

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 160021-EI

In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company.

DOCKET NO. 160061-EI

In re: 2016 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 160062-EI

In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

DOCKET NO. 160088-EI
ORDER NO. PSC-16-0325-PCO-EI
ISSUED: August 11, 2016

ORDER GRANTING IN PART AND DENYING IN PART
FLORIDA POWER & LIGHT COMPANY'S MOTION TO COMPEL

On May 20, 2016, Florida Power & Light Company (FPL) served the South Florida Hospital and Healthcare Association (SFHHA), via e-mail, with its First Set of Interrogatories Nos. 1-16 and First Request for Production of Documents Nos. 1-3. On June 15, 2016, SFHHA served its objections to all of FPL's discovery requests and provided no responses. After several conversations between the counsel for SFHHA and FPL, and the provision of additional responses by SFHHA, the parties are unable to agree that answers to the following discovery are required:

Interrogatory No. 7: Please identify all materials and documents provided to SFHHA members regarding electric rates as a result of any and all Public Utility Commission dockets or Public Service Commission dockets, Federal Energy Regulatory Commission dockets, or any other state or federal regulatory body dockets in the last seven (7) years in connection with a general base rate case or similar proceeding.

Interrogatory No. 8: Please describe the efforts or activities undertaken by SFHHA or any member of the SFHHA or their agents and representatives from 2010 to the present to disseminate fliers, handouts, documents, materials, letters, presentation materials, videos, and any and all other written or computer generated documents to members, prospective members, and others that discuss, address, refer to or otherwise mention FPL, including but not limited to the positions or issues that are the subject of this pending case.

Production of Documents No. 3: Please produce any and all documents identified in your responses to FPL's First Set of Interrogatories Nos. (1-16) to SFHHA.

FPL filed its Motion to Compel Discovery of Florida Power & Light Company's First Set of Interrogatories (Nos. 7-8, 11-12) and First Request for Production of Documents (No. 3) from South Florida Hospital and Healthcare Association on July 1, 2016. FPL withdrew its request to compel discovery of Interrogatories Nos. 11 and 12 on July 7, 2016. SFHHA filed its Response in Opposition to Florida Power & Light Company's Motion to Compel on July 7, 2016.

With regard to Interrogatory No. 7, FPL argues that information about "electric rates" in SFHHA's members possession associated with "any and all" regulatory bodies (Federal Energy Regulatory Commission, Florida Public Service Commission, other states' utility commissions) is relevant since it "can be used to illustrate bias, motive, or prior inconsistent statements." [FPL Motion at p. 3] FPL contends that "FPL Parties naturally need to know what information supports or contradicts their adversaries' position." [Id.] Likewise, for Interrogatory No. 8, FPL contends that this information is necessary to determine exactly how SFHHA's members are substantially affected by the Commission's decision in this rate case. [Id.] Further, FPL states that FPL's "intent is to capture as much information that discuss or refer to the pending issues." [Id.] Finally, FPL argues that if denied this information, FPL may even be precluded from challenging SFHHA's positions. [FPL Motion at p. 4]

SFHHA argues that none of the discovery to which it continues to object is relevant information or will lead to the discovery of admissible evidence. Essentially, SFHHA's argument is that FPL's questions are overbroad and seek information that is not relevant or likely to lead to relevant information about the central issue of the rate case, i.e., are FPL's proposed rates and charges in this case just, fair and not unduly discriminatory. SFHHA asserts that while FPL is free to conduct discovery of its expert witnesses exploring their "bias, motive or prior inconsistent statements", requesting that same information of SFHHA or its members does not assist FPL in cross examination of SFHHA expert witnesses. SFHHA points out that FPL is not limiting its discovery to materials prepared by SFHHA for its members that reference FPL or FPL's electric rates, but requests any information on "electric rates" regardless of which electric utility is referred to in the document. Finally, SFHHA argues that a party cannot be compelled to identify or produce documents not in its possession. SFHHA is the entity that is the party in this proceeding, not each of its individual members. Therefore, SFHHA contends it is not required to poll its members to find out what documents, if any, responsive to FPL's discovery requests exist.

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

[P]arties 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.

The purpose of discovery is to “eliminate surprise, to encourage settlement, and to assist in arriving at the truth.” Spencer v. Beverly, 307 So. 2d 461, 462 (Fla. 4th DCA 1975); Binger v. King Pest Control, 401 So. 2d 1310, 1313 (Fla. 1981); Elkins v. Syken (Elkins), 672 So. 2d 517, 522 (Fla. 1996) (“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.”) The scope of discovery is broad under Florida law: “any matter that is relevant to the subject matter or reasonably calculated to lead to the discovery of admissible evidence.” Rule 1.280(b)(1), F.R.C.P.; Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). 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. Elkins, 672 So. 2d at 522.

DECISION

Having reviewed the interrogatory requests, SFHHA’s responses and FPL’s motion, I find that FPL’s request in Interrogatory No. 7 for “**all materials and documents** provided to SFHHA members regarding electric rates as a result of **any and all** Public Utility Commission dockets or Public Service Commission dockets, Federal Energy Regulatory Commission dockets or **any other state or federal regulatory body dockets**” connected to a “general base rate case or similar proceeding” within the **last seven years** to be overly broad, burdensome, and not likely to lead to admissible evidence with regard to material for any entity except the Florida Public Service Commission. With regard to materials and documents associated with our Commission, the request shall be limited to documents prepared over the last four (4) years by SFHHA and distributed to its members.

With regard to Interrogatory No. 8, I find that the request for “**any and all** other written or computer generation documents” given to “members, prospective members and others” that “discuss, address, refer to or otherwise mention FPL” including “positions and issues that are the subject of this pending case” for the last six years to be overly broad, burdensome and not likely to lead to admissible evidence. I note that communications between SFHHA’s attorney and its members regarding proposed positions in this case or case strategy are clearly attorney-client privileged and not subject to discovery under the Florida Rules of Civil Procedure. Further, SFHHA will file a prehearing statement which states its positions on the issues identified in this case on August 5, 2016, or lose the ability to present testimony in support of a position at hearing. Since SFHHA has gone to the expense of filing the testimony of Lane Kollen, Richard Baudino, and Stephen Baron it seems highly unlikely that FPL will not have the benefit of SFHHA’s positions in a timely fashion. However, because Florida’s discovery process is intended to be broad, I will require SFHHA to provide information regarding the Association’s outreach to its members over the last four (4) years that discuss FPL to the extent that such material is not attorney-client privileged, e.g., newsletters, reports, etc. FPL’s request to compel documents pursuant to Production of Documents Request No. 3 is granted consistent with my rulings on Interrogatories Nos. 7 and 8 stated above. SFHHA shall be required to provide its responses to Interrogatories Nos. 7 and 8, and Production of Documents Request No. 3 within 10 days of the date of this order.

Therefore, it is

ORDERED that Florida Power & Light Company's Motion to Compel Discovery of Florida Power & Light Company's First Set of Interrogatories (Nos. 7-8) and First Request for Production of Documents (No. 3) is granted in part, and denied in part, as stated in the body of this order. It is further

ORDERED that the South Florida Hospital and Healthcare Association shall produce its responses to this discovery within 10 days of the date of this order.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 11th day of August, 2016.



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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.

SBr

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.