

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 20210015-EI DATED: JULY 23, 2021
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**FIT MOTION TO COMPEL OR IN THE ALTERNATIVE
FOR AN ORDER REQUIRING EXPEDITED RESPONSES TO DISCOVERY**

Florida Internet and Television Association, Inc. (FIT), by and through undersigned counsel and pursuant to Rule 1.380, Fla. R. Civ. P., hereby requests that the Prehearing Officer issue an order requiring Florida Power & Light Company (FPL) to respond to FIT’s First Set of Interrogatories Nos. 1-23 and Second Set of Interrogatories Nos. 24-32 and produce all documents responsive to FIT’s First Request for Production of Documents Nos. 1-15 and Second Request for Production of Documents Nos. 16-18 by no later than August 3, 2021. In the alternative, and at a minimum, FIT requests that the Prehearing Officer order FPL to respond by August 3, 2021 as an expedited production, and as grounds therefore states:

I. INTRODUCTION AND SUMMARY

This Motion concerns the timing of FPL’s response to FIT’s discovery. FIT moved to intervene on June 30, 2021, and, consistent with past Commission practice, it served its first and second sets of discovery on July 1, 2021 and July 8, 2021, respectively—39 days before the discovery cut-off in this proceeding. The due dates for FIT’s discovery requests should be July 26, 2021 (for the first set) and August 2, 2021 (for the second set). Thus, FIT’s submissions provided ample time for FPL to respond under the standard 25 day response timeline and for FIT to have FPL’s documents and interrogatory responses in time to do depositions before the close of discovery.

Yet, FPL now takes the position that the time for FPL’s responses to FIT’s discovery did not start until the Prehearing Officer granted FIT’s intervention—a date that was delayed by FPL’s

meritless objection to FIT's intervention. As a result, FPL takes the position that its responses are not due until August 9, 2021—the final day of discovery.

FPL's assertion that it need not produce until the last day of discovery is both legally incorrect and will have significant adverse impact on FIT and this proceeding by depriving FIT of the opportunity to use the documents and interrogatory responses in depositions. Accordingly, FIT requests that the Prehearing Officer order FPL to respond by August 3, 2021 on the ground that FPL's failure to respond to FIT's first set of discovery by July 26, 2021 is late. In the alternative, even if FPL is correct in its position regarding when its response period started, the Prehearing Officer should order production by August 3, 2021 as an exercise of the authority to issue "any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case." Rule 28-106.211, Florida Administrative Code (F.A.C.).

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Timing of FIT's Intervention and Discovery

On June 30, 2021, FIT filed its Petition to Intervene in this case.¹ Consistent with past practice before the Commission, on July 1, 2021, FIT served on FPL its First Set of Interrogatories and Request for Production of Documents, and on July 8th, 2021, FIT served its Second Set of Interrogatories and Request for Production of Documents. For reference, copies of the First and Second Sets of discovery are attached as Exhibits 1 & 2. Knowing that the discovery cutoff was August 6, 2021, to afford FPL ample time to respond to the requests, FIT served both sets of

¹ As set forth in FIT's Petition to Intervene, FIT's members' concerns in this case are as both electric ratepayers and entities who pay millions of dollars per year to attach to hundreds of thousands of FPL utility poles. FIT's members believe that FPL's pole attachment revenue projections are greatly overstated and depend on the imposition of unlawful pole attachment rental rates.

interrogatories more than 30 days in advance of the deadline, expecting to be granted intervention imminently.

FPL did not respond to or acknowledge the First Sets within 7 days. Instead, FPL filed an opposition to FIT's Petition to Intervene on July 7, 2021. A copy of FPL's Response is attached hereto as Exhibit 3. FPL's opposition to FIT's intervention was based on an argument that FPL's pole attachment rental rates—a key issue raised by FIT's Petition to Intervene—are not relevant in this proceeding. That argument was meritless, however, because FPL has included pole attachment rental revenues in its rate case. In its affirmative case, FPL has projected \$29,381,000 in revenues from pole attachment rentals in 2020, but it projects \$36,538,000 in revenues from pole attachment rentals for test year 2022.² That is a 24.36% increase. FPL projects \$39,519,000 in revenues from pole attachment rentals in test year 2023, which is an additional 8.16% increase over 2022 and a 34.5% increase over 2020 revenues.³ Despite the clear relevance of pole attachments in this rate case, FPL's opposition asked that the Prehearing Officer condition FIT's intervention to exclude pole attachment issues. On July 13, 2021, the Prehearing Officer rejected FPL's arguments and granted FIT's intervention without condition. Order No. PSC-2021-0255-PCO-EI (July 13, 2021).

On July 19, 2021, FIT served on FPL a notice of deposition, duces tecum, pursuant to Rule 1.310(b)(6) for the deposition of an FPL corporate witness on specific topics to take place on August 5, 2021. In addition, on July 22, 2021, FIT served on FPL notices of depositions, duces tecum, for three FPL witness to take place on August 6, 2021.

² MFR, 2022 test year, Vol. 3, Section C, Sched C-4 pp.2-3, 14 (combining 2020 pre-merger revenues for FPL and Gulf).

³ MFR, 2023 subsequent year adjustment, Vol. 3, Section C, Sched. C-4 pp.2.

B. The Parties' Dispute

On July 20, 2021, FPL served objections to FIT's First and Second Sets of Interrogatories and Document Requests.

On July 22, 2021, undersigned counsel for FIT had a meet and confer conference with counsel for FPL, Ms. Maria Moncada, to discuss FPL's objections to FIT's discovery in an attempt to resolve potential disputes regarding FPL's objections and production. Based on that meeting between counsel, it is counsel for FIT's understanding that FPL will be responding to all but two interrogatories. Accordingly, at this time, without waiving its rights, FIT is not addressing the merits of any of FPL's objections.

However, counsel for FPL also communicated that FPL takes the position that the 25 days for FPL to respond did not begin until the Prehearing Officer granted FIT's intervention, on July 13, 2021. As a result, FPL takes the position that its responses to interrogatories and production of documents is not due until August 9, 2021—the last day of discovery in this proceeding.

