

**BEFORE THE PUBLIC SERVICE COMMISSION**

Re: Review of 2020-2029 Storm Protection  
Plan pursuant to Rule 25-6.030, F.A.C.,  
Florida Power & Light Company.

DOCKET NO.: 20200071-EI

FILED: April 29, 2020

**CITIZENS' AMENDED MOTION TO COMPEL**

The Citizens of the State of Florida (Citizens) hereby file their Amended Motion to Compel requesting that the Prehearing Officer issue an order requiring Florida Power & Light Company (FPL) to respond to Citizens' First Set of Interrogatories Nos. 7, 8, 10, 22, 23, 24, 25, 26, 29, 31, 32, 33, 34, 40, and 41 and to produce all documents responsive to Citizens' First Request for Production of Documents Nos. 5, 6, 7, 8, and 13 ("Blocked Discovery") and as grounds state the following:

1. By Order No. PSC-2020-0073-PCO-EI, issued March 11, 2020, FPL is required to produce its discovery responses twenty days from the date of service. On April 3, 2020, Citizens' served their First Set of Interrogatories (Nos. 1-42) and First Request for Production of Documents (Nos. 1-14).
2. Pursuant to Rule 1.280(b)(1), Fla. R. Civ. P., FPL is required to provide responses to any discovery that is reasonably calculated to lead to the discovery of admissible evidence. Section 366.96(3), Fla. Stat., requires that "[e]ach public utility shall file, pursuant to commission rule, a transmission and distribution storm protection plan (SPP) that covers the immediate 10-year planning period." Section 366.96 sets forth the criteria that the Commission must consider in any proceeding that will evaluate whether to approve the SPP. Section 366.96(4)(c) and (d), Fla. Stat., require that the Commission consider the "the estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan" and "the estimated annual rate impact resulting from *implementation* of the plan during the first 3 years addressed in the plan." (Emphasis added.) Section 366.96(8), Fla. Stat., provides that annual SPP costs ". . . may not include

costs recovered through the public utility's base rates . . ." While implementation is effectuated in the cost recovery clause, the Commission is charged with making the rate impact determination during the consideration of the SPP.

3. Rule 25-6.030, F.A.C., the storm protection plan rule, requires Investor Owned Utilities (IOUs) provide cost information for the Commission to use in evaluating the first three years of the SPP programs and projects. While the IOU's must provide additional detailed information in the first year of the plans, the utilities are required to file project related information for years two and three containing sufficient detail, such as estimated number and costs of projects under every specific program, to allow the development of preliminary estimates of rate impacts. See Rule 25-6.030(3)(d), F.A.C. This rate impact information is required for *each* of the first three years of the SPP for the utilities' typical residential, commercial, and industrial customers. See Rule 25-6.030(3)(h), F.A.C. (Emphasis added.)
4. All of the Blocked Discovery sought by OPC is reasonably calculated to elicit sufficient information to examine, analyze, test, and challenge FPL's asserted development of the statutorily required rate impacts on its customers. This information and these aspects of cross-examination are necessary to develop evidence which would be admissible in the SPP proceeding.
5. FPL objects to the Blocked Discovery containing Interrogatories Nos. 10, 29, 31, 32, 33, 34, 40, 41, and to the Request for Production of Documents No. 13 as being beyond the scope of this proceeding and alleges that cost information should only be addressed in the SPP Cost Recovery Clause (SPPCRC). While the SPPCRC will address what, if any, of the costs related to an approved SPP will be *recoverable*, the current SPP proceeding, not the SPPCRC, will evaluate the rate impact of projects proposed in the SPP and whether the Commission should approve, approve with modifications or deny the proposed SPPs. There is nothing in the statute or the rule that pre-judges whether the Commission will accept the

SPP as filed. Instead, the Commission must consider the rate impacts of the plans in the current SPP docket in making its public interest determination. Accordingly, it is necessary to have cost information related to base rates and clause recovery rates because it directly implicates the rate impact analysis in the SPP proceeding.

