

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20250011-EI
ORDER NO. PSC-2025-0293-PCO-EI
ISSUED: August 1, 2025

ORDER GRANTING MOTION TO STRIKE REBUTTAL TESTIMONY
OF WITNESS MICHAEL P. GORMAN AND DENYING MOTION
TO CONDUCT DISCOVERY AS MOOT

Background

On July 9, 2025, the Federal Executive Agencies (FEA) submitted direct testimony in this docket, including the prefiled direct testimony of witness Gorman. On that same date, Florida Rising, the Environmental Confederation of Southwest Florida, and the League of United Latin American Citizens Florida (collectively referred to as FEL) submitted their direct testimony, including the prefiled direct testimony of witness Rabago. On July 9, 2025, FEA submitted prefiled rebuttal testimony of witness Gorman, which testimony is directed to certain FEL prefiled testimony.

On July 10, 2025, FEL filed a Motion to Strike Rebuttal Testimony of Federal Executive Agencies, or, in the alternative, Motion to Conduct Discovery (Motion). In the Motion, FEL asserts that rebuttal testimony from intervenor witnesses is not allowed by the Order Establishing Procedure (OEP) in this docket, nor is it generally allowed in such administrative proceedings. FEL requests in the alternative that it be allowed to conduct discovery on witness Gorman's rebuttal testimony if it is not stricken.

FEA filed its Response in Opposition to the Motion on July 16, 2025. FEA disagrees with FEL's assertion that the OEP expressly prohibits intervenor rebuttal. FEA further argues that it is entitled to rebut any assertion made by another party that is adverse to a position it has forwarded.

Analysis and Decision

Intervenor rebuttal testimony is not allowed under the OEP. Section V of the OEP, titled "Discovery Procedures," provides, in pertinent part, as follows:

For discovery requests made prior to the filing of *the utility's rebuttal testimony*, discovery responses shall be served within 20 days (inclusive of mailing) of receipt of the discovery request. For discovery requests related to matters addressed in *the utility's rebuttal testimony*, discovery responses shall be served within 7 days of receipt of the discovery request.¹

¹ Order No. PSC-2025-0075-PCO-EI at p.4 (emphasis added).

Section IX of the OEP, titled “Controlling Dates,” establishes July 9, 2025, as the deadline to file “[r]ebuttal testimony and exhibits.”² These provisions read together establish on their face that only the utility is provided the opportunity to submit prefiled rebuttal testimony and exhibits.

The scope of rebuttal testimony and exhibits established in the OEP is consistent with the accepted scope of rebuttal in civil actions.

“Rebuttal evidence explains or contradicts material evidence offered by a defendant.” *Britton v. State*, 414 So. 2d 638, 639 (Fla. 5th DCA 1982). During its case-in-chief, a plaintiff must establish a prima facie case, but is not required to anticipate possible defenses by affirmatively addressing them in its case-in-chief. *See Heberling v. Fleisher*, 563 So. 2d 1086, 1087 (Fla. 4th DCA 1990) (holding that the plaintiff need not “disprove all anticipated defenses in its main case—that is exactly what rebuttal is supposed to accomplish”). When not cumulative, rebuttal is appropriate to discredit an opposing party's defense or to challenge the conclusions of an opposing party's expert. *See Grieger v. DiPietro*, 708 So. 2d 666, 672 (Fla. 4th DCA 1998) (holding exclusion of rebuttal expert was improper where expert's “rebuttal testimony would have explained and contradicted material evidence offered by [defendant]”).

Gutierrez v. Vargas, 239 So. 3d 615, 627 (Fla. 2018). An intervenor is not seeking affirmative relief, does not present a case-in-chief, and is not entitled to rebut the testimony of co-intervenors.

The OEP allows intervenors the opportunities to submit prefiled testimony and exhibits in response to the utility's request, and to test the evidence of co-intervenors through cross-examination at the final hearing. This process affords all parties due process.³

In light of the foregoing, FEL's Motion to Strike Rebuttal Testimony is granted. Because the testimony is being stricken, the request to conduct discovery is denied as moot.

Therefore, it is

ORDERED by Chairman Mike La Rosa, as Prehearing Officer, that the Motion to Strike Rebuttal Testimony of Federal Executive Agencies Witness, Michael P. Gorman filed by Florida Rising the League of United Latin American Citizens Florida, and Environmental Confederation of Southwest Florida, is hereby granted, as set forth in the body of this Order. It is further,

ORDERED that the alternative Motion to Conduct Discovery is denied as moot.

² *Id.* at 12.

³ *Mizell v. N. Broward Hosp. Dist.*, 175 So. 2d 583, 586 (Fla. 3d DCA 1965) (notice and the opportunity to present evidence and cross-examine witnesses satisfies due process).

By ORDER of Chairman Mike La Rosa, as Prehearing Officer, this 1st day of August, 2025.



Mike La Rosa
Chairman and Prehearing Officer
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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.

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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.