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October 3, 2025

VIA PSC E-FILE SYSTEM

Adam Teitzman, Director
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Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In Re: Docket No. 20250011-FL, Florida Power & Light Rate Case
Florida Industrial Power Users Group (“FIPUG”), Florida Retail Federation (“FRF”),
Florida Energy for Innovation Association, Inc. (“FEIA”), Walmart Inc. (“Walmart”),
EVgo Services, LLC (“EVgo”), Americans for Affordable Clean Energy, Inc.
 (“AACE”), Circle K Stores, Inc. (“Circle K”), RaceTrac Inc. (“RaceTrac”), Wawa,
Inc. (“Wawa”), Electrify America, LLC (“Electrify America”), Federal Executive
Agencies (“FEA”), Armstrong World Industries, Inc. (“AWI”), and Southern
Alliance for Clean Energy (“SACE”), (collectively, the “Signatory Intervenors”),
Signatory Intervenors’ Joint Response to Florida Office of Public Counsel’s Motion
to Compel:

Dear Mr. Teitzman:

Through an inadvertent oversight, in filing the Signatory Intervenors' Joint Response to OPC's Motion to Compel Discovery yesterday, the actual Joint Response was not attached to the notice or certificate of service that were filed with the Commission. As the certificate of service indicated, a copy of the Response was timely emailed to all of the parties of record the afternoon of October 2, 2025.

To make the necessary correction, the Joint Response is attached for filing in the official record.

Please let me know if you have any questions.

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Best regards,

BERGER SINGERMANN LLP

A handwritten signature in blue ink, appearing to be 'F. Self', with a stylized flourish at the end.

Floyd R. Self

FRS/kmb

cc: E-Service List

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 20250011-EI

Date: October 2, 2025

**SIGNATORY INTERVENORS' JOINT RESPONSE TO
FLORIDA OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL**

Pursuant to Section 28-106.204, Florida Administrative Code, and Florida Rules of Civil Procedure 1.280 and 1.380, Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (FRF), Florida Energy for Innovation Association, Inc. (FEIA), Walmart Inc. (Walmart), EVgo Services, LLC (EVgo), Americans for Affordable Clean Energy, Inc. (AACE), Circle K Stores, Inc. (Circle K), RaceTrac Inc. (RaceTrac), Wawa, Inc. (Wawa), Electrify America, LLC (Electrify America), Federal Executive Agencies (FEA), Armstrong World Industries, Inc. (AWI), and Southern Alliance for Clean Energy (SACE), (collectively, the “Signatory Intervenors”), by and through their respective undersigned counsel, submit this Joint Response to the Florida Office of Public Counsel’s (OPC) September 30, 2025 Motion to Compel (Motion).¹

The Florida Public Service Commission (Commission) should deny the Motion. The interrogatories that are the subject of OPC’s Motion are not an effort to probe the substance of the settlement agreement the Signatory Intervenors entered into with Florida Power & Light Company (FPL) on August 20, 2025 (Settlement Agreement).² Rather, the requests seek privileged communications, information readily available to OPC within the Settlement Agreement itself, legal conclusions, and other information beyond the scope of permissible discovery prescribed by Florida Rule of Civil Procedure 1.280 (b). In further support of this Response, Signatory

¹ AWI joins this Response, but was not compelled to respond by the Motion, and requests the Commission’s ruling on the Motion acknowledge that fact.

² Docket No. 20250011-EI, 2025 Stipulation and Settlement Agreement (Aug. 20, 2025).

Intervenors state as follows:

1. On September 3, 2025, OPC propounded its first set of interrogatories (OPC Set 1) on the Signatory Intervenors. Signatory Intervenors each responded to OPC Set 1 by September 10, 2025.
2. On September 5, 2025, OPC propounded its second set of interrogatories (OPC Set 2) on the Signatory Intervenors. Signatory Intervenors each responded to OPC Set 2 by September 12, 2025.
3. On September 30, 2025, three days before the close of discovery and over two weeks after receiving Signatory Intervenors' responses to its first and second sets of interrogatories, OPC filed the Motion to Compel responses to interrogatories in OPC Set 1 and OPC Set 2 from the Signatory Intervenors.
4. On October 1, 2025, the Chairman of the Commission, through Staff counsel, requested responses to the Motion by the close of business October 2, 2025.
5. The Motion broadly asserts two bases for an Order compelling responses from Signatory Intervenors. First, OPC asserts that certain responses are “evasive” or “elusive.”³ Second, OPC asserts that Signatory Intervenors' objections based on attorney-client and work product privilege “are asserted overly broadly and are not valid[.]”⁴
6. Both bases for OPC's Motion fail.
7. With respect to the responses OPC claims are “evasive” or “elusive”, nothing in the referenced responses from Signatory Intervenors requires OPC to “ferret and sift

³ Motion at 7; *see* Attachment A.

