

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 080677-EI  
Filed: April 20, 2009

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSE IN OPPOSITION TO MOTION TO MODIFY LIMITS ON DISCOVERY  
AND RESPONSE TO MOTION TO CONSOLIDATE DOCKETS**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Office of Public Counsel's ("OPC's") Motion to Modify Limits on Discovery (the "Discovery Motion") and Motion to Consolidate Dockets 080677-EI and 090130-EI (the "Motion to Consolidate"), and in support thereof states:

**Response in Opposition to Discovery Motion**

1. On April 13, 2009, OPC filed its Discovery Motion requesting that the prehearing officer double the number of interrogatories and the number of requests for production of documents ("PODs") that a party is permitted to serve in this proceeding. Pursuant to the order establishing procedure, each party is currently permitted to serve up to 500 interrogatories and 500 PODs upon FPL. *See* Order No. PSC- 09-0159-PCO-EI (issued March 20, 2009). OPC's request that this limit be doubled to 1,000 interrogatories and 1,000 PODs per party is based primarily upon its assertion that more test years are being evaluated in this case as compared to FPL's last rate case and its assertion that the time for preparation of intervenor testimony is relatively short. For the reasons discussed below, OPC's arguments are without merit, and its Discovery Motion should be denied. If the

discovery limits are ultimately increased, they should be increased to no more than 700 each, the same limits that applied in FPL's last consolidated rate case and depreciation study proceedings.<sup>1</sup>

2. The number of years for which FPL has requested rate relief is equivalent to the number of years examined in FPL's last rate case. In Docket No. 050045-EI, FPL filed a petition for a rate increase in March of 2005, utilizing 2006 as the test year and requesting that new rates go into effect in January 2006. Additionally, FPL requested a subsequent adjustment for 2007 to account for the revenue requirements associated with the addition of new generation. Financial and other information was provided in support of the 2006 and 2007 requested increases. In this docket, FPL filed a petition for a rate increase in March of 2009, utilizing 2010 as the test year and requesting that new rates go into effect in January 2010. Additionally, FPL has requested a subsequent year adjustment for 2011 to account for a further revenue deficiency projected for that year. Financial and other information has been provided in support of the 2010 and 2011 adjustments. FPL's request for a continuation of the Generation Base Rate Adjustment in this proceeding is a request to continue that mechanism as a conceptual matter – no particular revenue requirements or time frames are assigned to FPL's request, and addressing FPL's request entails no substantial review of additional documentation. Accordingly, similar to FPL's last rate case, the two years following the year in which FPL's filing was made are at issue here.

3. OPC asserts that is faced with reviewing three different "test years." However, as explained above, only two years were presented by FPL. As such, a discovery maximum that is no higher than that which was used in FPL's last rate case would be appropriate. OPC's additional review of 2009 information is being conducted only at the express request and urging of OPC – it is

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<sup>1</sup> See Order No. PSC-05-0518-PCO-EI (issued May 11, 2005). It is interesting to note that in FPL's last rate case, OPC also requested that the discovery limits be raised to 1,000 each. In that request, OPC based its position in part on a suggested lack of detail in FPL's filing. Motion to Modify Order Establishing Procedure, Docket No. 050045-EI (filed April 11, 2005). In this instance, OPC suggests that FPL has provided an over abundance of information, including a set of 2009 supplemental MFRs, which were only provided pursuant to OPC's request.

not a hardship imposed on OPC by the content of FPL's petition for rate relief. FPL has already spent considerable time and effort creating the supplemental 2009 Minimum Filing Requirement ("MFR") schedules that OPC requested, without any legal or regulatory obligation to do so. Doubling the amount of discovery that could be served by each intervenor on FPL as a result of OPC's introduction of an additional "test year" would unjustly compound the burden on FPL.

4. Despite OPC's reliance on the number of "test years" in support of its request, the number of years being examined by OPC is not in fact the reason for OPC's already large volume of discovery requests. In examining the discovery propounded to date, the subparts counted toward OPC's total have not been associated with particular years. Rather, the subparts of requests served to date are topical or categorical in nature and, often, those subparts are preceded by a range of years for which FPL is requested to provide information. FPL conservatively counts subparts, and does not count requests for information covering 2009-2011, for example, as three subparts unless they are listed individually as such.<sup>2</sup> Accordingly, OPC's argument that the number of years being examined has caused the need for a higher discovery limit is not supported by the manner in which discovery is actually being conducted.