6. Section 366.96(8), Fla. Stat., provides that annual SPP costs “. . . may not include costs recovered through the public utility’s base rates . . .” and Rule 25-6.030 (3)(h), F.A.C., requires rate impact information for **each** of the first three years of the SPP for a utility’s typical residential, commercial, and industrial customers. Thus, OPC and the Commission must have sufficient information to ensure the Commission does not approve an SPP with resulting costs that impact customer rates which are also included in base rates. Any information that is related to the preliminary, estimated impact on customer rates is relevant and could lead to evidence that is admissible in the SPP proceeding. Since rate impact information is an element of the Commission’s public interest determination in the SPP proceeding, OPC is entitled to this relevant cost information in this proceeding that is necessary to examine, analyze, test, and challenge the claimed development of the required rate impact(s). Thus, the information requested by OPC in these requests is relevant to the evaluation of SPP rate impact and is, therefore, discoverable.
  
7. The following are the Blocked Discovery requests that the Company alleges are beyond the scope of this proceeding identified in Paragraph 5:
  - a. Interrogatory No. 10: “If your answer to Question 9 is yes, please explain how the Commission will be able to distinguish between costs covered by base rates and the incremental costs above that covered by base rates based on the language in the Rule 25-6.031(6)(b)?”
  - b. Interrogatory No. 29: “According to your storm hardening plans filed with the Commission and approved by the Commission on July 9, 2019, your Company already has plans to perform storm hardening activities for 2019

and 2020. Is it your Company's opinion that all of these activities and identified dollar amounts or dollar amount ranges would be recovered through your Company's current base rates and therefore is not being requested for recovery through the new Storm Protection Cost Recovery Clause? Explain your answer."

- c. Interrogatory No. 31: "If your answer to Question 8 is yes, please explain how the Commission will be able to distinguish between costs covered by base rates and the incremental costs above that covered by base rates based on the language in the Rule 25-6.031(6)(b)?"
- d. Interrogatory No. 32: "Please explain in detail how the Company will distinguish between tree trimming expenses currently being recovered through base rates and those that you will be requesting as new incremental costs to be recovered through the SPPCRC?"
- e. Interrogatory No. 33: "Rule 25-6.030(3)(e)2, Storm Protection Plan does not require the Company to list the specific projects to be included in years 2 and 3. Please explain how the Commission can make a determination that the programs included in year 2 and 3 do not include projects already being recovered through base rates, if no project detail is given?"
- f. Interrogatory No. 34: "Rule 25-6.031(3), states that the annual hearing will be limited to determining the reasonableness of approved storm protection plan costs, determining the prudence of actual storm protection plan costs incurred by the utility, and establishing storm protection plan cost recovery factors consistent with the requirements of this rule. If no project information is required for years 2 and 3 of the plan, please explain how the Commission, Commission Staff or any intervenor can contest the inclusion of a particular project as being imprudent for inclusion in the clause for recovery?"
- g. Interrogatory No. 40: "Please provide a detailed explanation of how your Company arrived at the amount of vegetation management costs you plan to include in the SPPCRC?"

- h. Interrogatory No. 41: “Please provide a detailed explanation of how your company arrived at the amount of pole inspection costs you plan to include in the SPPCRC?”
  - i. Production of Documents Request No. 13: “Please provide copies of all Company documents that discuss the separation of storm enhancement projects between those to be or already included in base rates and those projects to be included in the storm protection plan cost recover clause filing for the years 2019, 2020, and 2021.”
  
- 8. FPL’s objections to Interrogatories Nos. 7, 8, 22, 23, 24, 25, and 26 and Production of Documents Request Nos. 5, 6, 7, and 8 are based on its claim that the information is beyond the scope of this proceeding because the Company is not proposing or including the cost type (customer meters, battery installation, franchise agreements and AFUDC) as part of its SPP. Section 366.96(8), Fla. Stat., provides that annual SPP costs “. . . may not include costs recovered through the public utility’s base rates . . .” While FPL may contend that it is not specifically asking for these types of costs in its SPP, these programs and cost-types may impact the appropriateness of inclusion of certain projects and their related costs in the SPP. As noted above, this SPP docket is the proceeding where the rate impact must statutorily be evaluated and considered by the Commission. The SPP and its resulting costs are intertwined such that it is necessary and appropriate to be able to discover information related to SPPCRC and base rate cost information, because they influence the rate impact analysis in the SPP proceeding. Since rate impact information is required to be considered by the Commission in the SPP proceeding, OPC is entitled to any related cost information that is necessary to examine, analyze, test, and challenge the development of the rate impacts. Any information relevant to the development of this rate impact, which includes but is not limited to the information requested by OPC, is discoverable.

