

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20250011-EI  
ORDER NO. PSC-2025-0354-PCO-EI  
ISSUED: September 18, 2025

ORDER GRANTING IN PART AND DENYING IN PART SIGNATORY  
INTERVENORS' JOINT MOTION FOR PROTECTIVE ORDER  
REGARDING CORPORATE REPRESENTATIVE DEPOSITIONS

Background

On September 5, 2025, the Office of Public Counsel (OPC) filed Notices of Depositions Duces Tecum pursuant to Rule 1.310(b)(6), Florida Rules of Civil Procedure, for corporate representatives of every intervenor who signed the 2025 Stipulation and Settlement Agreement (2025 SSA) with Florida Power & Light Company (collectively FPL Intervenor Signatories or FPL-IS).<sup>1</sup> OPC identified the following as the matters on which examination of each FPL-IS corporate representative was requested:

1. All benefits, including both tangible and intangible benefits that you received, intend to receive, expect to receive, or will receive, as a result of that party signing the August 20, 2025, Stipulation and Settlement Agreement in Docket No. 20250011-EI;
2. The general nature of you, as a customer of FPL, including the rate classes under which you are being served;
3. The rates that you expect to be charged if the August 20, 2025, Stipulation and Settlement Agreement is approved as compared to the rates that you would be charged if FPL's originally requested rate increases were approved;
4. The purpose of your participation in Docket No. 20250011-EI;
5. Your corporate purposes;
6. Any documents that reflect your specific authorization to enter into the August 20, 2025, Stipulation and Settlement Agreement;

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<sup>1</sup>The FPL Intervenor Signatories are the Florida Industrial Power Users Group, Florida Retail Federation, Florida Energy for Innovation Association, Walmart Inc., EVgo Services, Americans for Affordable Clean Energy, Circle K, RaceTrac, Wawa, Electrify America, Federal Executive Agencies, Armstrong World Industries, and the Southern Alliance for Clean Energy.

7. The identity or identities of the persons who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement;
8. The basis upon which the person or persons who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement gave their authorization to do so;
9. The understanding of those who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement of the terms of that Settlement;
10. The understanding of those who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement of the impact of the terms of that Settlement on you;
11. The understanding of those who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement of the impact of the terms of that Settlement on the residential customers served by FPL; and
12. The understanding of those who authorized you to become a signatory to the August 20, 2025, Stipulation and Settlement of the impact of the terms of that Settlement on non-demand-metered commercial or “General Service” customers served by FPL.<sup>2</sup>

On September 5, 2025, Florida Rising, the League of United Latin American Citizens Florida, and the Environmental Confederation of Southwest Florida (collectively FEL) filed their own Notice of Depositions Duces Tecum of the same corporate representative at the same times as set forth in the OPC Notice. While maintaining that the scope of OPC’s Notices is appropriate, FEL set forth a more narrow scope when it specifically identified the following six areas on which it would seek to question the corporate representatives:

- 1) Why the party believes the purported settlement agreement filed on August 20, 2025 is in the public interest;
- 2) Why the party believes the agreement results in rates that are fair, just, and reasonable;
- 3) Why the party believes that the agreement is supported by a “diverse coalition” (if the party believes that);
- 4) Why the party believes the agreement “serves the best interests of the customers they represent;”

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<sup>2</sup> OPC’s questions for Armstrong World Industries and Walmart Inc. vary in slight, non-material ways from this listing.

5) The bases for the party contending it “has agreed to concessions to the others;” and

6) The bases for the party contending it entered into the agreement “in compromise of their respective positions.”

On September 8, 2025,<sup>3</sup> the FPL Intervenor Signatories filed a Joint Motion for Protective Order Regarding Corporate Representative Depositions (Joint Motion) directed at both the OPC and FEL Notices. In the Joint Motion, the FPL Intervenor Signatories allege that both the OPC and FEL Notices (1) lack the specificity required pursuant to Rule 1.310(b)(6), Florida Rules of Civil Procedure; (2) seek information and details regarding confidential settlement negotiations; (3) seek information that is protected by attorney-client privilege; (4) seek information that is already available in the record; (5) are unduly burdensome; (6) are irrelevant for this phase of the proceeding; and (7) seek discovery on matters that are untimely pursuant to the Order Establishing Procedure and First Revised Order Establishing Procedure.<sup>4</sup>

On September 9, 2025, OPC filed a Response in Opposition to the Joint Motion. OPC argues that it “exceeded the level of specificity” required under the applicable Rule of Civil Procedure, and that questions regarding “whether the [FPL-IS] possessed the representational status and authority to enter into the settlement” are relevant to the public interest and validity of the settlement agreement.<sup>5</sup> OPC further argued that the Florida Evidence Code does not apply in administrative proceedings before the Commission.<sup>6</sup>

On that same date, FEL filed a separate Response in Opposition to the Joint Motion. In addition to the arguments forwarded by OPC, FEL argues that its questions are directly related to matters contained in the 2025 SSA itself or a requirement that appears in Commission Orders relating to past requests for base rate increases by the Florida Power & Light Company (FPL).