After the meet and confer on July 22, 2021, counsel for FIT, Mr. Thompson, communicated to counsel for FPL, Ms. Moncada, that FIT requested that FPL agree to respond to interrogatories and produce documents on August 3, 2021 as a compromise and resolution of the parties' dispute regarding the due date for FPL's responses and to facilitate meaningful and efficient deposition of the FPL witnesses. On July 23, 2021, Ms. Moncada responded that FPL would agree to produce or respond prior to August 9, 2021 if the materials were "ready." A copy of Ms. Moncada's email is attached hereto as Exhibit 4. However, FPL's response did not provide any assurance that it would respond or produce prior to August 9, 2021. Accordingly, FIT brings this Motion.

III. ARGUMENT

FIT maintains that under the circumstances and in light of past practice, the time for FPL's response to FIT's discovery should run from the date the discovery was served (July 2, 2021 and

July 8, 2021). In the alternative, even if FPL's position is correct, at a minimum, FPL should be required to respond to FIT's discovery by August 3, 2021 in order to effectuate the just, speedy, and inexpensive determination of this proceeding.

A. FPL's Responses Are Due 25 Days After FIT's Discovery Was Served

FPL should be required to respond within 25 days of the date of service of FIT's discovery, pursuant to the Prehearing Officer's scheduling orders in this proceeding. As explained in FIT's Petition to Intervene—and as well-known to FPL—all of FIT's members are both electric service customers of FPL and occupants of FPL distribution poles. FIT's members' status as electric ratepayers, alone, is patent grounds for intervention in this matter, and indeed, in its Response to FIT's Petition to Intervene, FPL did not oppose FIT's intervention on that grounds. Moreover, FPL has included in its affirmative case projections of pole attachment rental rates in the tens of millions of dollars, and at rates that are an over 30% increase in the span of two years. Thus, FIT's members' status as attachers to FPL's poles is also a relevant interest for intervention in this proceeding. The Prehearing Officer agreed in the Order granting FIT's intervention. Order No. PSC-2021-0255-PCO-EI (July 13, 2021).

As such, the 13-day delay between FIT's Petition to Intervene and the Order granting the Petition was caused solely by FPL's meritless opposition to intervention—which FPL's filing reveals was actually an objection to discovery. Indeed, FPL did not object to FIT's intervention based on the status as electric rate payers. Instead, as the Prehearing Officer's Order recognized, FPL's Response to FIT's Petition to Intervene was primarily an assertion of FPL's objections to FIT's discovery. *Id.*

Accordingly, the Prehearing Officer should conclude that FPL had no good faith basis to withhold its consent to FIT's Petition to Intervene when asked in advance, and FPL should not be permitted to file meritless procedural filings purely to impose delay in discovery. FPL's deadline

for responding to FIT's discovery should run from the dates of service—July 1, 2021 and July 8, 2021. FPL's responses should be due July 26, 2021 and August 2, 2021. Its refusal to produce until August 9, 2021 is improper, and it should be compelled to respond no later than August 3, 2021.

B. At A Minimum, FPL Should Be Ordered to Respond by August 3, 2021

In the alternative and at a minimum, even if FPL's position regarding the start date for discovery responses were accepted for the sake of argument, the circumstances support the Prehearing Officer ordering FPL to respond by August 3, 2021 to prevent delay and to assure the just, speedy, and inexpensive determination of this case.

Under F.A.C. 28-106.211, the Prehearing Officer has authority to “issue *any orders* necessary to effectuate discovery, to prevent delay, and to *promote the just, speedy, and inexpensive* determination of all aspects of the case.” (Emphasis added); *see also* F.A.C. § 28-106.206 (“The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt”). In this case, ordering FPL to produce no later than August 3, 2021 is appropriate and necessary to effectuate discovery and promote just and speedy determination.

Ordering FPL to respond by August 3, 2021 will facilitate meaningful discovery. FIT has noticed depositions of FPL witnesses for August 5th and 6th. If FIT has no discovery from FPL before the depositions, the depositions will be less efficient, as counsel for FIT will be forced to spend time asking questions to uncover basic facts that would have been revealed in FPL's written discovery answers and/or documents. Moreover, if FPL were allowed to withhold responses until August 9, 2021, FIT would have no time to seek recourse for any deficiencies in FPL's production.

Requiring FPL to respond by August 3, 2021 is also necessary to allow FIT time to meaningfully prepare for the hearing in this case.

Finally, there is no prejudice or harm to FPL. FPL has had the vast majority of FIT's discovery requests since July 1, 2021. FPL had ample time to analyze the requests, and indeed, FPL's Response to FIT's Petition to Intervene was a substantive objection to FIT's discovery requests. And, fundamentally, FIT's document requests and interrogatories seek materials and information that FPL should already have at its easy access. To calculate the pole rental revenue projections set forth in FPL's affirmative case submissions, FPL should have consulted the data and materials that FIT seeks. Thus, FIT's discovery is no surprise to FPL, and FPL has had ample time to prepare its responses. Ordering it to respond and produce by August 3, 2021 will have no adverse impact on FPL.

IV. CONCLUSION

WHEREFORE, FIT hereby requests that the Commission grant its Motion to Compel FPL to respond to interrogatories and produce documents in response to FIT's First and Second Sets of Interrogatories and Document Requests by no later than August 3, 2021.

Dated this 23rd day of July, 2021. Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing has been served by electronic mail to the following on this 23rd day of July, 2021:

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/s/ Floyd R. Self
 Floyd R. Self

Exhibit 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 1, 2021

**NOTICE OF SERVICE OF FIT'S FIRST SET OF INTERROGATORIES TO
FLORIDA POWER & LIGHT COMPANY (Nos. 1 - 23)**

NOTICE IS HEREBY GIVEN that Florida Internet and Television Association, Inc.s (“FIT”), by and through undersigned counsel, have on July 1, 2021 served their First Set of Interrogatories (Nos. 1-23) to Florida Power & Light Company.

Dated July 1, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of foregoing has been served by electronic mail to the following on this 1st day of July, 2021:

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/s/ Floyd R. Self
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 1, 2021

**FIT'S FIRST SET OF INTERROGATORIES TO
FLORIDA POWER & LIGHT COMPANY (Nos. 1 - 23)**

Florida Internet & Television (“FIT”), by and through its undersigned attorney, propounds the following interrogatories, pursuant to Rule 1.340, Florida Rules of Civil Procedure, to Florida Power & Light Company (FPL). These interrogatories shall be answered under oath by you or your agent, who is qualified and who will be identified, with the answers being served as provided by the Rules of Civil Procedure, **and within the time period set out in Order No. PSC-2021-0120-PCO-EI**. As provided by Rule 1.340(a), Florida Rules of Civil Procedure, each interrogatory shall be answered separately and fully in writing under oath unless it is objected to. Each answer shall be signed by the person making it.

