BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Dania Beach Clean Energy Center Unit 7, by Florida Power & Light Company	Docket No. 20170225-EI Dated: Dec. 26, 2017

SIERRA CLUB'S
RESPONSE IN OPPOSITION TO FLORIDA POWER & LIGHT COMPANY'S
MOTION TO COMPEL DEPOSITION OF SUSANNAH RANDOLPH
AND CROSS MOTION FOR PROTECTIVE ORDER

As allowed by Rule 28-106.204, Florida Administrative Code, Sierra Club hereby (1) responds to Florida Power & Light Company's (FPL) motion to compel the deposition of Susannah Randolph, and (2) moves for a protective order, on the grounds that the subjects on which FPL proposes to examine Ms. Rudolph are irrelevant, duplicative, and calculated to take Sierra Club and its staff away from the established issues in this case. Respectfully, as FPL has already deposed Sierra Club's corporate representative Mr. Nahaliel Kanfer regarding these very same, irrelevant subjects, and FPL did so in a harassing manner, the Prehearing Officer should bar FPL from deposing Ms. Randolph and protect Sierra Club from further undue burden and harassment.

I. Legal Standard

The Commission has broad discretion to protect parties that come before it from oppression, undue burden, and undue expense. Rojas v. Ryder Truck Rental, Inc., 641 So. 2d 855, 857 (Fla. 1994). Where, as here, (i) the subjects of the

proposed discovery are not relevant to the cause, and (ii) discovery procedures are used to harass litigants, a motion to compel should be denied. Allstate Ins. Co. v. Boecher, 733 So. 2d 993, 995 (Fla. 1999). By contrast, discovery is allowed if it "is relevant to the subject matter of the pending action . . . [and] reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). To be relevant, the information sought must relate to a matter that pertains to either a claim or defense brought by a party to the controversy. *Id.* To be "reasonably calculated" to lead to the discovery of admissible evidence, the party seeking discovery must demonstrate, via a reasoning process, that a logical, causal connection exists between the information sought and evidence that is relevant to the action. Kridos v. Vinskus, 483 So. 2d 727, 731 (Fla. 4th DCA 1985); Calderbank v. Cazares, 435 So. 2d 377, 379 (Fla. 5th DCA 1983). More than a mere possibility of uncovering admissible information must be shown. State Farm Mut. Auto. Ins. Co. v. Parrish, 800 So. 2d 706, 707 (Fla. 5th DCA 2001); Kridos, 483 So. 2d at 731; Calderbank, 435 So. 2d at 379.

II. The Commission Should Deny FPL's Motion Because FPL Seeks Irrelevant, Duplicative Discovery that Appears Calculated to Harass Sierra Club

a. FPL Impermissibly Seeks Irrelevant Duplicative Discovery

Here, the relevant subjects are the statutory factors in Section 403.519, Florida Statutes, for need determination proceedings. In addition to citing these statutory factors, the Order Establishing Issues for Hearing, Order No. PSC-2017-

0447-PCO-EI (Nov. 17, 2017), recognizes that this proceeding concerns whether *FPL* has proven a need for another gas-burning power plant in South Florida. Yet FPL's motion to compel the deposition of Ms. Randolph seeks irrelevant, duplicative discovery on Sierra Club's past activities, which have no connection to whether FPL carried its burden of proof.

As discussed below, FPL is flatly wrong that Sierra Club's past activities are proper subjects of discovery, because the activities predate FPL producing (in discovery) the information necessary for an independent investigation into whether FPL has carried its burden of proof. Further inquiry into Sierra Club's past activities therefore cannot possibly lead to admissible evidence. Therefore, FPL's motion should be denied and a protective order should be granted.[1]

i. FPL Does Not Demonstrate that Information Sought from Ms. Randolph Is Relevant to this Proceeding and Offers No Persuasive Reason to Allow Irrelevant, Duplicative Discovery