9. The following are the Blocked Discovery requests that the Company alleges are beyond the scope of this proceeding identified in Paragraph 8:
- a. Interrogatory No. 7: “Please provide a detailed list and description of all functions of the customer meters that your Company has currently installed. The list should be broken into two categories: 1) functions used exclusively for extreme weather events and 2) functions other than those used for extreme weather events. For the purpose of this question, “extreme weather events” are defined as named tropical storm or hurricane events.”
  - b. Interrogatory No. 8: “Please provide a detailed list and description of all functions of current and future battery installations currently in place or planned for construction. If any functions are described as required for extreme weather events, please provide a detailed description of the benefit(s) to customers during this type of event and why this is the main purpose for the battery installation. For the purpose of this question, “extreme weather events” are defined as named tropical storm or hurricane events.”
  - c. Interrogatory No. 22: “Please provide a schedule listing all franchise agreements, indicating the expiration date and those currently being negotiated for renewal.”
  - d. Interrogatory No. 23: “Please describe in detail how your Company determines what is included in a project that would be eligible for AFUDC?”
  - e. Interrogatory No. 24: “Please describe in detail how your Company determines when a project is eligible for AFUDC treatment? Please identify the document(s) containing the specific criteria for making such a determination.”
  - f. Interrogatory No. 25: “Please provide the amount equal to 0.5% of the sum of the total balance in Account 101 – Electric Plant In Service, and Account 106 – Completed Construction not Classified as of February 29, 2020?”

- g. Interrogatory No. 26: “Given the following hypothetical:
- Three undergrounding of lateral projects located in three distinctly separate counties and are not physically inter-connected other than as distinct components of the overall Company grid,
  - The Company contracts for all three under one contract,
  - None of the three projects independently meet the AFUDC requirements of Rule 25-6.0141, Florida Administrative Code.
  - All three projects added together meet the threshold test of Rule 25-6.0141, Florida Administrative Code.

Do you believe the above projects would accrue AFUDC in accordance with your company policies and procedures? Explain your answer.”

- h. Production of Documents Request No. 5: “Please provide all Company documents that describe how customer meters aid in the recovery from extreme weather events.”
- i. Production of Documents, Request No. 6: “Please provide all literature known to the Company that describe how customer meters aid in the recovery from extreme weather events.”
- j. Production of Documents, Request No. 7: “Please provide all Company documents that describe how battery installations aid in the recovery from extreme weather conditions.”
- k. Production of Documents, Request No. 8: “Please provide all literature known to the Company that describe how battery installations aid in the recovery from extreme weather conditions.”
10. The SPP programs and related cost-types will impact the appropriateness of including certain projects in FPL’s SPP. Rate impact information is required to be considered by the Commission in the SPP proceeding and should be evaluated broadly. Discovery requests should be granted liberally to ensure that the Commission has all relevant information that is required to render a decision in compliance with Section 366.96(4), Fla. Stat. As the advocate for consumers who will pay the rates, OPC also is entitled to all relevant cost information that is

necessary to examine, analyze, test, and challenge the development of the rate impacts. Thus, the requests at issue herein are designed to elicit responses that are admissible evidence or are reasonably calculated to lead to the discovery of admissible evidence. *See* Rule 1.280(b)(1), Fla. R. Civ. P.

11. OPC has contacted the Parties regarding this motion. FPL objects to OPC's Motion to Compel responses to its First Set of discovery requests. Walmart takes no position on the motion. Staff counsel takes no position on the motion.

WHEREFORE, the Citizens hereby request that the Commission grant its Amended Motion to Compel.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 20200071-EI**

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's AMENDED Motion to Compel has been furnished by electronic mail on this 29<sup>th</sup> day of April, 2020, to the following:

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