Give the name, address, and relationship to FPL of those persons providing the answers to each of the following interrogatories.

If an interrogatory contained herein asks for information that has already been provided or is in the process of being provided to the Commission through a Commission audit, please so state, indicating the date provided and the audit document/record request number.

DEFINITIONS

“You”, “your”, “Company” or “FPL” refers to Florida Power & Light Company, its employees and authorized agents.

“Document” refers to written matter of any kind, regardless of its form, and to information recorded on any storage medium, whether in electrical, optical or electromagnetic form, and capable of reduction to writing by the use of computer hardware and software.

“Identify” means:

- (a) With respect to a person, to state the person’s name, address and business relationship (e.g., “employee”) to the Company;
- (b) With respect to a document, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.

INTERROGATORIES

1. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2022. Identify and set forth in detail Your calculation of the applicable annual pole rental rate used in the MFR.

2. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2022. Identify and set forth in detail the basis for the pole rent revenue projections in the referenced MFR, including but not limited to identifying in detail:

- a. The formula or other method used to calculate the annual pole attachment rental rate that underlies the projection;
- b. The cost year upon which the data and other inputs used in the calculation of the rental rate were based;
- c. The treatment of accumulated deferred taxes in calculating the annual pole rental rate, including how the amounts of excess accumulated deferred taxes created by the TCJA of 2017 were treated;

- d. The number of pole attachment billing units
 - e. The rate year upon which the number of billing units reflected in the projection were based, and any assumptions used to adjust or project billing units that may have been made;
 - f. A breakdown of the make-ready or non-recurring charges and fees included in the projections;
 - g. Whether the pole rent revenue projections included payments from all joint users, joint owners, third parties, or private parties with attachments on FPL poles.
3. With regard to the pole rate revenue projections identified in Your response to Interrogatory 2, above, please identify:
- a. The percentage of pole rate revenues as a percentage of total FPL electricity revenues;
 - b. The impact of a one dollar decrease in the pole rental rate on the average distribution customer bill, both on a per dollar and per kilowatt hour basis.
4. Please identify for test year 2020:
- a. total pole attachment revenues;
 - b. total electric service revenues;
 - c. average monthly electric service customer bill;
 - d. total number of electric service customers;
 - e. total kilowatt hours;
 - f. average monthly kilowatt hours per customer.
5. Please identify for test year 2022:
- a. total pole attachment revenues;

- b. total electric service revenues;
- c. average monthly electric service customer bill;
- d. total number of electric service customers;
- e. total kilowatt hours;
- f. average monthly kilowatt hours per customer.

6. Please identify for test year 2023:

- a. total pole attachment revenues;
- b. total electric service revenues;
- c. average monthly electric service customer bill;
- d. total number of electric service customers;
- e. total kilowatt hours;
- f. average monthly kilowatt hours per customer.

7. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2023. Identify and set forth in detail Your calculation of the applicable annual pole rental rate used in the MFR.

8. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2023. Identify and set forth in detail the basis for the pole rent revenue projections in the referenced MFR, including but not limited to identifying in detail:

- a. The formula or other method used to calculate the annual pole attachment rental rate that underlies the projection;
- b. The cost year upon which the data and other inputs used in the calculation of the rental rate were based;

- c. The treatment of accumulated deferred taxes in calculating the annual pole rental rate, including how the amounts of excess accumulated deferred taxes created by the TCJA of 2017 were treated;
- d. The number of pole attachment billing units;
- e. The rate year upon which the number of billing units reflected in the projection were based, and any assumptions used to adjust or project billing units that may have been made;
- f. A breakdown of the make-ready or non-recurring charges and fees included in the projections;
- g. Whether the pole rent revenue projections included payments from all joint users, joint owners, third parties, or private parties with attachments on FPL poles.

9. With regard to the pole rate revenue projections identified in Your response to Interrogatory 5, above, please identify:

- a. The percentage of pole rate revenues as a percentage of total FPL electricity revenues;
- b. The impact of a one dollar decrease in the pole rental rate on the average distribution customer bill, both on a per dollar and per kilowatt hour basis.

10. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, references to Account No. 454 Rent from Electric Property – Pole Attachments for historical test year 2020. Identify and set forth in detail Your calculation of the applicable annual pole rental rate used in the MFR.

11. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, references to Account No. 454 Rent from Electric Property – Pole Attachments for historical test year 2020. Identify and set

forth in detail the basis for the pole rent revenue in the referenced MFR, including but not limited to identifying in detail:

- a. The formula or other method used to calculate the annual pole attachment rental rate that underlies the document;
- b. The cost year upon which the data and other inputs used in the calculation of the rental rate were based;
- c. The treatment of accumulated deferred taxes in calculating the annual pole rental rate, including how the amounts of excess accumulated deferred taxes created by the TCJA of 2017 were treated;
- d. The number of pole attachment billing units;
- e. The rate year upon which the number of billing units reflected in the projection were based, and any assumptions used to adjust or project billing units that may have been made;
- f. A breakdown of the make-ready or non-recurring charges and fees included in the revenues;
- g. Whether the pole rent revenue projections included payments from all joint users, joint owners, third parties, or private parties with attachments on FPL poles.

12. Referring to pages 10 -12 of the Direct Testimony of Scott R. Bores describing FPL's merger with Gulf Power, explain with specificity how the consolidation of FPL and Gulf will impact Account 364 for Poles, Towers, and Fixtures post- consolidation, including but not limited to the detailed impact (incremental change associated with the consolidation) on:

- a. Gross Investment;
- b. Accumulated Depreciation;

- c. Total Number of Distribution Poles broken down by pole type and height (i.e., wood versus non-wood, pole height);
- d. Percentage of Account 364 associated with non-pole appurtenances;
- e. Average Pole Height;
- f. Number of Pole Replacements;
- g. Number of New Pole Additions;
- h. Number of Pole Retirements;
- i. Depreciation Rate;
- j. Capitalized Maintenance booked to Account 364;
- k. Expensed Maintenance booked to Account 593.

