

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 20250011-EI

Filed: July 3, 2025

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO THE
OFFICE OF PUBLIC COUNSEL'S SECOND MOTION TO ENLARGE DISCOVERY**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.204(1) and 28-106.206, Florida Administrative Code, hereby submits the following Response in Opposition to the Office of Public Counsel's ("OPC") Second Motion To Enlarge Discovery. As explained below, OPC has failed to meet its burden to demonstrate good cause justifying its request for its proposed increase of the limit from 850 to 950 interrogatories in this proceeding and, therefore, the Prehearing Officer should deny OPC's request.

Although discovery in Commission proceedings is broad, it is not without limits. The current discovery limits adopted by the Order Establishing Procedure, Order No. PSC-2025-0075-PCO-EI ("OEP") and increased previously by the Order Granting in Part and Denying in Part Office of Public Counsel's Motion to Enlarge Discovery and Denying Request for Oral Argument ("Order Enlarging Discovery"), Order No. PSC-2025-0133-PCO-EI, are significantly more than reasonable and appropriate for purposes of serving efficient, focused, and relevant discovery regarding FPL's filing, while also protecting FPL from overly burdensome and harassing discovery requests. Having previously requested an enlargement of discovery to eliminate any limit on interrogatories in this case, OPC is and has been aware of these reasonable limits and, nonetheless, elected to continue to propound set after set of interrogatories and requests for production of documents, now up to 19 sets of interrogatories and 19 requests for production of documents, with no apparent regard to the limit already increased by the Prehearing Officer. OPC's continuing failure to be selective and judicious with its discovery to date falls woefully

short of demonstrating good cause as to why the discovery limits established in the OEP as increased by the Order Enlarging Discovery are not adequate and should be increased for now the second time since FPL filed its petition in this proceeding. For these reasons, as more fully explained below, OPC's Second Motion To Enlarge Discovery should be denied.

1. On February 28, 2025, FPL filed its petition requesting a base rate increase along with minimum filing requirement schedules and testimony supporting the request.

2. On March 14, 2025, the Prehearing Officer issued the OEP ordering that discovery in this proceeding shall be conducted in accordance with the provisions of Chapter 120, Florida Statutes, the relevant provisions of Chapter 366, Florida Statutes, Rules 25-22, 25-40 and 28-106, Florida Administrative Code, and the applicable Florida Rules of Civil Procedure.

3. On April 1, OPC filed its first Motion To Enlarge Discovery and Request for Oral Argument ("First Motion To Enlarge Discovery"), requesting an increase from the limit on interrogatories in the OEP from 750 to 1,000 or unlimited.

4. On April 16, 2025, the Prehearing Officer issued the Order Enlarging Discovery in response to OPC's First Motion To Enlarge Discovery, increasing the limit on interrogatories from 750 to 850 but rejecting OPC's request for no limit.

5. On June 26, 2025, OPC filed a Second Motion To Enlarge Discovery, requesting that the current limit on interrogatories be increased from 850 to 950.

6. Rule 1.340(a) of the Florida Rules of Civil Procedure limits parties to thirty (30) interrogatories, including subparts, unless a party moves to exceed that number and demonstrates good cause. However, the Commission permits parties to exceed that number when the scope of a proceeding is complex. *In re: Petition for rate increase by Duke Energy Florida, LLC*, Order No. PSC-2024-0145-PCO-EI, Docket No. 20240025-EI (FPSC May 7, 2024).

7. Accordingly, the OEP in this proceeding established the following limits on discovery: (a) interrogatories shall be limited to 750 including all subparts; (b) request for production of documents shall be limited to 750 including all subparts; and (c) requests for admissions shall be limited to 200 including all subparts. As noted, the limit on interrogatories was increased to 850 in the Order Enlarging Discovery based on OPC's prior request.

8. As of the date of this response, eighteen (18) parties¹ have petitioned to intervene in this proceeding. Each of these parties and Commission Staff can propound discovery on FPL in this proceeding up to the discovery limits established by the OEP. Thus, even absent OPC's request to expand the discovery limits, FPL potentially could be asked to respond to 14,350 interrogatories, 14,250 requests for production of documents, and 3,800 requests for admissions (or a combined total of 32,400 discovery requests), and that does not include depositions conducted to date and further potential further depositions of FPL's witnesses who file rebuttal testimony. This is already a tremendous amount of discovery that FPL potentially may be required to respond to within a 20-day period for any discovery served prior to rebuttal and within a 7-day period for discovery served after rebuttal.

9. Prior to FPL filing its petition, OPC elected to serve the following three sets of pre-filed discovery requests: OPC First Set of Interrogatories (Nos. 1-96) and First Request for Production of Documents (Nos. 1-51), served on January 29, 2025; OPC Second Set of Interrogatories (Nos. 97-102) and Second Request for Production of Documents (No. 52), served on February 3, 2025; and OPC Third Set of Interrogatories (Nos. 103-106) and Third Request for Production of Documents (Nos. 53), served on February 17, 2025. Thus, OPC elected to serve three robust sets of discovery *before it had the opportunity to read a single page of FPL's filing*.