⁴ Motion at 4; *see* Attachment A.

through [other sources] to determine whether the information is there.”⁵ Rather, as the table in Attachments A - J to the Motion (tabulating all of the subject responses) amply demonstrates, Signatory Intervenors objected to several of OPC’s interrogatories asking for Signatory Intervenors’ *interpretation* of “whereas” clauses in the Settlement Agreement because those interrogatories call for legal conclusions. That response is not “evasive”; it is a valid objection to a request asking Signatory Intervenors to opine on the legal meaning of clauses contained in the Settlement Agreement.⁶ Similarly, Signatory Intervenors objected to certain questions asking for the source of each intervenor’s authority to take positions on issues and enter into the Settlement, including in some instances with express reference to the Florida Statutes and Florida Administrative Code, because those interrogatories call for a legal conclusion. These are evidently legal questions, which are not discoverable under Florida and Commission precedent.⁷

8. In a similar vein, Signatory Intervenors responded to several of OPC’s interrogatories

⁵ Motion at 8 (citing *Summit Chase Condo. Assoc. v. Protean Inv’rs*, 421 So.2d 562, 564 (Fla. Dist. Ct. App.1982).

⁶ See Fla. R. Civ. P. 1.280(c)(4); Fed. R. Civ. P. 26(b)(3)(A)-26(b)(3)(B); *S. Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d. 1377, 1384 (Fla. 1994) (“Opinion work product consists primarily of the attorney’s mental impressions, conclusions, opinions, and theories”); *State v. Rabin*, 495 So. 2d 257 (Fla. 3d DCA 1986); *Fla. Eye Clinic, P.A. v. Gmach*, 14 So. 3d. 1044,1049 (Fl 5th DCA 2009) (holding that causing an attorney to turn over their papers or things based on their “mental conclusions, theories, or opinions” may cause a chilling effect in future cases); *Northup v. Herbert W. Acken, M.D., P.A.*, 865 So. 2d 1267, 1272 (Fla. 2004) (“An attorney may not be compelled to disclose the mental impressions resulting from his or her investigations, labor, or legal analysis unless the product of such investigation itself is reasonably expected or intended to be presented to the court or before a jury at trial”); *Duplan Corp. v. Moulinage et Retorderie de Chavanoz*, 509 F.2d 730, 734-36 (4th Cir. 1974).

⁷ See, e.g., Order No. PSC-12-0349-PCO-TP, Docket No. 110234-TP, *In re Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T* (July 5, 2012); Order No. PSC-00-0291-PCO-EU, Docket No. 991462-EU, *In re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C* (Feb. 11, 2000).

by stating that the Settlement Agreement “speaks for itself.” Again, that response is not “evasive”; it is a valid response to a request for information that is readily apparent from a review of the Settlement Agreement. At the end of the day, the terms of the Settlement Agreement must stand on their own; the interpretations of the Signatories are irrelevant to the terms of the Settlement.⁸ Additionally, OPC’s Motion seems to imply that as to the answers that each of the Signatory Intervenors had already provided to Commission Staff, that references to those responses (and other responses such as those provided by FPL) are insufficient and non-responsive. Taken on its face, this would require each Signatory Intervenor to copy verbatim the substantive responses they provided to Staff and obtain another affidavit from their supporting witness to attest to information they have already attested to. This is duplicative, unnecessary, and wasteful of parties’ resources in this proceeding.

9. With respect to the objections to OPC’s requests based on privilege, the subject requests ask for Signatory Intervenors’ understanding of provisions in the Settlement Agreement, which necessarily implicate attorneys’ communications with their clients regarding the Settlement Agreement, as well as information regarding compromises among the Signatories. Signatory Intervenors’ therefore validly assert privilege objections. The Commission’s sound denial of OPC’s attempt to depose corporate representatives only reinforces the validity of the privilege objections.⁹

⁸ OPC’s requests seek the Signatory Intervenors’ subjective interpretations of the Settlement Agreement’s “WHEREAS” clauses, which are unincorporated recitals with no operative effect. As these inquiries do not appear to be intended to clarify ambiguity in the operative terms of the Agreement, they seek information that is irrelevant to the ultimate questions the Commission must answer regarding whether the Settlement Agreement, taken as a whole, is in the public interest and whether it results in fair, just and reasonable rates that are compensatory and non-discriminatory.