13. Identify all database or electronic systems that contain records related to or reflecting Your continuing property records associated with FERC distribution account 364 for the years 2018, 2019, 2020, and 2021.

14. Referring to pages 27-28 of the Direct Testimony of Scott R. Bores regarding FPL's storm hardening program, explain with specificity how the various costs associated with the FPL's storm hardening program have impacted, and are projected to impact, Account 364 for Poles, Towers, and Fixtures for each of the years 2019 through 2022, including but not limited the detailed impact on:

- a. Gross Investment;
- b. Accumulated Depreciation;
- c. Total Number of Distribution Poles;
- d. Percentage of Account 364 associated with non-pole appurtenances;
- e. Average Pole Height;

- f. Number of Pole Replacements;
- g. Number of New Pole Additions;
- h. Number of Pole Retirements;
- i. Depreciation Rate;
- j. Capitalized Maintenance booked to Account 364;
- k. Expensed Maintenance booked to Account 593;
- l. Average Service Life of Poles;
- m. Average Remaining Life of Poles;
- n. Net Negative Salvage (Salvage less Cost of Removal).

Please provide as part of this response both the unconsolidated values for FPL and Gulf Power separately, as well as the projected post consolidated values.

15. For each of the years 2019-2020, and for the year 2021 through June 30, 2021, please provide the total accumulated cost and number of units of each item listed below, including appurtenances, recorded in FPL's FERC Account 364 for Poles, towers, and fixtures under 18 C.F.R. Pt. 101, and identify all additional items, if any, included under FERC Account 364 in FPL's FERC Form 1. To the extent the requested cost data is not available at the level of detail specified in the FERC rules, please provide the most disaggregated level of detail available to FPL, including data recorded and retrievable through electronic databases, at the minimum, a breakdown between pole and non-pole (appurtenance items). Under FERC rules, items classified as non-pole "appurtenances" include the following: (i) Head arm; (ii) Brackets; (iii) Crossarms and braces; (iv) Extension arms; (v) Guards;(vi) Insulator pins and suspension bolts; (vii) Racks complete with insulators; (viii) Railings; (ix) Towers; and (x) Transformer racks and platforms.

- a. Anchors, head arms, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.;
- b. Brackets;
- c. Crossarms and braces;
- d. Excavation and backfill, including the disposal or excess excavated material;
- e. Extension arms;
- f. Foundations;
- g. Guards;
- h. Insulator pins and suspension bolts;
- i. Paving;
- j. Permits for construction;
- k. Pole steps and ladders;
- l. Poles, wood, steel, concrete or other material;
- m. Racks complete with insulators;
- n. Railings;
- o. Reinforcing and stubbing;
- p. Settings;
- q. Shaving, painting, gaining, roofing, stenciling, and tagging;
- r. Towers;
- s. Transformer racks and platforms.

16. For each of the years 2019-2020, and for the year 2021 through June 30, 2021, please identify the total number of poles that FPL used in the provision of electric distribution

service, specifically, poles that FPL has attached its distribution lines, equipment, appurtenances, or facilities to, and for which any associated costs may have been booked by FPL to Account 364. The total number of requested poles include, but is not limited to, the following categories of poles:

- a. Poles that are solely owned, jointly owned, or under the custodial control of third party or private entities;
- b. SCADA (Supervisory control and data acquisition) or other poles used for internal utility communications purposes;
- c. Stub, Drop, Brace, Lift, Dead-End poles or other poles that may be categorized as supporting or auxiliary to another pole;
- d. Multi-Use Poles or Mixed-Use Poles referring to poles used to provide both distribution and transmission service, also described as Transmission Poles with Distribution Underbuild;
- e. Poles associated with “non-unitized” or otherwise yet to be fully classified investment that has been booked to Account 364.

17. Please identify the average pole height for the following categories of poles booked to FPL’s Account 364 and reflected in the pole rate calculation incorporated in the revenue requirements in this case:

- a. Aggregate Number of Poles;
- b. Wood Poles;
- c. Non-wood Poles (Concrete, Steel, Composite).

18. Please provide the number of poles in FPL’s continuing property records (or equivalent electronic data bases) by one foot increments of pole height. To the extent pole height

records are not readily retrievable in the requested one-foot increments, please identify the number of poles within bands of 5 foot increments (*e.g.*, 25 to 30 ft, 35 to 40 feet, 40 to 45 feet, etc).

19. If You take the position that You cannot calculate the actual average pole height because You do not maintain records of each pole's precise height, but instead only maintain records of pole heights within 5 foot increments, identify the number of poles that You have within each 5 foot increment in Your continuing property records.

20. Please identify the average pole height for the following types of pole installations per the drivers identified in the Direct Testimony of Scott R. Bores at 22:

- a. New and replacement poles installed to meet requirements of the FPL storm hardening program;
- b. New and replacement poles installed to meet requirements needed for increased reliability;
- c. New and replacement poles installed to support FPL's system and customer growth.

21. For the years 2019, 2020, 2021, and the test years 2022 and 2023:

- a. Please describe whether the treatment of accumulated deferred taxes included in FPL's calculation of the annual pole attachment rental rate used in the calculation of revenue requirements is consistent with the treatment in this rate case. To the extent the answer is anything other than an unqualified yes, please explain any and all differences between the two treatments.
- b. Would FPL agree that the FCC pole rate methodology typically relies on the direct subtraction of accumulated deferred taxes from gross investment, including the use of a proration methodology for attributing a proportionate share

of accumulated deferred income taxes (“ADIT”) to poles, rather than incorporated in the rate of return element?

c. To the extent ADIT is included in the rate of return element of the pole attachment rental rate formula used by FPL to calculate its pole attachment rental rates, please provide the derivation of the rate of return element including the incorporation of ADIT.

d. Please confirm that the ADIT amount included in the calculation of the pole rental rate, either as part of the rate of return carrying charge element, or following the FCC methodology as a direct subtraction from gross investment calculation, includes the total amount of ADIT carried on FPL regulatory books, inclusive of all unamortized amounts of excess ADIT created by the Tax Cut and Jobs Act (TCJA), including those booked as regulatory liabilities in Account 254.

e. Please identify the amounts of unamortized amount of ADIT, both protected (normalized) and unprotected created by the TCJA being carried on FPL’s books for the years 2019 to 2020, and the FERC accounts in which they are recorded or in any way affected by.

