

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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

Federal Executive Agencies ("FEA") hereby files this Response opposing the Motion to Strike the rebuttal testimony of FEA's witness Michael P. Gorman filed by Florida Rising, League of United Latin American Citizens, and Environmental Confederation of Southwest Florida ("FEL") on July 10, 2025.

**I. LIMITING REBUTTAL TO JUST THE UTILITY DENIES PARTIES DUE PROCESS
IN THEIR ABILITY TO IDENTIFY AND EXPLAIN THEIR POSITION ON ALL
THE SUBJECTS RAISED IN DIRECT TESTIMONY**

FEA filed the Rebuttal Testimony of its witness Michael P. Gorman to rebut the direct testimony of FEL witness, Karl Rabago, on July 9, 2025. FEL filed a motion to strike this testimony on July 10, 2025, citing that the Commission's Order of Establishing Procedure ("the Order" or "the Commission Order"), dated March 14, 2025, does not allow cross intervenor rebuttal testimony. FEA disagrees. Rebuttal is defined as "the time given to a party to present contradictory evidence or argument."¹ To identify and explain FEA's position on a contested issue raised within FEL's direct testimony, FEA appropriately filed testimony to rebut or counter FEL's position on the issue. Not all intervenors have the same position on contested issues and not all intervenors oppose the utility on every issue either. These cases are not clear-cut situations where you have one side against another. There are varying parties with varying

¹Garner, B. A. (Ed.). (2004). *Black's Law Dictionary* (8th ed.). Thomson/West, pg. 1295.

interests and positions, and limiting rebuttal testimony to only the utility denies intervenors the ability to fully present their position to the Commission. Put another way, to allow only the utility the opportunity to rebut the testimony of all intervenors and staff denies intervenors of proper due process.

Specifically, as stated in the Federal Evidence Practice Guide § 13.00 [1][e]:

The purpose of rebuttal testimony is to explain, repel, counteract, or disprove the evidence of the adverse party. In one sense, rebuttal testimony can be considered any testimony that a plaintiff presents after the defendant has put on its case. However, true rebuttal is evidence that is directed to rebutting new evidence or new theories proffered in defendant's case. Surrebuttal, likewise, should be directed only to new matters raised in plaintiff's rebuttal.

To limit rebuttal to only the utility ignores the purpose of rebuttal. For the Commission to follow FEL's interpretation of the Order would harm FEA and other intervenors by denying them the ability to rebut new matters that are raised within intervenor and staff direct testimony. For the Commission to only allow the utility the opportunity to rebut all other parties' testimony puts the intervenors and staff at a disadvantage and denies them the opportunity and ability to fully present their position on the contested issues to the Commission.

On the other hand, FEL is not at risk of facing any harm by having the ability to request discovery as the terms are provided within the Commission Order. With the ability to perform discovery, parties remain prepared to advocate their positions and have the potential to streamline evidentiary hearings as parties will be better equipped to fully litigate their positions before the Commission.

II. ALTERNATIVELY, FEL’S MOTION SHOULD BE DENIED BECAUSE THE COMMISSION’S ORDER ESTABLISHING PROCEDURE DOES NOT FORBID CROSS INTERVENOR REBUTTAL TESTIMONY.

FEL’s claims the Commission Order does not allow cross intervenor rebuttal. This is not the case. The Order provides specific due dates for certain filings: *Utility’s* testimony and exhibits to be filed by February 28, 2025; *Intervenors’* 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, 2025.² The Commission took the time to specify the due date for each party’s direct testimony but does not limit parties rebuttal. This is not ambiguous. FEL’s motion attempts to create ambiguity by citing the deadlines for discovery and not the actual orders for when and from which party testimony and rebuttal are required.

FEL claims that reading the Commission Order’s directions on discovery makes it clear that the Commission is limiting the submission of rebuttal testimony, however, that is not the case.³ The Commission could have specified “*Utility Rebuttal* testimony” as it did with the utilities due date for direct testimony but did not. It also makes sense that the Commission would contemplate discovery based on the utility’s rebuttal because the utility is the party that is most likely to file rebuttal testimony, but again the Commission failed to expressly limit rebuttal testimony only to the utility.

Additionally, FEL claims that the prior orders establishing procedure FEL cited in its motion proves the Commission’s intent to limit rebuttal to only the utility.⁴ However, the prior orders merely show that the language has been present for some time as the orders all contain the same wording utilized in the current docket. This is more likely a result of cutting and pasting

² ORDER NO. PSC-2025-0075-PCO-EI, pg. 12

³ FEL Motion to Strike Rebuttal Testimony of FEA, pg. 1

⁴ *Id.* at 2.

than an attempt to confuse the issue or limit due process by the Commission. FEL fails to provide any other evidence to support its claim that it is clear it was the Commission's intention to limit rebuttal to the utility. Without more clear evidence, the Commission should not harm FEA by limiting its due process to something less than what other parties addressing issues raised in direct are allowed.

It should also be noted, FEA is not the only intervenor that understood the Commission Order allowed interveners to file rebuttal. Florida Energy for Innovation Association ("FEIA") also filed cross intervenor rebuttal testimony to rebut the testimony of Florida Industrial Power Users Group's ("FIPUG") witness Mr. Jeff Pollock. Further, as of the filing of this response, there has been no motion to strike that testimony. Given the importance of developing a complete record and ensuring all parties are given the same opportunities to present their cases, it is hardly surprising no one is objecting to FEIA's rebuttal testimony. Instead, it is clear evidence of what should be and is allowed under the Order.

III. FEA SUPPORTS FEL'S ALTERNATIVE REQUEST FOR AN OPPORTUNITY TO CONDUCT DISCOVERY.

FEA agrees that FEL and other parties should be allowed the opportunity to conduct discovery on rebuttal testimony. FEA also agrees to follow the truncated timeline to response to any of FEL's discovery request by the current discovery completion deadline on July 23, 2025.⁵

⁵ FEL submitted its first set of interrogatories and request for production of documents to FEA on July 10, 2025 requesting a response within 7 days of service in accordance with the Commission Order's directive regarding the utility's responses to rebuttal discovery. FEA is actively working to and will deliver its discovery within the 7-day requirement.

IV. FEA REQUEST THE COMMISSION TO DENY FEL'S MOTION TO STRIKE AND CLARIFY THE TIMELINES ESTABLISHED FOR DISCOVERY IN ITS ORDER ESTABLISHING PROCEDURE.

FEA respectfully requests the Commission deny FEL's motion to strike FEA's rebuttal testimony and update the direction provided in its order establishing procedure to clarify its intent regarding discovery on rebuttal testimony. For example, clarify that all parties will respond to discovery request on rebuttal testimony within 7 days. Clarifying this will avoid confusion and any conflicts while also protecting all parties' due process rights.

RESPECTFULLY SUBMITTED THIS 16th day of July 2025.

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CERTIFICATE OF SERVICE

Docket Nos. 20250011-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 16th day of July 2025, to the following:

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