

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20250011-EI  
ORDER NO. PSC-2025-0367-PCO-EI  
ISSUED: October 3, 2025

ORDER DENYING THE OFFICE OF PUBLIC COUNSEL'S CITIZENS' MOTION TO  
COMPEL SPECIAL INTEREST PARTIES' RESPONSE TO DISCOVERY

Background

This proceeding was set for final hearing on August 11-22, 2025, by Order No. PSC-2025-0075-PCO-EI, issued March 14, 2025. On August 8, 2025, Florida Power & Light Company (FPL) filed a Notice of Settlement in Principle and Joint Motion to Suspend Schedule and Amend Procedural Order. The Florida Industrial Power Users Group, Florida Retail Federation, Florida Energy for Innovation Association, Walmart Inc., EVgo Services, Americans for Affordable Clean Energy, Circle K, RaceTrac, Wawa, Electrify America, Federal Executive Agencies, Armstrong World Industries, and the Southern Alliance for Clean Energy (collectively FPL Signatories) joined in the Joint Motion to Suspend. On August 11, 2025, the Office of Public Counsel (OPC), Florida Rising, League of United Latin American Citizens Florida, Environmental Confederation of Southwest Florida, and Floridians Against Increased Rates (collectively FPL Non-Signatories) filed a Joint Response in Opposition to the Joint Motion to Suspend. After hearing argument from the parties, the Commission voted to grant the Joint Motion and suspend the schedule in order to allow the parties time to finalize the settlement. On August 12, 2025, Order No. PSC-2025-0304-PCO-EI memorializing this vote was issued.

On August 20, 2025, FPL and the FPL Signatories filed a Joint Motion for Approval of 2025 Stipulation and Settlement Agreement. The FPL Non-Signatories did not sign or otherwise join in the 2025 Stipulation and Settlement Agreement (2025 SSA). Because the 2025 SSA is not unanimous, further proceedings under Section 120.57(1), Florida Statutes, are necessary to address the disputed issues of material fact. Accordingly, on August 22, 2025, the undersigned Prehearing Officer issued a First Order Revising Order Establishing Procedure,<sup>1</sup> and therein set this matter for a two-week hearing to commence October 6, 2025.

On September 3, 2025, OPC issued its First Set of Interrogatories Nos. (1-3) directed at the FPL Signatories (with the exception of FPL itself). These interrogatories ask questions with respect to certain "WHEREAS" clauses that appear in the 2025 SSA. On September 5, 2025, OPC issued its Second Set of Interrogatories (Nos. 4-8). These interrogatories contain questions about the various party's understandings of both the individual terms of the 2025 SSA itself as well as potential impacts those terms may have on future Commission decisions. On September 30, 2025, OPC filed Citizens' Motion to Compel Special Interest Parties' Response to Discovery (Motion). On October 1, 2025, the parties were advised that any response(s) to the Motion

<sup>1</sup> Order No. PSC-2025-0323-PCO-EI.

should be filed by the end of the day on October 2, 2025, and Order No. PSC-2025-0365-PCO-EI was subsequently issued reflecting such. On October 2, 2025, the FPL Signatories filed a Joint Response to Florida Office of Public Counsel's Motion to Compel (Joint Response).

### Motion to Compel

OPC's Motion to Compel argues that the answers provided in response to the subject discovery requests "were evasive, non-responsive, or otherwise received only objections."<sup>2</sup> Additionally, OPC alleges the objections failed to describe the nature of the documents, communications, or things not produced or disclosed" in contradiction of Rule 1.280(c), Fla. R. Civ. P. OPC states the discovery it seeks is relevant to understanding and testing the validity of the terms in the 2025 SSA, including whether it meets the public interest standard, or the fair, just, and reasonable tests for such agreements.<sup>3</sup> OPC also describes the discovery, specifically interrogatories 4-8, as "relative to the respective SIP's understanding of the settlement itself, not of any negotiations."

OPC states that without these answers it will not be able to fully execute its statutory role in the rate setting process and that it will be denied due process under Section 350.0611(1), Florida Statutes. OPC states the determination of whether or not the 2025 SSA is in the public interest "must be supported by the record which requires discovery that either supports or refutes it." OPC further argues that "[d]iscovery facilitates the truth-finding process and must strike a balance between encouraging corporations to seek legal advice preventing corporate attorneys from being used as shields to thwart discovery."<sup>4</sup> Finally, OPC alleges that, "The failures to provide the requested information and answers, prejudices the Citizens, and precludes the thorough vetting of the non-unanimous agreement, that on its face, appears unduly discriminatory. This will result in a denial of due process."<sup>5</sup>

### Response(s) to Motion to Compel

The FPL Signatories argue that the subject interrogatories seek privileged and irrelevant information, and are beyond the scope of permissible discovery as set forth in Rule 1.280, Fla. R. Civ. P.<sup>6</sup> They further argue that the interrogatories improperly seek legal opinions regarding provisions of the 2025 SSA.<sup>7</sup> Finally, the FPL Signatories argue that the timing of this Motion – filed on the eve of the hearing – provides an additional basis for denial.<sup>8</sup>

### Standard of Review

Rule 28-106.206, Florida Administrative Code (F.A.C.), provides that:

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<sup>2</sup> Motion at page 3.

<sup>3</sup> *Id.*

<sup>4</sup> *S. Bell Tel. & Tel. Co. v. Deason (Southern Bell)*, 632 So. 2d 1377, 1383 (Fla. 1994).

<sup>5</sup> Motion at page 9.

<sup>6</sup> Response at page 1.

<sup>7</sup> *Id.* at page 3.

<sup>8</sup> *Id.* at page 5.

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. 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.