22. Referring to the direct testimony and exhibits of Ned W. Allis regarding depreciation, and to the projection of revenue from pole attachment rentals for test years 2022 and 2023 in MFR, 2022 test year, Vol. 3 of 8, Section C and MFR 2023 test year, Vol. 3 of 8, Section C:

a. Please identify the amount of accumulated depreciation deducted from gross pole investment for Account 364 in the pole rate calculation used in the calculation of revenue requirements for each test year, and provide the source or

derivation of those figures. Please indicate whether the amounts are an historic or projected amount.

b. To the extent the two figures are different, please provide a reconciliation between the accumulated depreciation amount used in the pole rate calculation used for the test years 2022 and 2023 and identified in response to the preceding subpart of this request and the “book depreciation reserve” amounts identified for Account 364.10 ad 364.20 in Tables 1 -3 of Mr. Allis’ direct testimony and exhibit, along with an explanation of any differences between the two.

c. Referring to Table 3 of Mr. Allis’ exhibit NWA-1, please explain the source of the differences between the book depreciation reserve and theoretical reserve amounts shown for Accounts 364.10 and 364.20

d. Please indicate if the theoretical reserve amounts set forth in Mr. Allis’ exhibit NWA-1 were taken into consideration in any manner, directly or indirectly, in the pole rate calculation and if so, how.

23. Please identify any intercorporate cost allocations between FPL or Gulf and any parent or subsidiary thereof that affected or may affect administrative and general expense accounts (accounts 920 through 935) included in the FCC’s formula for calculating pole attachment rates for the years 2019 to 2020 and as forecasted by FPL in this proceeding.

Dated July 1, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 1, 2021

**NOTICE OF SERVICE OF FIT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO FLORIDA POWER & LIGHT COMPANY (Nos. 1 - 15)**

NOTICE IS HEREBY GIVEN that Florida Internet and Television Association, Inc.s (“FIT”), by and through undersigned counsel, have on July 1, 2021 served their First Set of Interrogatories (Nos. 1-15) to Florida Power & Light Company.

Dated July 1, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of foregoing has been served by electronic mail to the following on this 1st day of July, 2021:

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/s/ Floyd R. Self
Floyd R. Self

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 1, 2021

**FIT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
FLORIDA POWER & LIGHT COMPANY (Nos. 1 - 15)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, Florida Internet & Television ("FIT"), by and through its undersigned attorney, hereby serves the following Request for Production of Documents upon Florida Power & Light Company (FPL). Please produce the following documents at **Berger Singerman LLP 313 North Monroe Street, Suite 301 Tallahassee, Florida 32301**, as provided by the Rules of Civil Procedure, **and within the time period set out in Order No. PSC-2021-0120-PCO-EI**.

DEFINITIONS

As used herein, the word "documents" shall mean the original and any non-identical copies of any writing or record, including but not limited to a book, pamphlet, periodical, letter, memorandum, telegram, report, study, interoffice or intraoffice, handwritten or other notes, working paper, draft, application, permit, chart, paper, graph, survey, index, tape, disc, data sheet or data processing card, computer printout, or any other written, recorded, transcribed, filed or graphic matter, however produced or reproduced.

"You", "your", "Company" or "FPL" refers to Florida Power & Light Company, its employees and authorized agents.

DOCUMENTS REQUESTED

1. Please produce all documents You produced to the Staff of the Florida Public Service Commission ("Staff") in response to any and all requests for production of documents served by Staff in this proceeding.

2. Produce all documents referring to, related to, regarding, reflecting, or used in Your responses to each Interrogatory in FIT's First Set of Interrogatories to FPL.

3. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2022. Please produce all documents referring to, reflecting, or regarding Your calculation of the annual pole rental rate used in the projections.

4. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2022. Please produce all documents referring to, reflecting, or regarding the projections of rent from pole attachments reflected in those Exhibits in the MFR, including but not limited to documents and work papers reflecting the calculation of the projections.

5. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, references to Account No. 454 Rent from Electric Property – Pole Attachments for historical test year 2020. Please produce all documents referring to, reflecting, or regarding the amounts reflected in Account No. 454 in the MFR including but not limited to documents and work papers reflecting the calculation of the amounts reflected in Account No. 454.

6. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2023. Please produce all documents referring to, reflecting, or regarding Your calculation of the annual pole rental rate used in the projections.

7. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2023. Please produce all documents referring to, reflecting, or regarding the projections of rent from pole attachments

reflected in those Exhibits in the MFR, including but not limited to documents and work papers reflecting the calculation of the projections.

8. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, references to Account No. 454 Rent from Electric Property – Pole Attachments for historical test year 2020. Please produce all documents referring to, reflecting, or regarding the amounts reflected in Account No. 454 in the MFR including but not limited to documents and work papers reflecting the calculation of the amounts reflected in Account No. 454.

9. Please produce records reflecting the height of all existing distribution poles in service in Your service territories in Florida as of December 31, 2020.

10. Please produce records reflecting the height of all existing distribution poles in service in Your service territories in Florida as of December 31, 2019.

11. Please produce records reflecting the height of all existing distribution poles in service in Your service territories in Florida as of December 31, 2018.

12. Please produce records reflecting the height of all existing distribution poles in service in Your service territories in Florida as of June 30, 2021.

13. Please produce your continuing property records associated with FERC distribution account 364 for the years 2018, 2019, 2020, and 2021.

14. Produce documents reflecting the number of all distribution poles deployed by You in Florida.

15. For each of the years 2019-2020, and for the year 2021 through June 30, 2021, please provide documents reflecting the total accumulated cost and number of units of each item listed below, including appurtenances, recorded in FPL's FERC Account 364 for Poles, towers, and fixtures under 18 C.F.R. Pt. 101, and all additional items, if any, included under FERC

Account 364 in FPL' FERC Form 1. To the extent the requested cost data is not available at the level of detail specified in the FERC rules, please provide documents reflecting the most disaggregated level of detail available to FPL, including data recorded and retrievable through electronic databases, at the minimum, a breakdown between pole and non-pole (appurtenance items). Under FERC rules, items classified as non-pole "appurtenances" include the following: (i) Head arm; (ii) Brackets; (iii) Crossarms and braces; (iv) Extension arms; (v) Guards;(vi) Insulator pins and suspension bolts; (vii) Racks complete with insulators; (viii) Railings; (ix) Towers; and (x) Transformer racks and platforms.