### Discussion and Decision

The initial and most fundamental question is whether the questions in the OPC and FEL Notices “designate with reasonable particularity the matters on which examination is requested.” Fla. R. Civ. P. 1.310(b)(6). This inquiry is particularly important in this instance for two reasons. First, pursuant to the First Order Revising Order Establishing Procedure,<sup>7</sup> discovery is currently “limited to the issues in the Settlement Agreement.” Second, only two of the FPL Intervenor Signatories submitted prefiled testimony in support of the 2025 SSA, and those two witnesses were specifically and separately deposed on that testimony.<sup>8</sup> Accordingly, the universe of

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<sup>3</sup> The Joint Motion was served on all parties at approximately 7:30 p.m. on Sunday, September 7, 2025. Because it was received by the office of the Public Service Commission Clerk after 5:00 p.m. on Friday, the Joint Motion was filed and docketed Monday, September 8, 2025. *See* Rule 28-106.104(3), Florida Administrative Code (F.A.C.).

<sup>4</sup> Order Nos. PSC-2025-0075-PCO-EI and Order No. PSC-2025-0323-PCO-EI.

<sup>5</sup> OPC Response at 4 & 5.

<sup>6</sup> *Florida Industrial Power Users Group v. Graham* 209 So. 3d 1142, 1146 (Fla. 2017).

<sup>7</sup> Order No. PSC-2025-0323-PCO-EI

<sup>8</sup> *See* Documents 09184-2025 (Notice of Deposition Duces Tecum of FEA witness Gorman) and 09185-2025 (Notice of Deposition Duces Tecum of AWI witness Simmons).

relevant testimony that can be offered by the corporate representatives can include only negotiations regarding the settlement and the settlement itself. With no prefiled testimony, no other matters are relevant under the discovery limitation currently in effect.

As to negotiations, the FPL Intervenor Signatories, OPC, and FEL disagree as to the applicability of the settlement privilege found in Section 90.408, F.S. FEL and OPC both<sup>9</sup> cite *Florida Industrial Power Users Group v. Graham* for the proposition that the Florida Evidence Code does not apply in administrative proceedings before the Commission. 209 So. 3d 1142, 1146 (Fla. 2017). FEL and OPC continue that because the Code does not apply, the FPL-IS cannot claim that the settlement privilege applies.

The specific holding in *Graham* is that “the rules of evidence do not *strictly apply* in administrative proceedings.” *Id.* at 1146 (emphasis added). The Court specifically noted in that same opinion that “the Commission has discretion on whether to apply the Florida Evidence Code . . . .” *Id.* In determining whether to exercise this discretion in any particular instance, the Commission is guided by the following provision of the Administrative Procedure Act:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

Section 120.569(2)(g), F.S. The Commission’s discretion is further guided by the Florida Supreme Court’s direction that “[t]he legal system favors the settlement of disputes by mutual agreement between the contending parties.” *Utilities Comm’n of City of New Smyrna Beach v. Fla. Pub. Serv. Comm’n*, 469 So. 2d 731, 732 (Fla. 1985).

A party who decides to engage in negotiations to settle a pending legal action must have a reasonable expectation that statements made during those negotiations will remain in confidence and will not be used later as admissions against interest in a subsequent trial or hearing. To provide protection and allow parties freedom to negotiate, Section 90.408 of the Florida Evidence Code provides that “[e]vidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.” Without such assurance, a party may refuse to make material disclosures or carefully measure any disclosures they make in a good faith effort to settle against the risk of having these statements turn into admissions. Such caution will impair or even prevent the settlement of disputes. Reasonably prudent persons in the conduct of their affairs must enter settlement discussions with an expectation that negotiations will remain confidential. In this case, the conduct of the FPL Intervenor Signatories is indicative of such a reasonable expectation. Those expectations in this proceeding are evidenced, in part, by mutual

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<sup>9</sup> See OPC Response at 6 and FEL Response at 13.

understandings that discussions were confidential and the execution of nondisclosure agreements. *See* Joint Motion at 3.