¹ OPC, FIPUG, SACE, Florida Rising, LULAC, ECOSWF, FEA, FRF, EVgo, Electrify America, Walmart, AACE, Circle K, RaceTrac, Wawa, FEIA, FAIR, and Armstrong World Industries.

10. As of July 3, 2025, OPC has served 19 sets of interrogatories and 19 requests for production of documents, as well as taken the deposition of 16 FPL representatives. According to OPC's Second Motion To Enlarge Discovery, OPC had now served FPL with 770 interrogatories in this proceeding.²

11. On June 26, 2025, OPC filed its Second Motion To Enlarge Discovery requesting that the limit on interrogatories be increased from 850 to 950.

12. As the party seeking to expand the discovery limits in this proceeding, OPC has the burden to demonstrate good cause why the additional discovery is necessary and justified.³ In an effort to meet this burden, OPC's Motion asserts there is good cause for the following three reasons: (i) OPC is proactively seeking to expand discovery because OPC does not know what amount of investigation will be required once FPL files expected rebuttal testimony on July 9, 2025, and the discovery deadline is July 23, 2025; (ii) OPC does not know when FPL will file its expected Notice of Identified Adjustments ("NOIA") or what amount of investigation and associated discovery will be required for this filing; and (iii) FPL filed an application with the Federal Energy Regulatory Commission ("FERC") under Section 203 of the Federal Power Act for approval of its acquisition and merger into FPL of Vandolah Power Company L.L.C. ("Vandolah Power") with its associated 660 MW natural gas/oil generating facility on June 10, 2025, one day after OPC filed its expert witness testimony in this proceeding, allegedly necessitating further investigation and discovery beyond what will be required for responding to FPL's rebuttal case. OPC's arguments lack merit and fail to establish good cause why the

² OPC and FPL may disagree as to the appropriate method to calculate subparts of discovery requests. However, FPL accepts OPC's estimated total of 770 interrogatories for purposes of this Response only but reserves the right to challenge the method used by OPC to count discovery requests that include subparts.

³ See Fla. R. Civ. P. 1.340(a). See also *In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc.*, Order No. PSC-95-1453-FOF-WS, Docket No. 950495-WS (FPSC Nov. 28, 1995) ("This rule places the burden on the person requesting the additional interrogatories to demonstrate good cause why they should be permitted").

discovery limits established in the OEP as increased by the Order Enlarging Discovery are insufficient to obtain relevant information necessary to evaluate FPL's filing.

13. In its Motion, OPC asserts that it has served 770 interrogatories, including subparts, upon FPL as of June 26, 2025. By OPC's own admission, it has not reached the 850 limit on interrogatories set in the Order Enlarging Discovery and, therefore, OPC's Motion is entirely premature and should be denied.⁴ Although OPC's Motion is premature, FPL submits that OPC's Motion should also be denied on the merits because OPC has failed to establish good cause for the reasons further explained below.

14. With respect to OPC's repeated claim that FPL's proposed 2025 rate case is vast, complex, and evolving, FPL notes that the discovery limits established by the OEP and already increased by the Prehearing Officer, significantly exceed those permitted under the Florida Rules of Civil Procedure and clearly already contemplate the technical and complex nature of a base rate proceeding.

15. Additionally, OPC's argument ignores the fact that FPL's 2021 rate case in Docket No. 20210015-EI was also a four-year rate plan that similarly involved two test years and two years of similar SoBRA mechanisms. Notably, the discovery limits established by the OEP in this proceeding are the same as those established in FPL's 2021 rate case, but increased already by the Prehearing Officer.⁵ Arguably, FPL's 2021 rate case was an even more complex and voluminous case that involved, among other things, the merger and consolidation of FPL and former Gulf

⁴ *In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc.*, Order No. PSC-95-1453-FOF-WS, Docket No. 950495-WS (FPSC Nov. 28, 1995) ("We also note that OPC has yet to reach the limits set on discovery, and it is at that time that OPC may file another motion pursuant to Rule 1.340(a), Florida Rules of Civil Procedure, for additional discovery").

⁵ *See In re: Petition for rate increase of Florida Power & Light Company*, Order No. PSC-2021-0120A-PCO-EI, Docket No. 20210015-EI (FPSC Apr. 8, 2021) (setting discovery limits in the FPL 2021 rate case to 750 interrogatories, 750 requests for production of documents, and 200 requests for admission).

Power Company (“Gulf”), rate unification of the two companies, and the filing of four alternative rate proposals, each with their own sets of MFRs for both the test year and subsequent year: (i) consolidated FPL rate increase with RSAM; (ii) consolidated FPL rate increase without RSAM; (iii) standalone FPL rate increase; and (iv) standalone Gulf rate increase. Despite the complexity and volume of FPL’s 2021 rate case, all parties had a full and fair opportunity to request necessary information regarding FPL’s 2021 rate case without the need to expand or modify the discovery limits.