- a. Anchors, head arms, and other guys, including guy guards, guy clamps, strain insulators, pole plates; etc.
- b. Brackets;
- c. Crossarms and braces;
- d. Excavation and backfill, including the disposal or excess excavated material;
- e. Extension arms;
- f. Foundations;
- g. Guards;
- h. Insulator pins and suspension bolts;
- i. Paving;
- j. Permits for construction;
- k. Pole steps and ladders;
- l. Poles, wood, steel, concrete or other material;
- m. Racks complete with insulators;
- n. Railings;
- o. Reinforcing and stubbing;
- p. Settings;
- q. Shaving, painting, gaining, roofing, stenciling, and tagging;
- r. Towers;
- s. Transformer racks and platforms.

Dated July 1, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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*Attorneys for Florida Internet and Television
Association, Inc.*

Exhibit 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 8, 2021

**NOTICE OF SERVICE OF FIT'S FIRST SECOND SET OF INTERROGATORIES TO
FLORIDA POWER & LIGHT COMPANY (Nos. 24-32)**

NOTICE IS HEREBY GIVEN that Florida Internet and Television Association, Inc.'s ("FIT"), by and through undersigned counsel, have on July 8, 2021 served their Second Set of Interrogatories (Nos. 24-32) to Florida Power & Light Company.

Dated July 8, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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Association, Inc.*

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of foregoing has been served by electronic mail to the following on this 8th day of July, 2021:

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/s/ Floyd R. Self
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 8, 2021

**FIT'S SECOND SET OF INTERROGATORIES TO
FLORIDA POWER & LIGHT COMPANY (Nos. 24 - 32)**

Florida Internet & Television (“FIT”), by and through its undersigned attorney, propounds the following interrogatories, pursuant to Rule 1.340, Florida Rules of Civil Procedure, to Florida Power & Light Company (FPL). These interrogatories shall be answered under oath by you or your agent, who is qualified and who will be identified, with the answers being served as provided by the Rules of Civil Procedure, **and within the time period set out in Order No. PSC-2021-0120-PCO-EI**. As provided by Rule 1.340(a), Florida Rules of Civil Procedure, each interrogatory shall be answered separately and fully in writing under oath unless it is objected to. Each answer shall be signed by the person making it.

Give the name, address, and relationship to FPL of those persons providing the answers to each of the following interrogatories.

If an interrogatory contained herein asks for information that has already been provided or is in the process of being provided to the Commission through a Commission audit, please so state, indicating the date provided and the audit document/record request number.

DEFINITIONS

“You”, “your”, “Company” or “FPL” refers to Florida Power & Light Company, its employees and authorized agents, including but not limited to Gulf Power Company (“Gulf Power”) unless the Interrogatory explicitly references Gulf Power as a separate entity either pre- or post-merger.

“Document” refers to written matter of any kind, regardless of its form, and to information recorded on any storage medium, whether in electrical, optical or electromagnetic form, and capable of reduction to writing by the use of computer hardware and software.

“Identify” means:

- (a) With respect to a person, to state the person’s name, address and business relationship (e.g., “employee”) to the Company;
- (b) With respect to a document, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.

INTERROGATORIES

24. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, Schedule C-6 at page 7, identify actual revenues for account 454 for each year 2016, 2017, 2018, 2019 disaggregating revenues from pole attachment rents to show the annual revenue for each year from rent for pole attachments.

25. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, Schedule C-6 at page 13 (**pre-consolidation Gulf**), identify actual revenues for account 454 for each year 2016, 2017, 2018, 2019 disaggregating revenues from pole attachment rents to show the annual revenue for each year from rent for pole attachments.

26. For each year from 2006 to and through 2021 as of June 30, 2021, identify the number of utility distribution poles FPL and Gulf Power replaced as a result of the implementation of Grade B construction standards for utility poles.

27. For each year from 2006 to and through 2021 as of June 30, 2021, identify how many utility distribution poles FPL and Gulf Power installed that met Grade B construction standards, excluding the poles identified in response to FIT's Interrogatory 26, above.

28. Identify the height of each Grade B construction standard pole installed by FPL and Gulf Power since January 1, 2006.

29. For Gulf Power prior to the merger with FPL, please identify for test year 2020:

- a. total pole attachment revenues;
- b. total electric service revenues;
- c. average monthly electric service customer bill;
- d. total number of electric service customers;
- e. total kilowatt hours;
- f. average monthly kilowatt hours per customer

30. Referring to MFR, 2022 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2022. Please identify each of the following attributable to Gulf Power disaggregated from the totals for the consolidated FPL and Gulf Power:

- a. total pole attachment revenues;
- b. total electric service revenues;
- c. average monthly electric service customer bill;
- d. total number of electric service customers;
- e. total kilowatt hours;
- f. average monthly kilowatt hours per customer.

31. Referring to MFR, 2023 test year, Vol. 3 of 8, Section C, referring to Account No. 454 Rent from Electric Property – Pole Attachments for test year 2023. Please identify each of the following attributable to Gulf Power disaggregated from the totals for the consolidated FPL and Gulf Power:

- a. total pole attachment revenues;
- b. total electric service revenues;
- c. average monthly electric service customer bill;
- d. total number of electric service customers;
- e. total kilowatt hours;
- f. average monthly kilowatt hours per customer.

32. As to Your response to each of FIT's Interrogatories numbers 1 through 31 (1-23 in the First Set, 24-31 in this Second Set), please Identify the person or persons most knowledgeable of the facts set forth in and underlying Your responses to each Interrogatory.

Dated July 7, 2021.

Respectfully submitted,

/s/ Floyd R. Self
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Attorneys for Florida Internet and Television Association, Inc.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of foregoing has been served by electronic mail to the following on this 8th day of July, 2021:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 8, 2021

**NOTICE OF SERVICE OF FIT'S SECOND REQUEST FOR PRODUCTION OF
DOCUMENTS TO FLORIDA POWER & LIGHT COMPANY (Nos. 16 - 18)**

NOTICE IS HEREBY GIVEN that Florida Internet and Television Association, Inc.'s ("FIT"), by and through undersigned counsel, have on July 8, 2021 served their Second Request for Production of Document (Nos. 16-18) to Florida Power & Light Company.

