yvlaw.net](mailto:swright@yvlaw.net)  
[jlavia@yvlaw.net](mailto:jlavia@yvlaw.net)

Jon C. Moyle, Jr., Esquire  
Vicki Gordon Kaufman, Esquire  
Keefe Anchors Gordon & Moyle, PA  
118 North Gadsden Street  
Tallahassee, FL 32301  
Attorneys for The Florida Industrial  
Power Users Group (FIPUG)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

John W. McWhirter, Jr., Esquire  
c/o McWhirter Law Firm  
P.O. Box 3350  
Tampa, FL 33601  
Attorneys for The Florida Industrial Power Users  
Group (FIPUG)  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

Thomas Saporito  
Saporito Energy Consultants, Inc.  
Post Office Box 8413  
Jupiter, FL 33468-8413  
[support@SaporitoEnergyConsultants.com](mailto:support@SaporitoEnergyConsultants.com)

Stephanie Alexander, Esquire  
Tripp Scott, P.A.  
200 West College Avenue, Suite 216  
Tallahassee, FL 32301  
Attorneys for Association For Fairness In Rate  
Making (AFFIRM)  
[sda@trippscott.com](mailto:sda@trippscott.com)

Shayla L. McNeill, Capt, USAF  
Utility Litigation & Negotiation Team  
Staff Attorney  
AFLOA/JACL-ULT  
AFCESA  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5317  
Attorneys for the Federal Executive Agencies  
[shayla.mcneill@tyndall.af.mil](mailto:shayla.mcneill@tyndall.af.mil)

Mary F. Smallwood, Esq.  
Ruden, McClosky, Smith, Schuster & Russell, P.A.  
215 South Monroe Street, Suite 815  
Tallahassee, FL 32301  
Attorney for Associated Industries of Florida  
[Mary.Smallwood@Ruden.com](mailto:Mary.Smallwood@Ruden.com)

Brian P. Armstrong, Esquire  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308  
Attorneys for the City of South Daytona,  
Florida  
[barmstrong@ngnlaw.com](mailto:barmstrong@ngnlaw.com)

Cecilia Bradley  
Senior Assistant Attorney General  
Office of the Attorney General  
The Capitol - PL01  
Tallahassee, FL 32399-1050  
[cecilia.bradley@myfloridalegal.com](mailto:cecilia.bradley@myfloridalegal.com)

Tamela Ivey Perdue, Esquire  
Associated Industries of Florida  
516 North Adams Street  
Tallahassee, FL 32301  
[tperdue@aif.com](mailto:tperdue@aif.com)

Barry Richard, Esq.  
Greenberg Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32301  
Attorneys for Florida Power & Light  
Company and FPL Employee  
Intervenors  
[richardb@gtlaw.com](mailto:richardb@gtlaw.com)

By: /s/Scott A. Goorland  
Scott A. Goorland  
Florida Bar No. 0066834