

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Numeric) DOCKET NO. 930548-EG
Conservation Goals and) ORDER NO. PSC-94-0603-PCO-EG
Consideration of National Energy) ISSUED: May 20, 1994
Policy Act Standards (Section)
111) by Florida Power and Light)
Company.)
_____)

ORDER IN LIMINE

On May 16, 1994, Florida Power and Light Company (FPL) filed a Motion to Compel the Legal Environmental Assistance Foundation, Inc. (LEAF) to respond to discovery requests of FPL in this docket. Specifically, FPL requests that LEAF be compelled to answer its interrogatory 17, which posed the following question to LEAF:

Please identify all regulated electric utilities that, in the opinion of LEAF, perform or have performed integrated resource planning to which it would be fair and reasonable to compare FPL's planning process and/or the three resource plans (the Supply Only plan, the DSM-RIM plan, the DSM-TRC plan) FPL has presented in the testimony of Dr. Steve Sim in this docket.

FPL also requests that LEAF be compelled to answer all other discovery questions related to this question.

In its response to interrogatory 17, LEAF stated that no Florida utility has performed integrated resource planning in a manner that meets federal standards. FPL contends that this response is inadequate in that LEAF did not answer the interrogatory with regard to utilities outside of Florida. FPL asserts that the interrogatory asked LEAF to identify not just a Florida utility that would be fair and reasonable to use as a comparison; the question asked LEAF to identify all utilities that met this criterion.

On May 17, 1994, LEAF filed a response to FPL's Motion to Compel, and a Motion for Protective Order. In its response LEAF stated that from the totality of the interrogatories, LEAF reasonably believed that Interrogatory 17 related only to Florida utilities. LEAF also stated that it's prefiled testimony contains no comparison of FPL's planning process to the integrated resource plans used in other jurisdictions; that LEAF made a strategic decision not to make a comparison of FPL's planning process to those used in other states, because in past dockets this approach

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has been of little persuasive value; and that if LEAF's experts are asked during cross-examination to make a comparison of FPL's planning process to that of another state, then FPL will have the opportunity to make an appropriate objection.

Pursuant to notice, oral argument was conducted on FPL's Motion to Compel on May 18, 1994.

After oral argument, LEAF and FPL, in separate discussions with staff, agreed that this discovery dispute be resolved through the issuance of an Order in Limine prohibiting LEAF's witnesses from testifying regarding the subject matter of Interrogatory 17. Specifically, in lieu of the relief requested in FPL's motion, FPL agreed that upon the issuance of an Order in Limine, FPL would withdraw its Motion to Compel. LEAF's Motion for Protective Order would thereby be rendered moot. Pursuant to this agreement, LEAF's witnesses shall be prohibited, on either direct, redirect, cross-examination or recross-examination, from presenting testimony:

1. Regarding integrated resource planning in other jurisdictions;
2. Comparing FPL's planning process to integrated resource plans used in other jurisdictions;
3. Citing integrated resource plans in other jurisdictions as models or examples of how integrated resource planning should be accomplished.

I note that in his prefiled testimony, LEAF's witness, Mr. Chernick, stated that other jurisdictions have quantified externalities. Cross-examination by the parties will be permitted in this narrow area. On a going forward basis, however, LEAF's witnesses should not be permitted to present additional testimony on either direct or cross-examination on the subjects enumerated above. Apart from the fact that FPL has not received discovery from LEAF on these matters, I find that this subject area is beyond the scope of the prefiled direct testimony submitted by LEAF. It is axiomatic that it is within the Commission's discretion to reasonably limit cross-examination to the subject matter of the witnesses' testimony.

LEAF shall make certain that each of its witnesses is familiar with the terms and conditions of this Order.

Finally, during oral argument, the parties reached a consensus regarding the deposition of LEAF's witness Mr. Chernick. Pursuant

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to this agreement, Mr. Chernick will be made available for deposition on Thursday, May 26, 1994. The deposition will begin at 9:00 a.m. and will end at 5:00 p.m. A one hour lunch break will be taken at approximately 12:00 noon. I will permit FPL to depose Mr. Chernick on May 26, 1994, despite the fact that this is outside the discovery cut-off date.

It is therefore

ORDERED that the witnesses of the Legal Environmental Assistance Foundation, Inc. shall be precluded from offering evidence, either on direct or cross-examination, on the subject matter enumerated above, related to the information sought by Florida Power and Light Company in its Interrogatory 17 submitted to the Legal Environmental Assistance Foundation, Inc., in this proceeding.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 20th day of May, 1994.


J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)
MAP:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2),

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Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.