Dated July 8, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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*Attorneys for Florida Internet and Television
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/s/ Floyd R. Self
Floyd R. Self

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI

DATED: JULY 8, 2021

**FIT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO
FLORIDA POWER & LIGHT COMPANY (Nos. 16 - 18)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, Florida Internet & Television (“FIT”), by and through its undersigned attorney, hereby serves the following Request for Production of Documents upon Florida Power & Light Company (FPL). Please produce the following documents at **Berger Singerman LLP 313 North Monroe Street, Suite 301 Tallahassee, Florida 32301**, as provided by the Rules of Civil Procedure, **and within the time period set out in Order No. PSC-2021-0120-PCO-EI.**

DEFINITIONS

As used herein, the word "documents" shall mean the original and any non-identical copies of any writing or record, including but not limited to a book, pamphlet, periodical, letter, memorandum, telegram, report, study, interoffice or intraoffice, handwritten or other notes, working paper, draft, application, permit, chart, paper, graph, survey, index, tape, disc, data sheet or data processing card, computer printout, or any other written, recorded, transcribed, filed or graphic matter, however produced or reproduced.

“You”, “your”, “Company” or “FPL” refers to Florida Power & Light Company, its employees and authorized agents, including but not limited to Gulf Power Company (“Gulf Power”) unless the Interrogatory explicitly references Gulf Power as a separate entity either pre- or post-merger.

DOCUMENTS REQUESTED

16. In Your Status Report/Update dated March 3, 2008 and filed June 1, 2008 in PSC Dockets 060198-EI, 060078-EI, in Section 5.1.2, You reported that in pole attributes collected via pole inspections are populated in FPL's GIS, including "Pole Height" and "Class." Please produce documents reflecting Pole Height and Class for each and every pole in FPL's GIS as of year-end for the years 2018, 2019, 2020, and for 2021 as of June 30, 2021.

17. Please produce documents reflecting Pole Height and Class for each and every pole in Gulf Power's GIS as of year-end for the years 2018, 2019, 2020, and for 2021 as of June 30, 2021.

18. Please produce all documents reflecting Your response to FIT's Second Set of Interrogatories in this proceeding.

Dated July 8, 2021.

Respectfully submitted,

/s/ Floyd R. Self

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/s/ Floyd R. Self
Floyd R. Self

Exhibit 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company
for Rate Unification and for Base Rate Increase

Docket No. 20210015-EI
Filed: July 7, 2021

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO THE PETITION TO INTERVENE
OF FLORIDA INTERNET AND TELEVISION ASSOCIATION**

Florida Power & Light Company (“FPL”) hereby submits its response to Florida Internet and Television Association, Inc.’s (“FITA”) Petition to Intervene (“Petition to Intervene”). Specifically, FPL requests the Florida Public Service Commission (“the Commission”) limit FITA’s participation to issues germane to this proceeding. FITA should not be permitted to use this proceeding to pursue, through discovery or otherwise, efforts that will be considered in separate administrative proceedings, and will be subject to rules and procedures that the Commission will promulgate later this year, as part of its evaluation of pole attachment rates, charges, terms and conditions in Florida. In support, FPL states as follows:

ARGUMENT

A. SB1944 and the Commission’s new jurisdiction over pole attachments.

FITA filed its Petition to Intervene on June 30, 2021, one day after Governor Ron DeSantis signed Senate Bill 1944 (“SB1944”).¹ SB1944 directs the Commission to complete the necessary certification requirements, detailed in 47 U.S.C. 224(c), to expressly divest the Federal Communications Commission (“FCC”) of jurisdiction over the “rates, charges, terms and conditions of pole attachments” in Florida. Thereafter, for the first time, the Commission would

¹ SB1944 established Commission jurisdiction over “rates, charges, terms, and conditions of pole attachments” on certain electric utility poles in Florida, including FPL’s. Prior to SB 1944, the Federal Communications Commission had jurisdiction over pole attachments to FPL’s poles.

have ongoing jurisdiction over the rates, terms and conditions of pole attachments in Florida (including those between FPL and FITA members). The Commission will first need to promulgate the initial procedural rules to administer and implement its new jurisdiction.²

One of the issues in the Commission’s forthcoming pole attachment proceedings will be the pole attachment rate, the methodology used to arrive at that rate, and the various cost components used in the pole attachment rate methodology, not only for attachments to FPL poles, but also for attachments by FPL to the poles of FITA members. In its passage of SB1944, the Florida Legislature indicated awareness that multiple parties would have a substantial interest in both the initial rulemaking proceeding and the subsequent precedent-setting pole attachment rate proceedings. As such, SB1944 expressly grants FITA the same participation rights it seeks here – a right to intervene in the Commission’s pole attachment rate cases:

(f) In the administration and implementation of this subsection, the commission shall authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under chapter 120 in the first four formal administrative proceedings conducted to determine pole attachment rates under this section. These initial four proceedings are intended to provide commission precedent on the establishment of pole attachment rates by the commission and help guide negotiations toward voluntary pole attachment agreements. After the fourth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate.

SB1944, Section 3(f) (emphasis added).

The purpose of this proceeding is to evaluate FPL’s proposed base rate increase and unification of rates with the former Gulf Power Company (“Gulf”). This proceeding does not

² SB1944 Section 3 states: “The commission shall propose procedural rules to administer and implement this subsection. The rules must be proposed for adoption no later than January 1, 2022, and upon adoption of such rules, shall provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).”

involve the Commission determining whether the rates FPL charges FITA members or FITA charges FPL for pole attachments are “fair, just and reasonable” or how the Commission’s new jurisdiction over pole attachments should be implemented. FITA’s Petition to Intervene, and the accompanying premature discovery requests discussed below, seek to convert this proceeding into a prequel of a forthcoming pole attachment rate proceeding, for which the necessary rules and procedures have yet to be established. To that extent, FITA’s Petition to Intervene is not only inappropriate under SB1944, but a distraction from the purposes and administration of this complex ratemaking proceeding. *See, e.g., In Re: Investigation Into Affiliated Cost-Plus Fuel Supply Relationships of Fla. Power Corp.*, Order No 18982, Docket No. 860001-EI-G (Mar. 11, 1988) (limiting discovery to policy issues concerning the pricing of goods and services from affiliated fuel supply affiliates in a proceeding opened to examine these specific issues, rather than permitting a broader prudency review).

