

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C., Florida
Power & Light Company.

DOCKET NO. 20220051-EI
ORDER NO. PSC-2022-0194-PCO-EI
ISSUED: May 25, 2022

ORDER DENYING OPC'S MOTION TO COMPEL DISCOVERY
AND MOTION TO ENLARGE DISCOVERY DEADLINES,
TESTIMONY DUE DATES, AND HEARING DATES

BY THE COMMISSION:

The Review of Florida Power & Light Company's (FPL) Storm Protection Plan (SPP) docket was established on March 9, 2022. Office of Public Counsel's (OPC) intervention was acknowledged in this docket on March 14, 2022.

By the Order Establishing Procedure, Order No. PSC-2022-01119-PCO-EI, issued on March 17, 2022, this docket was consolidated with Docket Nos. 20220048-EI, 20220049-EI, and 20220050-EI for the purpose of hearing to review each of the investor-owned electric utilities' SPPs, and a procedural schedule was established, including dates and procedures for conducting discovery. The evidentiary hearing is scheduled to be held from August 2-4, 2022.

On March 22, 2022, OPC served its First Set of Interrogatories (Nos. 1-8) and First Request for Production of Documents (Nos. 1-5) upon FPL. On March 30, 2022, FPL served its initial Objection regarding OPC's propounding of detailed discovery prior to the filing of the Direct testimony. On April 11, 2021, FPL filed its initial Direct testimony and its Transmission and Distribution SPP pursuant to Section 366.95(5), F.S., and Rule 25-6.030, F.A.C. FPL provided Responses and additional Objections to OPC's First Set of Interrogatories and First Request for Production of Documents on April 14, 2022. On April 15, 2022, OPC served its Second Set of Interrogatories (Nos. 9-13) and Second Request for Production of Documents (Request for Production) (No. 6) upon FPL. FPL served its Responses and Objections to OPC's second round of Discovery on May 5, 2022.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Motion to Compel and Responses

On May 5, 2022, OPC filed a Motion to Compel Discovery concerning OPC's Second Set of Interrogatories, Interrogatory 13 and OPC's Second Request for Production of Documents No. 6. OPC's Interrogatory 13 requested a list of persons primarily responsible for developing

FPL's "entire suite of winter weather emergency preparedness measures." OPC's Request for Production No. 6 was a similar request for FPL to provide each document and all supporting workpapers that fully describe the company's "entire suite of winter weather emergency preparedness measures." In its Motion, OPC argues that it is unable to properly prepare their expert witness, comply with the May 31, 2022, Intervenor Testimony deadline, or prepare for hearing due to FPL's objections and refusal to provide complete responses to the discovery.

FPL filed its Response in Opposition to OPC's Motions on May 13, 2022. FPL's primary objections to providing discovery in addition to what it had already provided in response to OPC's Interrogatory 13 and Request for Production No. 6 are that: (1) FPL had already provided information relevant to the Distribution and Transmission Winterization Programs included in FPL's 2023-2032 Storm Protection Plan and that any additional contested discovery is beyond the scope of this proceeding, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible or relevant evidence, and (2) that the additional contested discovery was the subject of the current Ten Year Site Plan (TYSP) proceeding, or addressed in subsequent and separate filings in the Commission's Storm Protection Plan Cost Recovery Clause proceeding (Docket No. 2020010-EI), or in a future rate case.

FPL argues that while it did not waive its objections that the additional discovery responses sought by OPC are beyond the scope of this proceeding, and are unlikely to lead to admissible evidence, FPL has participated in substantial informal discovery with OPC by sharing its filings and data request responses from the TYSP, engaging in email exchanges of information, and providing the names of FPL's Winterization Generation and Winterization Transmission and Distribution representatives for deposition by OPC. FPL states that the two depositions of FPL's Winterization witnesses are scheduled on May 23-24, 2022.

Motion to Enlarge Discovery and Change Dates

OPC's Motion to Enlarge Discovery Deadlines, Testimony Due Dates, and Hearing Date, is based upon the assertion that OPC suffered harm as a result of FPL's alleged failure to provide the contested discovery. OPC requests that the Intervenor Testimony due date, discovery deadline, and hearing be delayed if the additional information requested about the SPP winterization programs is not produced in a timely fashion. In the alternative, OPC requests that FPL's Winterization Programs be stricken from the SPP docket. As discussed above, without waiving its objections, FPL has already provided the requested information to OPC, through a combination of formal and informal discovery.

Standard of Review

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

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.

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), Florida Rules of Civil Procedure; *Allstate Insurance Co. v. Langston*, 655 So. 2d 91 (Fla. 1995). The discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules. *Weyant v. Rawlings*, 389 So. 2d 710 (Fla. 2nd DCA 1980). 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. *Poston v. Wiggins*, 112 So. 3d 783 (Fla. 1st DCA 2013). 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. *Calderbank v. Cazares*, 435 So. 2d 377 (Fla. 5th DCA, 1983). 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. *Elkins*, 672 So. 2d at 522.

Decision

Having reviewed the arguments in OPC’s Motion to Compel, FPL’s Response in Opposition, and the discovery record in this docket, OPC’s Motion to Compel is hereby denied. I note that OPC argues that additional information is required for their understanding of the SPP. However, I find that the scope of OPC’s Interrogatory 13 and Request for Production No. 6 is overly broad for this proceeding. Additionally FPL, without waiving its objections, cooperated with OPC by providing access to the requested information, in the normal course of formal and informal discovery processes.

Further, as the basis for OPC’s Motion to Enlarge Discovery Deadlines, Testimony Due Dates, and Hearing Date, I have determined that there is no failure to provide the contested information; therefore, I find that the Motion to Enlarge Discovery Deadlines, Testimony Due Dates, and Hearing Date is also denied.

Therefore, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel Discovery is hereby denied. It is further

ORDERED that OPC's Motion to Enlarge Discovery Deadlines, Testimony Due Dates, and Hearing Date is denied. It is further,

ORDERED that the provisions of this Order are applicable only to this Florida Power & Light Company SPP proceeding (Docket No. 20220051-EI).

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 25th day of May, 2022.



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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.

WLT

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.