⁹ The Signatory Intervenors note that the Chairman did allow the more narrowly focused corporate representative depositions sought by FEL, which mostly stayed away from privileged matters; OPC

10. While the sheer breadth of OPC’s Motion, and the expedited briefing schedule established by the Commission, does not permit Signatory Intervenors to address each and every response OPC seeks to compel herein, a couple examples help demonstrate why the subject interrogatories are plainly objectionable.
11. For example, Interrogatories 2(b) and 2(c) inquire about a party’s legal “rights and interests under Chapters 350, 366, and 120, Florida Statutes, as applicable”, and Interrogatories 3(a) and (b) inquire about what constitutes valid “consideration”. These are classic examples of requests calling for a legal opinion or conclusion. A proper objection to this type of discovery is attorney-client privilege and that the request seeks an improper legal conclusion.¹⁰
12. Moreover, Interrogatories 4(a), 4(b), 6(a)-(f), 7, and 8(a)-(f) appear to be copied verbatim from Staff’s Interrogatories served on August 27, 2025, and thus seek information that is repetitive to discovery responses previously provided to Staff. Those interrogatories are therefore redundant, cumulative, intended to harass, and needlessly increase the cost of litigation.¹¹
13. Finally, the timing of OPC’s Motion supports its denial. Despite receiving Signatory Intervenors’ responses to OPC Sets 1 and 2 over two weeks ago, OPC waited until the

participated in these depositions, asked questions in some, and quite frankly, in the aggregate these corporate representative depositions likely covered in a non-privileged way the general subject matter sought by OPC through its overreaching discovery requests.

¹⁰ *In re: Application for a rate increase in Lee County by Lehigh Utilities, Inc.*, Docket No. 911188-WS, Order No. PSC-92-0752-PCO-WS, 1992 Fla. PUC LEXIS 1236 *3 (F.P.S.C. Aug. 6, 1992) (“OPC is requesting legal theories and legal opinions regarding the application of federal and state law to this case. Such legal opinions are not appropriate for discovery.”); *In re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C.*, Docket No. 991462-EU; Order No. PSC-00-0562-PCO-EU, 2000 Fla. PUC LEXIS 345 at *7 (F.P.S.C. Mar. 17, 2000) (finding that discovery requests concerning how “the Florida Statutes and Commission rules apply to investor-owned utilities” are “inappropriate requests for conclusions of law or legal opinions”).

¹¹ *See In re: Petition of Competitive Carriers*, Docket No. 990321; Order No. PSC-03-0857-PCO-TP (July 22, 2003) (finding that AT&T not required to respond to interrogatory that was “repetitive of” another interrogatory).

eve of hearing, and three days prior to the close of discovery, to file a motion to compel responses. The Motion does not explain why OPC waited over two weeks to seek an Order compelling responses to its Set 1 and Set 2 interrogatories. Moreover, OPC made no attempt to contact any of the Signatory Intervenors to discuss particular responses to ascertain whether there could be a compromise for through perhaps an alternative question or whether other relevant information could be obtained. Instead, OPC ignored common practice and instead “consulted” by merely asking us for our position without any specifics as to what its motion to compel would cover. Given OPC’s failure to follow common practice to potentially receive non-privileged responses, an Order granting OPC’s belated Motion would require Signatory Intervenors to participate in discovery during the evidentiary Hearing set to commence on October 6, which would be both unduly burdensome and unlikely to lead to the discovery of relevant evidence that would have any bearing on the issues before the Commission.

14. Rule 1.280(c) of the Florida Rules of Civil Procedure allows broad discovery of “any *nonprivileged* matter that is relevant to and party’s claim or defense *and the proportional needs of the case . . . and whether the burden or expense of the proposed discovery outweighs its likely benefit.*” (emphasis added). These restrictions on discovery remain relevant in the context of the Motion. The burden of OPC’s discovery outweighs its likely benefit at this stage of the litigation, and therefore, the Commission should deny the Motion.

WHEREFORE, for the foregoing reasons, Signatory Intervenors respectfully request that Commission deny OPC’s Motion. Signatory Parties also request that this Commission order such other relief as it may deem necessary so the parties can move ahead expeditiously in presenting

evidence to the Commission during the scheduled hearing in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE
20250011-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
by electronic mail this 2nd day of October 2025 to the following parties:

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