Nowhere does FPL attempt to connect the information it seeks from Ms. Randolph to the issues in this proceeding. Order No. PSC-2017-0447-PCO-EI. That no such connection exists is underscored by the fact that Sierra Club pre-filed the testimony of its expert witness, Dr. Hausman, after he reviewed the information

[1] FPL also misstates Sierra Club positions in this proceeding. For example, FPL asserts that "Sierra Club did not respond to FPL's email request for a position on FPL's Motion," FPL Motion ¶ 10, but FPL's own exhibit shows the falsity of that assertion. *See* FPL Motion at Exhibit E (stating Sierra Club's reply in opposition to FPL's request). Further, Sierra Club reiterated its opposition to FPL's motion by phone after sending its reply email.

produced by FPL in discovery that allowed for an independent investigation into whether FPL has carried its burden of proof. At no point has Sierra Club asserted that Ms. Randolph has the qualifications to conduct such an independent investigation, or even that she had the opportunity to review the information FPL produced in discovery. To the contrary, Sierra Club has conveyed to FPL, including in response to FPL's written discovery requests, that Sierra Club plans to present only its expert witness at the evidentiary hearing. Nor does FPL now contend that Ms. Randolph can testify to the issues in this proceeding. As such, the irrelevant deposition sought by FPL should be denied. *See* State v. Domenech, 533 So. 2d 896 (Fla. 3d DCA 1988) (quashing trial court order that upheld subpoenas "bear[ing] no legal pertinence whatever to the issues in the case and thus could not be of any potential assistance in the legitimate defense of the pending charges").

Sidestepping the issue of relevance, FPL suggests that deposing Ms. Randolph is necessary because Mr. Kanfer, Sierra Club's corporate designee and Ms. Randolph's supervisor, confirmed that Ms. Randolph participated in certain past activities of Sierra Club. But FPL has already deposed Mr. Kanfer. During that deposition, FPL's counsel asked myriad questions—over Sierra Club's objections—regarding Sierra Club's past activities that have absolutely no connection to the evidence that is relevant to the Commission in this proceeding,

which, again, centers on the information produced by FPL, and which could only be independently investigated after FPL produced certain information in discovery.

Having deposed Mr. Kanfer, FPL offers no valid reason to now depose Ms. Randolph. Courts regularly deny parties' attempts to conduct duplicative discovery. *See, e.g.*, Robbie v. Robbie, 629 So. 2d 220 (Fla. 3d DCA 1993) (quashing trial court order that required production of documents when the party seeking discovery already had received through discovery many relevant documents); American Southern Co. v. Tinter, Inc., 565 So. 2d 891, 893 (Fla. 3d DCA 1990) (upholding trial court decision to deny duplicative depositions).

Further, FPL misleads this Commission as to the materiality of any questions that Ms. Randolph may be able to answer. FPL Motion ¶ 5 (citing FPL Motion at Exhibit F). FPL avers that, during the deposition of Mr. Kanfer, "basic questions pertaining to the basis and source" of Sierra Club's positions went unanswered. *Id.* The following are the only deposition inquiries cited by FPL: (i) whether a resolution by Sierra Club's Broward group was written; (ii) if written, whether that was done electronically or physically; and (iii) whether commitments from municipalities in FPL's service areas are legally enforceable. *See* FPL's Motion at Exhibit F. The Broward resolution itself has no bearing on the statutory factors governing whether FPL should be granted a determination of need for its proposed project. Although municipal commitments to clean energy are pertinent,

as noted below, Sierra Club has already responded to written discovery on this matter, informing FPL that "currently it has no particularized information on the enforceability by Sierra Club of any of the commitments." *See* Exhibit A (attached hereto).

