

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida) DOCKET NO. 20250011-EI
Power & Light Company)
_____)

MOTION TO STRIKE REBUTTAL TESTIMONY OF FEDERAL EXECUTIVE AGENCIES, OR, IN THE ALTERNATIVE, MOTION TO CONDUCT DISCOVERY

Florida Rising, League of United Latin American Citizens, and Environmental Confederation of Southwest Florida (“Movants”) hereby file this Motion to Strike the rebuttal testimony of Intervenor Federal Executive Agencies (“FEA”) witness Michael P. Gorman filed on July 9, 2025, as outside the Commission’s Order Establishing Procedure of March 14, 2025 (“the Order” or “the Commission’s Order”).

I. FEA’S REBUTTAL TESTIMONY IS NOT ALLOWED BY THE ORDER ESTABLISHING PROCEDURE

Mr. Gorman’s rebuttal testimony does not comply with the procedures set out by the Commission and reading the Commission’s Order otherwise renders it nonsensical. The Order sets a schedule for submission of testimony requiring the utility’s testimony and exhibits to be filed by February 28, 2025; Intervenor’s testimony and exhibits to be filed by June 9, 2025; Staff testimony and exhibits to be filed by June 17, 2025; and rebuttal testimony and exhibits to be filed by July 9. Order Establishing Procedure at 12. Discovery is to be completed by July 23, 2025. *Id.* The Order further directs:

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.

Id. at 4 (emphasis added). Consequently, when taken as a whole, the order limits the submission of rebuttal testimony to the utility.

To read the Order as allowing any party to submit rebuttal testimony would create a tilted process where parties would receive responses to discovery requests regarding FPL's rebuttal testimony in 7 days but would be left with a 20-day response time to requests seeking discovery on Intervenor's rebuttal. Given that testimony was filed on July 9, 2025, and discovery closes on July 23, 2025, this would leave parties without any opportunity to seek discovery on Intervenor's rebuttal testimony. This cannot be what the Order intended.

And the nonsensical reading is belied by the Commission's historical practice of limiting rebuttal testimony in the order of procedure. *See e.g. In re: Petition for rate increase by Peoples Gas System, Inc., etc.*, Docket No. 20230023-GU, 20220219-GU, 20220212-GU, Order No. PSC-2023-0128-PCO-GU (Fla. P.S.C. April 12, 2023) (using similar language in the case at bar in its Order Establishing Procedure); *In re: Petition for a limited proceeding to approve third SoBRA, by Tampa Electric Company*, Docket No. 20190136-EI, Order No. PSC-2019-0295-PCO-EI (Fla. P.S.C. July 26, 2019) (same); *In re: Petition for rate increase by Gulf Power Company*, Docket No. 130140-EI, Order No. PSC-13-0342-PCO-EI (Fla. P.S.C. July 31, 2013) (same).

Importantly, Movants support the right of intervenors to submit rebuttal testimony as a general rule, and would certainly have filed rebuttal testimony if Movants believed such testimony was permitted by the Order. But if FEA intends to offer such testimony here, the proper procedure is to move the Commission to reconsider or amend the Order to allow it. This would also provide an opportunity for the Commission to harmonize the accompanying discovery provisions to provide an equitable process. However, as the Order currently stands, FEA's rebuttal testimony should be stricken. *See e.g. In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*, Docket No.

991643-SU, Order No. PSC-00-1779-PCO-SU (Fla. P.S.C. Sept. 29, 2000) (striking OPC's rebuttal testimony that addressed identified issues in the proceeding that should have been provided on direct).

II. ALTERNATIVELY, IF THE COMMISSION ALLOWS FEA'S REBUTTAL TESTIMONY, DUE PROCESS REQUIRES THAT A FAIR OPPORTUNITY FOR DISCOVERY BE PROVIDED.

Due Process requires that parties have an opportunity to be heard, and that opportunity must be full and fair, not merely colorable or illusive. *Solonina v. Artglass International, LLC*, 256 So.3d 971, 973 (3d DCA 2018). This extends to the right to develop defenses and depose material witnesses. *Id.* at 972, 975 (finding material injury where attorney prevented from deposing 3 material witnesses); *Clarke v. Coca-Cola Refreshments USA, Inc.*, 282 So.3d 897, 898 (3d DCA 2019) (reversing protective order preventing deposition because court did not properly balance plaintiffs due process right to full discovery and "depositions are an essential part of civil discovery practice").

If FEA's rebuttal testimony is allowed, the current Order of Procedure would not allow Movant's a fair opportunity to conduct discovery and test their witness' assertions, as the discovery deadline will pass before responses to any discovery requests Movant's make are due. Accordingly, should the testimony be allowed, the discovery deadline must be extended or the abbreviated response time must be applied to matters in all rebuttal testimony, amending the Order of Procedure.

Movants have conferred with the other parties in this docket regarding their position on this motion. Florida Power & Light, the Office of Public Counsel, Staff of the Florida Public Service Commission, Electrify America, Walmart, Florida Retail Federation, Armstrong World Industries, FEIA, EVgo Services, and the Fuel Retailers take no position. FAIR and the Southern Alliance for Clean Energy take no position on the motion to strike but support the

alternative motion to conduct discovery if the motion to strike is denied. The Federal Executive Agencies oppose the motion to strike and will likely file a response in opposition but have agreed to accept discovery on the rebuttal testimony with an accelerated response time (in time before the close of discovery), even in the absence of an Order modifying the Commission's Order Establishing Procedure. As of the time of filing, the undersigned had not received a position from the Florida Industrial Power Users Group.

RESPECTFULLY SUBMITTED this 10th day of July, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 10th day of July, 2025, via electronic mail on:

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DATED this 10th day of July, 2025.

/s/ Bradley Marshall
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