16. Likewise, OPC’s continued reliance on the number of customers and counties served in Florida served by FPL is misplaced and fails to make any causal connection between the number of customers served and the number of interrogatories that are reasonably needed to obtain relevant information related to FPL’s filing. Indeed, there is nothing in the Florida Rules of Civil Procedure or established Commission practice to suggest the number of interrogatories established for a Commission proceeding are to be proportional to or conditional upon the number of customers served.

17. While OPC does not provide a definition of what is meant by “evolving,” FPL assumes that OPC is referring to the fact that in any litigated case as testimonies are filed and discovery is propounded and responded to, additional information about the case, underlying facts, and this positions of the parties are learned. This is all normal process and procedure in litigation before the Commission in a rate proceeding like this, and in no way does it justify altering the established procedural schedule, including the limits on discovery established by order of the Prehearing Officer. To permit otherwise would result in a never ending discovery and hearing process that would be unfair and unreasonable for the petitioner, the intervening parties, and the Commission and its Staff.

18. OPC’s reliance on uncertainty associated with an FPL NOIA in this proceeding

similarly lacks merit and fails to demonstrate good cause. Utilities not infrequently file NOIAs in base rate proceedings, and OPC was given notice from FPL that a NOIA would be filed. FPL noted the adjustments that will be made in the NOIA in discovery responses previously in this proceeding, and FPL filed its NOIA on May 23, 2025. OPC has had opportunity to ask discovery regarding the NOIA and will continue to do so through the end of the discovery period.

19. OPC's reliance on FPL's FERC filing for approval of the Vandolah Power transaction is not unexpected and should not be a mystery to OPC. Before this Vandolah Power transaction was made public, OPC and other parties to this proceeding were made aware of the transaction on a confidential basis. They have had opportunity to conduct discovery and have in fact done so through written discovery and at deposition of FPL witnesses. FPL has consistently provided answers in that discovery that clearly indicate and advise the Vandolah Power transaction has no bearing on FPL's instant base rate request for 2026 and 2027, but nonetheless agreed that an issue could be included in this proceeding for the Commission to decide regarding Vandolah Power's impact on any aspect of this rate request. OPC is aware of all of this information, as evidenced by its attachment of FPL's Vandolah Power FERC filing to OPC's motion, and in no way does FPL's filing with FERC support a finding of good cause to once again enlarge the discovery limit in this proceeding.

20. OPC was fully aware that the OEP would and did establish discovery limits in this proceeding, just like every other proceeding before this Commission. Given the Commission's long-standing practice of setting reasonable limits on discovery in every proceeding, it is incumbent on all parties to be efficient and take a focused approach to using the limited written discovery permitted by the OEP to obtain relevant information to evaluate the case.⁶ This is further

⁶ Although discovery in Commission proceedings is broad, it is not without limits, and it certainly is not intended to be an unlimited fishing expedition. *See In re: Application of Du-Lay Utility*
(Continued on next page)

underscored by the fact that the Commission has rejected requests to expand discovery beyond the limits set forth in the applicable OEP.⁷ It is important that the Prehearing Officer not overlook the fact that written discovery serves as a predicate for oral depositions, a discovery tool that OPC has utilized and intends to continue to utilize this proceeding.

21. In sum, it appears OPC has simply disregarded the interrogatory discovery limit established by the OEP and assumed that the discovery limit would be expanded simply by serving an avalanche of questions early in the proceeding including before the petition and supporting documents were even filed. OPC's failure to be selective, efficient, and focused with its discovery to date does not constitute good cause for revising the discovery limits established in the OEP.

22. Accordingly, OPC has failed to meet its burden to demonstrate good cause why the discovery limits established in the OEP should be expanded and, therefore, OPC's Motion should be denied. To the extent OPC's Motion is granted, permission to serve additional interrogatories above the already robust number allowed by the OEP should be limited in number (*i.e.*, no more than 50) and, of course, limited to OPC.

WHEREFORE, FPL respectfully requests that the Prehearing Officer promptly deny OPC's Second Motion To Enlarge Discovery, as requested in this proceeding.

Company, Inc. for authority to increase rates for water and sewer service in Duval County, Florida, Order No. 16372, Docket No. 850100-WS (FPSC July 17, 1986).

⁷ See, *e.g.*, *In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc.*, Order No. PSC-95-1453-FOF-WS, Docket No. 950495-WS (FPSC Nov. 28, 1995) (denying OPC's request for unlimited discovery, concluding that allowing unlimited interrogatories and requiring the respondent to seek a protective order if it thought the discovery unduly burdensome would turn the requirement for good cause in Florida Rule of Civil Procedure 1.340 on its head).

Respectfully submitted this 3rd day of July 2025,

By: /s/ William P. Cox

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CERTIFICATE OF SERVICE

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