Furthermore, FPL's stated questions regarding the Broward resolution are trivial, calculated only to identify highly specific matters that are irrelevant to Sierra Club's positions and the need for a gas burning power plant. Courts routinely refuse to allow the use of discovery to explore every minute detail of a controversy or to delve into immaterial or inconsequential matters. *See* Travelers Indem. Co. v. Salido, 354 So. 2d 963, 964 (Fla. 3d DCA 1978). Moreover, the questions could easily have been answered through written discovery such as interrogatories. *See* Waite v. Wellington Boats, Inc., 459 So. 2d 425, 426 (Fla. 1st DCA 1984) (upholding trial court's refusal to allow deposition because "petitioner has made no showing that he has been, or will be, unable to obtain needed discovery by other means available under the Florida Rules of Civil Procedure."). In fact, in written discovery, Sierra Club has provided to FPL the text of the resolution by Sierra Club's Broward group, and an associated email related to that resolution. *See* Exhibit B (attached hereto). Thus, there remains no reason to compel an irrelevant deposition of Ms. Randolph.

Not surprisingly, FPL does not assert that Ms. Randolph is a material witness. Florida District Courts of Appeal uphold the denial of a motion to compel where the person sought to be compelled is not a material witness. *See, e.g.*, Duran v. MFM Grp., Inc., 841 So. 2d 500, 501 (Fla. 3d DCA 2003). A material witness is someone "who possesses information going to some fact *affecting the merits of the cause* and about which no other witness might testify." *Id.* (emphasis added). For example, the *Duran* court pointed to Lifemark Hospitals of Florida, Inc. v. Hernandez, 748 So. 2d 378 (Fla. 3d DCA 2000), in which the district court required the deposition of an expert medical witness because her testimony was material to a central issue in the case. Here, the fact that FPL seeks to depose Ms. Randolph on trivial issues already addressed in written discovery and a prior deposition further supports denial of FPL's motion to compel.

ii. FPL Does Not Demonstrate that Deposing Ms. Randolph Is Reasonably Calculated to Lead to the Discovery of Admissible Evidence

FPL states that it seeks information on the "basis and source" of Sierra Club's position. FPL Motion ¶ 6. This cryptic statement falls far short of demonstrating, via a reasoning process, that a logical, causal connection exists between the information requested and evidence that is relevant to this action. *See* Kridos, 483 So. 2d at 731; Calderbank, 435 So. 2d at 379. Further, FPL's position that deposing Ms. Randolph *might* lead to admissible evidence is not sufficient to

meet FPL's burden. *Compare* FPL Motion ¶ 6 (stating that Ms. Randolph "may have knowledge" regarding Sierra Club's positions), *with* State Farm, 800 So. 2d at 707 (citation omitted) (quashing order of trial court "authorizing a fishing expedition [into that] which 'might give rise to a potential cause of action.'"), *and* Calderbank, 435 So. 2d at 379 (stating that the mere fact that discovery "might" lead to relevant evidence is not enough; must show more than a mere possibility of uncovering admissible information). No valid justification exists for FPL to use a deposition of Ms. Randolph, who Sierra Club does not plan to call as a witness at the Commission hearing in January 2018, to conduct a fishing expedition into "the basis and support" for Sierra Club's position.[2] *See* Nationwide Mut. Fire Ins. Co. v. Hess, 814 So. 2d 1240, 1243 (Fla. 5th DCA 2002) (quashing trial court order requiring compliance with irrelevant interrogatory that appears to be overbroad and a fishing expedition); Parrish, 800 So. 2d at 707 (holding that certiorari is available to quash order permitting discovery that was a fishing expedition).

b. FPL Is Impermissibly Using Discovery to Harass Sierra Club and Deprive Sierra Club of Its Limited Resources

i. Standard of Review

"Discovery was never intended to be used as a tactical tool to harass an adversary . . . . To allow discovery that . . . harasses, embarrasses, and annoys

[2] Moreover, to the extent FPL is seeking to depose Ms. Randolph on matters protected by the attorney-client privilege or work product doctrine, that is impermissible.

one's adversary would lead to a lack of public confidence in the credibility of the civil court process." Elkins v. Syken, 672 So. 2d 517, 522 (Fla. 1996). "Discovery is not a weapon. It is a tool." Kobi Karp Architecture & Interior Design, Inc. v. Charms 63 Nobe, LLC, 166 So. 3d 916, 920 (Fla. 3d DCA 2015).