As the Commission has stated previously, the purpose of discovery is to “eliminate surprise, to encourage settlement, and to assist in arriving at the truth.”<sup>9</sup> “Pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial.”<sup>10</sup>

The scope of discovery is broad under Florida law: “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.”<sup>11</sup> The discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules.<sup>12</sup> However, discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence.<sup>13</sup> If a logical connection is not readily apparent, the questioner should make it apparent by pointing out to the court his reasoning process based on facts and inferences demonstrating how he calculates that the sought information will reasonably lead to admissible evidence.<sup>14</sup> Further, in deciding whether a party should be required to respond to a discovery request, the court must weigh the relevance of the information sought against the burdensomeness of the request.<sup>15</sup> In determining whether discovery is proportional to the needs of the case, the tribunal is to consider “the importance of the discovery in resolving the issues.”<sup>16</sup>

### Analysis and Decision

While the scope of discovery is generally broad, courts possess “significant discretion” in regulating the discovery process.<sup>17</sup> Under Chapter 120, presiding officers have the power to effect discovery by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, with some exceptions.<sup>18</sup> However, a presiding officer’s power to effect discovery is not as comprehensive as a courts power.<sup>19</sup> Additionally, a presiding officer may

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<sup>9</sup> Order No. PSC-2022-0194-PCO-EI, Issued May 25, 2022, in Docket No. 20220051-EI citing *Spencer v. Beverly*, 307 So. 2d 461, 462 (Fla. 4<sup>th</sup> DCA 1975); *Binger v. King Pest Control*, 401 So. 2d 1310, 1313 (Fla. 1981)

<sup>10</sup> *Elkins v. Syken (Elkins)*, 672 So. 2d 517, 522 (Fla. 1996)

<sup>11</sup> Rule 1.280(c)(1), Fla. R. Civ. P.

<sup>12</sup> *Weyant v. Rawlings*, 389 So. 2d 710 (Fla. 2<sup>nd</sup> DCA 1980).

<sup>13</sup> *Poston v. Wiggins*, 112 So. 3d 783 (Fla. 1<sup>st</sup> DCA 2013).

<sup>14</sup> *Calderbank v. Cazares*, 435 So. 2d 377 (Fla. 5<sup>th</sup> DCA, 1983).

<sup>15</sup> *Elkins*, 672 So. 2d at 522.

<sup>16</sup> Rule 1.280(c)(1), Fla. R. Civ. P.

<sup>17</sup> *Adkins v. Sotolongo*, 337 So. 3d 110 (Fla. 3d DCA 2021).

<sup>18</sup> Section 120.569(2)(f), Florida Statutes.

<sup>19</sup> See *Florida Dept. of Revenue v. WHI Limited Partnership*, 754 So.2d 205 (Fla. 1<sup>st</sup> DCA 2000).

issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.<sup>20</sup>

Despite OPC's assertions, the logical connection between the discovery in question to any controversy justiciable by this Commission is not readily apparent.<sup>21</sup> OPC includes in the Motion a conclusory statement that the discovery "concerns the terms of a public document that claims to resolve a case still in controversy in an amount in excess of several billion dollars and which impacts twelve million Floridians." OPC also states that, specifically interrogatories 4-8, are "relative to the respective [parties'] understanding of the settlement itself, not of any negotiations." Regardless of the truth of these statements, they fail to demonstrate how the sought information will reasonably lead to admissible evidence.

OPC also relies on the *Southern Bell* case, arguing in the Motion that "Discovery facilitates the truth-finding process and must strike a balance between encouraging corporations to seek legal advice preventing corporate attorneys from being used as shields to thwart discovery." This quote glaringly omits a significant portion, however, as the full text reads, "Discovery facilitates the truth-finding process, and although this process constitutes the core of any litigation, *it must be tempered by the established interest in the free flow of information between an attorney and client.*" (emphasis added). The Commission has an interest in encouraging the free flow of information between attorney and client, and must be cautious of intruding on the attorney client privilege. This caution rings especially true in the context of settlement negotiations.<sup>22</sup> Once this type of information is revealed, it cannot be unrevealed, further encouraging caution.<sup>23</sup>

Additionally, OPC's motion acknowledges the "limited time remaining before hearing" in this case. Responses to the discovery in question were due under applicable rules on September 10 and September 12, however, OPC's Motion to Compel was not filed until September 29, more than two weeks later and exactly 1 week prior to the hearing. Given the lack of apparent connection between the discovery requests and the discovery of admissible evidence discussed above and the limited time remaining before the close of the discovery window, October 3, and the beginning of the hearing, October 6, the Motion is denied.

Therefore, it is

ORDERED by Chairman Mike La Rosa, as Prehearing Officer, that Citizens' Motion To Compel filed by the Office of Public Counsel is denied.

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<sup>20</sup> Rule 28-106.211, F.A.C.

<sup>21</sup> See *State, Dept. of Administration, Division of Personnel v. State, Dept. of Administration, Division of Admin. Hearings*, 326 So.2d 187 (Fla. 1<sup>st</sup> DCA 1976) (discovery should have been foreclosed in areas where administrative process cannot resolve the relevant question at issue).

<sup>22</sup> See *Utilities Comm'n of City of New Smyrna Beach v. Fla. Pub. Serv. Comm'n*, 469 So. 2d 731, 732 (Fla. 1985) ("[t]he legal system favors the settlement of disputes by mutual agreement between the contending parties.")

<sup>23</sup> See *Eight Hundred, Inc. v. Florida Dept. of Revenue*, 837 So.2d 574, 576 (Fla 1<sup>st</sup> DCA 2003).

By ORDER of Chairman Mike La Rosa, as Prehearing Officer, this 3rd day of October, 2025.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.