5. OPC also seems to assert that the time frame for preparing intervenor testimony supports an increase in the discovery limits. FPL disagrees that intervenors have a relatively short time frame for the preparation of testimony in this case. Intervenors have been given approximately four months from the date of FPL's filing to prepare testimony. In FPL's last rate case, intervenors had approximately three months and one week to prepare testimony. *See* Order No. PSC-05-0518-PCO-EI (issued May 11, 2005). Similarly, in the recent Tampa Electric Company rate case, intervenors had approximately three months to prepare testimony. *See* Order No. PSC-08-0557-OCI-

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<sup>2</sup> OPC has exceeded the 500-interrogatory limit even using FPL's conservative approach to counting subparts.

EI (issued August 26, 2007). In both of those cases, discovery limits were capped at 700 requests and 250 requests, respectively. *Id.*

6. Regardless of the particular time frame at issue, if OPC had been confronted with a relatively short period for the development of testimony, such a circumstance would not necessarily support any need to serve *more* discovery. On the contrary, it would indicate a need for OPC to be efficient in its discovery process and may support the need to serve discovery quickly, which OPC has certainly done. FPL filed its case approximately one month ago, and has received 1,244 discovery requests (counting subparts) from two interveners and four interrogatories from Staff thus far. One month after filing its rate case in 2005, FPL had received only 759 discovery requests (counting subparts) from OPC and Staff. Clearly OPC has acted quickly – and perhaps precipitously – in the service of discovery on FPL. Indeed, it is difficult to see how OPC intends to digest the large volume of materials already being produced, in response to its request for supplemental 2009 MFR schedules and in response to its many discovery requests, prior to the submittal of testimony. It is also important to recognize that FPL has not requested any extensions in time to provide its responses, despite the fact that so many requests have been served so quickly in this case.

7. Finally, FPL notes that none of the arguments raised in OPC's Discovery Motion is based on information that has come to light after the Order Establishing Procedure was issued on March 20, 2009. OPC had the opportunity to seek reconsideration of that order if it felt that the 500-interrogatory limit was inadequate. Pursuant to Rule 25-22.0376, Fla. Admin. Code, however, OPC would have had to petition for reconsideration by March 30, 2009. OPC's Discovery Motion is thus nothing more than an untimely motion for reconsideration and should be rejected as such.

8. FPL does not object to responding to appropriate discovery that would provide meaningful input to OPC and others in their review of FPL's filing and the preparation of their cases;

however, FPL respectfully requests that the prehearing officer deny OPC's Discovery Motion to increase discovery limits to 1,000 interrogatories and 1,000 PODs per party. Based on a review of electric rate case procedural orders, it does not appear that the Commission has ever exceeded the 700 limit applied in FPL's last rate case – a limit that was revised upward from 500 because FPL's rate case docket was consolidated with its depreciation study docket and which applied to the total discovery that could be served in the consolidated proceedings.<sup>3</sup> Nor does it appear that the Commission has ever exceeded a 500 limit, with that one exception. Allowing for such a high limit on discovery requests in this proceeding would be unreasonable and inconsistent with limits established in prior rate cases. Additionally, OPC has failed to demonstrate a need for propounding such a large amount of discovery. Applying the requested discovery limit would serve only to place an unreasonable burden on FPL.

#### **Response to Motion to Consolidate**

9. On April 20, 2009, OPC filed its Motion to Consolidate FPL's rate case docket and depreciation study docket. FPL supports consolidation of these two dockets. However, in footnote 1 to the Motion to Consolidate, OPC requests that the dockets not be considered to be consolidated for purposes of counting the number of discovery requests served. Such piecemeal application would be inconsistent with the purposes of consolidating the two dockets and inconsistent with the discovery limits imposed by the Commission in FPL's last consolidated rate case and depreciation dockets. A 700-interrogatory and 700-POD limit per intervenor would be more than enough discovery to accommodate a full review of the issues presented in the consolidated dockets.

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<sup>3</sup> Order No. PSC-05-0518-PCO-EI (issued May 11, 2005). Specifically, the prehearing officer determined "...because the rate case has been consolidated with the depreciation study, an increase in the discovery limits should ensure that parties can adequately conduct discovery related to both the rate case and the depreciation study. The new limits of 700 interrogatories and 700 document requests shall apply to this consolidated rate case and depreciation study proceeding." (p. 2)

WHEREFORE, FPL respectfully requests that OPC's Discovery Motion be denied and that, if Dockets 080677-EI and 090130-EI are consolidated, a discovery limit of no more than 700 interrogatories and 700 requests for production of documents apply to the total discovery served by each party in the consolidated proceeding.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic delivery this 20th day of April, 2009, to the following:

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