ii. FPL's Pattern in Discovery, and the Redundant Discovery It Seeks, Reveal Its True Purpose to Harass Sierra Club and Prevent Sierra Club from Devoting Its Resources to the Merits of this Case

As described above, the information sought by FPL from Ms. Randolph is irrelevant to this proceeding, not calculated to lead to admissible evidence, and duplicative of its deposition of Mr. Kanfer and of other written discovery. These facts confirm FPL's harassing purpose. *See* Calvo v. Calvo, 489 So. 2d 833 (Fla. 3d DCA 1986) (holding that husband's request for information on wife's financial resources was for purpose of harassment when the only issue is amount of arrears due and owing).

FPL has squandered its opportunities to depose Sierra Club's witnesses who possess information going to the merits of this need determination. Deposing Sierra Club's expert witness, Dr. Ezra Hausman, FPL wasted multiple hours to belabor the obvious point that Dr. Hausman has previously worked for the Sierra Club. FPL's decision to do so not only contravenes limits set by the Florida Supreme Court, Elkins, 672 So. 2d at 521, but also evinces FPL's lack of interest

in using depositions to address the merits of the need proceeding before the Commission.

Meanwhile, responding to FPL's irrelevant discovery imposes significant burdens on Sierra Club's resources in this fast moving docket. This loss is especially costly because of the compressed time for this proceeding and multiple intervening holidays. Requiring Sierra Club to produce yet another employee for deposition would be unduly expensive and burdensome, forcing Sierra Club to divert limited resources in the weeks leading up to the hearing for essentially cumulative, duplicative and irrelevant testimony.

iii. Sierra Club's Offer to Stipulate to Its Position, and FPL's Refusal, Expose FPL's Harassing Purpose

In an effort to address FPL's persistent inquiry into what is obvious—that Sierra Club supports opportunities to develop clean energy, as opposed to continued reliance on fossil fuels—Sierra Club already offered to stipulate to this fact. *See* Exhibit C (attached hereto). FPL rejected that stipulation. *Id.* FPL's refusal to stipulate exposes its harassing purpose, while Sierra Club's continued willingness to stipulate is yet another reason to deny FPL's motion to compel. Granville v. Granville, 445 So. 2d 362, 365 (Fla. 1st DCA 1984) (citing fact that party was willing to stipulate as one reason for quashing discovery); E. Colonial Refuse Serv., Inc. v. Velocci, 416 So. 2d 1276, 1278 (Fla. 5th DCA 1982) (finding

that admission can nullify right to discovery); Manual for Complex Litigation § 11.471 (encouraging stipulations to narrow issues and avoid need for discovery).

c. The Cases Cited by FPL Do Not Support Its Motion to Compel

FPL's motion cites only two judicial authorities and two Commission orders, none of which support its motion to compel. FPL cites Commission decisions in Orders Nos. PSC-09-0564-PCO-EI and PSC-02-1260-PCO-EI that actually undercut FPL's argument. In both, the Commission compelled the deposition of *one* representative of an intervenor. By contrast, in this proceeding, Sierra Club already willingly produced, and FPL has already deposed, a representative of Sierra Club—Mr. Kanfer. Moreover, because Mr. Kanfer oversees Ms. Randolph's work, he spoke to all of the material issues to which Ms. Randolph can speak. Therefore, the rationale for compelling a deposition in those Commission decisions—where no intervenor representative had been deposed—is not applicable here. Moreover, in Order No. PSC-02-1260-PCO-EI, FPL sought to depose the intervenor on the requirements for associational standing. Here, as FPL admits, Sierra Club's standing is uncontested. *See* FPL Motion ¶ 2.