For all of the reasons discussed above, I find that Section 90.408, F.S., is applicable to this proceeding. Because offers to compromise are inadmissible under Section 90.408, and there is no persuasive argument that the discovery of this inadmissible evidence could or would lead to the discovery of admissible evidence, deposition inquiries regarding the substance of the settlement negotiations in this matter are outside of the scope of permissible discovery.

I turn next to deposition questions related to the 2025 SSA itself. Five of the six areas of inquiry in the FEL Notice track representations in the 2025 SSA that were joined by the FPL Intervenor Signatories. These are relevant areas for discovery, and the FEL Notice sets them forth with reasonable specificity. FEL argues that the other area of inquiry in its Notice is relevant to “the existence of a ‘broad’ or ‘diverse’ ground of customer classes,” which FEL asserts “has been a crucial finding of fact in the Commission orders approving the last two contested settlements tiled to resolve FPL’s two most recent cases.” FEL Response at 6. While FEL’s characterization of findings is something for argument in a post-hearing brief, the Commission has included findings in its past two FPL rate case Orders<sup>10</sup> regarding the customer classes that are represented in a settlement. FEL’s question – “why the party believes that the agreement is supported by a ‘diverse coalition’ (if the party believes that)” – is appropriate.

It is conceivable that a line of questioning under one of the identified areas may venture into privileged matters, but the areas of non-privileged inquiry are designated with reasonable specificity. The Joint Motion with respect to the FEL Notice shall be denied.

The questions in the OPC Notice are more numerous, less specific, and tread closer to privilege than those in the FEL Notice. They are not specifically related to a cited provision of the 2025 SSA or any of the identified major elements. Questions eight through ten would likely elicit immediate objections based on privilege. OPC’s suggested “solution” is to have every such objection “resolved through an in-camera review.” OPC Response at 6. The better solution is to steer clear of known hazards and have the parties proceed on the clearer path presented by FEL’s questions.

Additionally, the questions are broadly worded and seek to question the corporation’s general purpose and purpose for participating in this docket, issues that are not relevant to the Commission’s public interest determination regarding the 2025 SSA. For example, OPC’s first inquiry reads allows:

All benefits, including both tangible and intangible benefits that you received, intend to receive, expect to receive, or will receive, as a result of that party signing the August 20, 2025, Stipulation and Settlement Agreement in Docket No. 2025001 1-EI[.]

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<sup>10</sup> Order Nos. PSC-2021-0446-S-EI & PSC-16-0560-AS-EI.

OPC asserts that the “intangible benefits” that the FPL Intervenor Signatories received is a matter that is highly relevant to the ultimate issue of whether the Settlement Agreement is in the public interest and results in rates that are fair, just, and reasonable. OPC Response at 9. This statement assumes that the term “intangible benefits” is not vague or overbroad. The parties have not cited and I have been unable to find reference to this term or anything substantially similar in any prior Commission final order on rates which might assist in determining how it should be defined or, more importantly, why any particular benefits, either tangible or intangible, anticipated or realized, to a specific party are relevant to the Commission’s ultimate determination of the public interest.

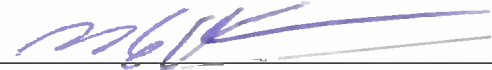
Because the OPC Notice does not comply with the requirements of Rule 1.310(b)(6), I will grant the Joint Motion as to OPC’s Notice. To the extent discoverable information is sought in OPC’s Notice, it is fully covered in the questions in the FEL Notice. The docket indicates that OPC has cross-noticed those depositions and will avail itself of that opportunity.

Therefore, it is

ORDERED by Chairman Mike La Rosa, as Prehearing Officer, that the Signatory Intervenor’s Joint Motion for Protective Order Regarding Corporate Representative Depositions is granted as to the Notices of Deposition Duces Tecum issued by the Office of Public Counsel (Documents 09165-2025, 09167-2025, 09169-2025, 09170-2025, 09172-2025, 09172-2025, 09175-2025, 09176-2025, 09177-2025, 09178-2025, 09179-2025, & 09180-2025). It is further,

ORDERED that the Signatory Intervenor’s Joint Motion for Protective Order Regarding Corporate Representative Depositions is denied as to the Notices of Deposition Duces Tecum issued by Florida Rising, the League of United Latin American Citizens Florida, and the Environmental Confederation of Southwest Florida (Document 09215-2025).

By ORDER of Chairman Mike La Rosa, as Prehearing Officer, this 18th day of September, 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.

SPS

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.