B. FITA’s Discovery Requests and Participation.

FITA seeks to intervene on behalf of its members for two stated reasons: (1) the members purchase electricity from FPL and Gulf, *see* Petition to Intervene at 2, ¶ 5; and (2) the members “also attach their cables and other equipment to FPL and Gulf utility poles,” *Id.* FPL does not oppose FITA’s Petition to Intervene for the first stated reason - as an association representing the interests of its members as retail electric customers of FPL and Gulf.

But, FITA’s Petition to Intervene goes too far in also seeking “to ensure that the rates charged to FITA’s members for . . . pole attachments (which are directly impacted by the allocation of costs and revenues that are at issue in this proceeding) are fair, just and reasonable.” Petition to Intervene, 8 at ¶ 13(c). The timing of FITA’s effort to intervene, when contrasted with its past absence from similar proceedings, demonstrates its desire to gain early access to information that it believes might be relevant in the Commission’s future pole attachment proceeding. More telling

is the content of the 23 interrogatories and 15 requests for production FITA served on FPL on July 1, 2021, just one day after filing the Petition to Intervene and obviously before being granted party status.³ The Commission should not allow FITA to use this proceeding to litigate only one side of the issues that will be litigated by all parties in the upcoming proceeding to be instituted pursuant to S.B. 1944 when rates will be established for attachments to all jurisdictional poles, not simply FPL's.

By its own admission, this is FITA's first participation in a FPL electric rate case. In the forty-year history of FCC regulated pole attachment rates, neither FITA, nor its predecessor (Florida Cable Television Association), has ever "previously participated in an electric rate case before this Commission." Petition to Intervene at 7, ¶ 12. FITA's lack of participation is telling as the cost inputs from prior Commission-conducted general rate cases have been utilized in the FCC's pole attachment rate formula for decades. In other words, FPL's prior electric rate proceedings had no more or less bearing on pole attachment rates charged to FITA members than the current proceeding, casting doubt on both the need and propriety of FITA's request for discovery on pole attachment rates in this proceeding.

That said, FITA may exercise its associational rights on behalf of its retail electric customers as any other properly participating party may lawfully do in accordance with the Commission's rules. FPL likewise recognizes that elements within the current case will have some bearing on future pole attachment rates, inasmuch as certain cost inputs borne by FPL's electric customers inform the pole attachment rate setting process. But, early discovery for litigation in a future pole attachment rate case is not the purpose of this proceeding. The Commission has and

³ Because FITA served its discovery prior to being granted party status, the clock for FPL to respond has not yet started.

should exercise authority to properly define the scope of permissible discovery to best serve the purposes of the proceeding. *In Re: Fla. Power Corp.*, Order No. PSC-03-0687-PSC-EI, Docket 000824-EI (June 9, 2003) (limiting the scope of discovery on an ancillary issue regarding ex parte communications in a proceeding on the merits of a settlement refund dispute); *In Re: Complaint of Mad Hatter Util., Inc., & Paradise Lakes Util., LLC Against Verizon Fla., Inc.*, Order No. PSC-10-0021-PCO-PU, Docket 090313-PU (Jan. 7, 2010) (limiting the scope of witness examination on a dispute regarding under-road boring because it was not relevant to the issues raised in that proceeding).

In reviewing the premature discovery, it becomes very obvious that FITA's motivation for intervening in this proceeding (at least in part) is to seek information from the perspective of its interest in "pole attachment rates," as opposed to its interest in retail rates and policies generally. The final seven (7) data requests FITA has propounded upon FPL (again, before being granted party status) well exemplify this point. To varying degree, these requests seek information regarding distribution plant in service that seems only relevant to the derivation of a pole attachment rate. The final request 15 does elicit granular cost data, but seeks that information, as well as unit count data, for 19 subcategories of equipment classes within a single FERC account (364) that FPL reports as part of its FERC Form 1. *See* FITA First Request for Production of Documents to FPL at 3-4.

The interrogatories similarly oscillate between matters arguably within the scope of this proceeding and those within the future pole attachment rate proceeding. Perhaps the most obvious FITA "pole attachment" interrogatories are those asking FPL to calculate "[t]he impact of a one dollar decrease in the pole rental rate on the average distribution customer bill, both on a per dollar and per kilowatt hour basis." *See e.g.*, FITA First Set of Interrogatories to FPL at 3. Several other

discovery requests appear to stray well beyond legitimate requests that are beyond the scope of this proceeding. For example, several subcategories of Interrogatory 12 dive into elements of pole attachment rate design and beyond reasonable inquiries into matters germane to this proceeding. Interrogatories 15, 18 and 19 likewise are patently focused on matters to be raised in a future pole attachment proceeding.

CONCLUSION

If FITA is granted status as a party to this proceeding, for the reasons stated above, FPL reserves the right to object to any and all discovery that is beyond the scope of this proceeding (or is otherwise improper), whether propounded by FITA or any other party. The Commission will

reach pole attachment issues for all parties in due course and FPL will be a willing participant.
This proceeding, however, is not the proper place to start that process.

Respectfully submitted,

FLORIDA POWER & LIGHT COMPANY

By: /s/ R. Wade Litchfield

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CERTIFICATE OF SERVICE
20210015-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 7th day of July 2021 to the following parties:

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Exhibit 4

Thompson, Scott

From: Moncada, Maria <Maria.Moncada@fpl.com>
Sent: Friday, July 23, 2021 11:52 AM
To: Thompson, Scott; Floyd R. Self
Subject: FPL Docket 20210015

Hi Scott, in response to your voicemail from yesterday, I have run it up the flag pole. We will provide answers before August 9th if they are ready.

Something I forgot to mention to you yesterday – we have an NDA that governs the receipt of confidential information. If you are interested in receiving such information, please let me know and I will send you our form. Also, we are using an electronic data room to post our discovery responses. I will also provide you the form that governs access and use. There will be some up front IT-type work involved to get you set up. But my understanding is that it's not difficult. And, by all accounts, once you finish the set up it's all very simple to use – you will have 24/7 access to all discovery responses that has been produced in the case. There are separate access sites for confidential vs non-confidential information. Alternatively, we would provide the responses to you on a disc via overnight mail when the docs are too large to send via email. I'm aiming to get these forms to you today.

Thanks, Maria

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