FPL also cites two judicial decisions for generally accepted propositions—first, that civil trials should not be ambushes for one side or another, *Grau v. Branham*, 626 So. 2d 1059 (Fla. 4th DCA 1993), and second, that "discovery rules were enacted to eliminate surprise, to encourage settlement, and to assist in

arriving at the truth." *Spencer v. Beverly*, 307 So. 2d 461 (Fla. 4th DCA 1975). While those propositions are true, FPL's motion takes them too far. As explained above, Florida law limits discovery used for improper and irrelevant purposes. *See supra*; *see also* Brooks v. Owens, 97 So. 2d 693, 699-700 (Fla. 1957) (stating that discovery that has "the purpose of placing one party in a more strategic position than he otherwise would be by acquiring information that has nothing to do with the merits of the action" is not allowed); Tanchel v. Shoemaker, 928 So. 2d 440, 442 (Fla. 5th DCA 2006) (explaining that litigants are not entitled to *carte blanche* discovery of irrelevant material). Moreover, those cases are inapposite on their facts. *Grau* deals with witnesses whose testimony became known to the adversary "for the first time during trial." *Grau*, 626 So. 2d at 1059. By contrast, Ms. Randolph will not be testifying at the hearing in this case and is already known to FPL because of her affidavit in support of standing, which FPL does not contest. *Spencer* dealt with the question of whether work product protection is waived by an intention to use evidence at trial.

In sum, FPL offers no persuasive basis for the Commission to grant its motion to compel, and to do so would only perpetuate FPL's pattern of using burdensome discovery to interfere with Sierra Club's ability to challenge the merits of FPL's determination of need petition.

III. The Commission Should Grant Sierra Club's Motion for Protective Order

a. Standard of Review

Florida Rule of Civil Procedure 1.280(c) provides that, for good cause shown, this Commission may make any order to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. 1.280(c). Even the discovery of relevant, non-privileged information may be restricted or prohibited to prevent annoyance, embarrassment, oppression, or undue burden or expense. Elkins, 672 So. 2d at 522. The Commission may order that the discovery not be had; it be had only on specified terms and conditions, including designation of time or place; it be had only by an alternative method than that which FPL selected; and certain matters not be inquired into, or that the scope of the discovery be limited to certain matters. Fla. R. Civ. P. 1.280(c).

In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting or denying discovery. Rasmussen v. S. Fla. Blood Serv., Inc., 500 So. 2d 533, 535 (Fla. 1987); *see also* Krypton Broadcasting v. MGM-Pathe Communs. Co., 629 So. 2d 852, 855 (Fla. 1st DCA 1993) ("The trial court, in deciding whether a party should be required to respond to a given discovery request, should weigh the relevance of the information sought against the burdensomeness of the request.").

The Commission has broad discretion in protecting parties that come before it from oppression or undue burden or expense. Rojas, 641 So. 2d at 857.

b. The Commission Should Grant a Protective Order Prohibiting FPL from Taking the Proposed Deposition of Ms. Randolph

As explained above, FPL's proposed deposition of Ms. Randolph is irrelevant, duplicative, harassing, and calculated to take Sierra Club away from the recognized issues in this proceeding. Ample judicial authority supports Sierra Club's motion for a protective order to prohibit FPL from taking the deposition of Ms. Randolph. *See, e.g.*, Hollywood, Inc. v. Broward Cty., 90 So. 2d 47, 47 (Fla. 1956) (lower court's order preventing depositions was within that court's discretion); Tanchel, 928 So. 2d at 442 (quashing trial court order which allowed inquiry into "immaterial" events because "there has been no showing of its relevance or how it might possibly lead to relevant material"); Am. Southern Co., 565 So. 2d at 893 (trial court did not abuse its discretion in denying duplicative depositions).

c. In the alternative, the Commission Should Limit the Duration and Scope of Ms. Randolph's Deposition

If the Commission grants FPL's motion to compel, it should exercise its discretion to limit the scope and duration of that deposition. Klein v. Lancer, 436 So. 2d 137, 138 (Fla. 2d DCA 1983) (trial judge did not abuse discretion by limiting ability to proceed in deposing a party). FPL's cryptic explanation of its

reason for deposing Ms. Randolph—to explore the "basis and source" of Sierra Club's position—is completely open-ended. If the Commission grants FPL's motion, for the reasons set forth earlier in this brief, it should limit FPL's deposition of Ms. Randolph to no more than ninety minutes, and to those topics not already covered in FPL's lengthy deposition of Sierra Club's corporate representative. Nor should it permit FPL to burden Sierra Club with a request for production or subpoena duces tecum of yet additional documents.

IV. Statement required by Rule 28-106.204(3), F.A.C.

Sierra Club sought to conferr with all parties of record and its undersigned representative is authorized to represent that FL&P opposes this motion and Sierra Club has not been able to timely obtain OPC's position.

V. Conclusion

For the reasons set forth above, FPL's motion to compel the deposition of Ms. Randolph should be denied. Alternatively, the Commission should issue a protective order that the deposition not go forward, or, limiting FPL's deposition of Ms. Randolph to no more than ninety minutes, and to those topics not already covered in FPL's lengthy deposition of Sierra Club's corporate representative, and prohibiting FPL from seeking the production of yet additional documents.

RESPECTFULLY SUBMITTED this 26th day of December, 2017

/s/ Julie Kaplan

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Qualified Representative for Sierra Club

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically on this 26th day of December, 2017 on:

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Exhibits to Sierra Club's Response in Opposition to Florida Power & Light Company's Motion to Compel Deposition of Susannah Randolph and Cross Motion for Protective Order

December 26, 2017

Exhibit A

FPSC Docket No. 20170225-EI
Sierra Club's Specific Objections and Response to
Florida Power & Light Company's Second Set of Interrogatories - No. 49(b)

No. 49(b) Please state whether the commitment made by any Florida city, town, village, or other local government entity or mayor or any other local government official is enforceable as a matter of law by the Sierra Club.

Response Sierra Club objects that this request is vague, ambiguous, overly broad, imprecise, and not reasonably calculated to lead to admissible evidence. Rather, this request appears to be calculated to take Sierra Club and its staff away from normal work activities, and require them to expend significant time and resources to provide complete and accurate answers to FPL's request for information that is of little to no value in this docket. Sierra Club further objects to the extent that FPL proposes to require Sierra Club to perform legal research to answer this request.

Subject to and without waiving its objections, Sierra Club responds that currently it has no particularized information on the enforceability by Sierra Club of any of the commitments identified in subpart (a), above.

Exhibit B

Sierra Club's Specific Objections and Response to
Florida Power & Light Company's First Set of Interrogatories - No. 12

No. 12 Please explain whether Sierra Club members who are FPL customers have passed a resolution or otherwise voted affirmatively to have the Sierra Club participate in this proceeding.

Original Response

Sierra Club objects to Interrogatory No. 12 on the ground that its internal processes in preparation for litigation are not discoverable unless FPL shows particular need. Rule 1.280, Fla. R. Civ. P. Sierra Club further objects that such information is outside the scope of the issues in this docket, *id.,* and on the grounds that matters discussed at Sierra Club meetings between members are protected by the First Amendment association rights. U.S. Const. amend.

Subject to, and without waiving these objections, Sierra Club responds that the following motion was passed by Sierra Club's Broward Group Ex-Com to oppose the Dania Beach Project:

> *Motion: Approve a campaign to stop the building of a new gas plant in Dania Beach and instead, push Florida Power & Light to commit to developing more renewable energy through increasing their capacity to provide clean energy (such as solar) and helping homeowners and businesses put solar panels on their rooftops.*

For further evidence of Sierra Club members' and supporters' opposition to this project, please see the comments provided with Sierra Club's response to FPL's Interrogatory No. 19.

Supplemental Response

Subject to and without waiving the foregoing objections, and further objecting that this request is not fairly construed as seeking documents responsive to FPL's FPL's First Request for the Production of Documents, in the interest of amicably resolving a pending discovery dispute, Sierra Club is providing a document reflecting the passage of this motion in Attachment E The responsive information provided is the result of a reasonable and diligent search of Sierra Club records in connection with this discovery request. To the extent that the discovery request

proposes to require more, Sierra Club objects on grounds that compliance would impose an undue burden or expense on, and be designed to harass, Sierra Club.

Attachment E

Responsive to Interrogatory 12

Fwd: Broward Group Motion opposing Dania Beach gas plant

---------- Forwarded message ----------
From: **Stanley Pannaman** [redacted]
Date: Thu, Jul 6, 2017 at 2:23 PM
Subject: Motion
To: Frank Jackalone <frank.jackalone@sierraclub.org>

Hi Frank,
The EXCOM committee of the Broward group of the Sierra Club unanimously voted yes on the following motion.
Motion: Approve a campaign to stop the building of a new gas plant in Dania Beach and instead, push Florida Power & Light to commit to developing more renewable energy through increasing their capacity to provide clean energy (such as solar) and helping homeowners and businesses put solar panels on their rooftops.

Exhibit C

Diana Csank <diana.csank@sierraclub.org>

proposed stipulation

Cox, Will P. <Will.P.Cox@fpl.com> Wed, Dec 13, 2017 at 6:26 PM
To: "Diana Csank (diana.csank@sierraclub.org)" <diana.csank@sierraclub.org>
Cc: "Donaldson, Kevin" <Kevin.Donaldson@fpl.com>, "Marcil, Michael" <MMarcil@gunster.com>, "Julie Kaplan (julie.kaplan@sierraclub.org)" <julie.kaplan@sierraclub.org>

Diana:

Thank you for the note. We respectfully decline to enter into this stipulation. Consistent with our discussion with Julie this evening, we maintain that the interrogatories you reference (13 and 30) are reasonably calculated to lead to admissible evidence in the case.

Best,

Will

From: Diana Csank <diana.csank@sierraclub.org>
Date: December 13, 2017 at 1:49:59 PM EST
To: "Cox, Will P." <will.p.cox@fpl.com>, Kevin Donaldson <kevin.donaldson@fpl.com>
Cc: Julie Kaplan <julie.kaplan@sierraclub.org>, Michael Lenoff <michael.lenoff@sierraclub.org>
Subject: proposed stipulation

CAUTION - EXTERNAL EMAIL

Will,

As we discussed briefly this morning, Sierra Club drafted the proposed stipulation below concerning its interest in promoting non-fossil alternatives to DBEC. The Club's intent here is to head off further discovery on this subject for all the reasons we have previously provided, including in objections to FPL's written discovery requests and our follow up conversation with you and Kevin on Monday regarding FPL's aim to show Sierra Club's "bias" towards non-fossil alternatives to DBEC. While Julie and I are ready to work with you to make minor revisions to the proposed language below, once we agree on the language, the Club will will view any further discovery demands regarding Sierra Club's interest in promoting non-fossil alternatives to DBEC, such as FPL's interrogatories 13 and 30 to Sierra Club, as a bad faith abuse of discovery, and the Club will seek remedies accordingly.

Proposed stipulation:

For the purposes of Florida Public Service Commission Docket No. 2017-0225, Sierra Club stipulates the following:

As a nonprofit membership organization, Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Consistent with its mission, and for reasons detailed in its intervention petition and the accompanying affidavit of Ms. Randolph, Sierra Club is dedicated to reducing pollution through the rapid transition away from fossil fuel burning electricity generation. To achieve the transition, Sierra Club has intervened in this docket to ensure that FPL and the Commission consider, as required by all applicable Florida law, available alternatives to FPL's proposed fossil gas generation -- "Dania Beach Clean Energy Center Unit 7" -- for which FPL seeks an affirmative determination of need in this docket. In particular, Sierra Club seeks to promote alternatives that do not burn fossil fuels, such as energy efficiency, solar power, wind power, and energy storage.

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I check email infrequently. Please call me if you need a quick reply.

SIERRA CLUB

Diana Csank

Staff Attorney

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Dania Beach Clean Energy Center Unit 7, by Florida Power & Light Company	DOCKET NO. 20170225-EI DATE: December 26, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Sierra Club's response in opposition to Florida Power & Light's motion to compel deposition of Susannah Randolph, cross motion for protective order, and accompanying attachments have been furnished by electronic mail on this 26th day of December, 2017, to the following:

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