

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Rate Increase by Florida  
Power & Light Company

Docket No. 20250011-EI

Filed: August 5, 2025

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSE IN PARTIAL OPPOSITION TO THE OFFICE OF  
PUBLIC COUNSEL'S SECOND MOTION AND NOTICE OF INTENT TO  
SEEK OFFICIAL RECOGNITION AND REQUEST FOR ORAL ARGUMENT**

Florida Power & Light Company ("FPL") hereby responds in partial opposition to the Office of Public Counsel's ("OPC") Second Motion and Notice of Intent to Seek Official Recognition ("Second Notice"). FPL objects to only two items OPC asks this Commission to officially recognize. As explained below, OPC has failed to meet even the minimal requirements necessary to establish entitlement to official recognition of (i) a press release on action taken by an administrative body in a different jurisdiction or (ii) an unrelated third-party's factual responses and opinions to data requests in a different jurisdiction. OPC's Motions should be denied.

1. On July 31, 2025, OPC filed its Second Motion and Notice of Intent to Seek Official Recognition. OPC's Second Motion asks the Commission to officially recognize four distinct items, identified as Exhibit O through R. Although FPL questions whether a request for official notice is necessary and warranted for Exhibit O under Florida law and the Order Establishing Procedure in this case, FPL is not taking a position with respect to Exhibits O or Q. This opposition is limited to OPC's request for official notice of "Exhibit P – Georgia Public Service Commission News Release dated January 23, 2025" and "Exhibit R – Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Responses to the North Carolina Utilities Commission's Questions Regarding Large Load Customers (Order Initiating Proceeding and Requesting Comments, Docket No. E-100, Sub 208)."

2. Pursuant to Section 120.569(2)(i), Florida Statutes, “[w]hen official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.” The corollary rule, 28-106.213(6), Florida Administrative Code, provides that “[r]equests for official recognition shall be . . . considered in accordance with the provisions governing judicial notice in Sections 90.201-90.203, F.S.”

3. Section 90.202 of the Florida Evidence Code identifies matters that a court or administrative agency may, but is not required, to take official notice of. Pertinent to this Response, OPC claims that Exhibit Exhibits P or Q are eligible for official notice pursuant to Section 90.202(6), which provides that the Commission may take official notice of “[r]ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.” Section 90.202, Fla. Stat. As explained below, OPC’s position is contrary to the plain reading of Section 90.202(6).

4. Further, official notice is not a shortcut around the rules of evidence. *See, e.g., Stoll v. State*, 762 So. 2d 870, 877 (Fla. 2000) (“we find that documents contained in a court file, even if that entire court file is judicially noticed, are still subject to the same rules of evidence to which all evidence must adhere”). Additionally, a request for official notice is not a substitute for meeting the requirements of admissibility; it merely allows a tribunal to acknowledge facts that are not subject to reasonable dispute. *See DiFour v. State*, 69 So. 3d 235, 253 (Fla. 2011) (“the fact that a record may be judicially noticed does not render all that is in the record admissible”); *DiGiovanni v. Deutsche Bank Nat’l Tr. Co.*, 226 So. 3d 984, 989 (Fla. 2d DCA 2017), *reh’g denied* (May 16, 2017) (“‘the practice of taking judicial notice of adjudicative facts should be exercised with great caution’ because ‘the taking of evidence, subject to established safeguards, is the best way to resolve disputes concerning adjudicative facts’”) (citations omitted).

**OPC’s Exhibit P –Georgia Public Service Commission News Release**  
**dated January 23, 2025**

5. Exhibit P to OPC’s Second Motion appears to be a press release reporting on a vote by the Georgia Public Service Commission to approve a new rule in that jurisdiction based on the facts and record before it. The press release appears to summarize the new rule and provide certain statements made at the time the vote was taken by the Georgia Public Service Commission. OPC contends that the press release in Exhibit P consist of “records of the Georgia Public Service Commission, a regulatory tribunal” and argues that the Commission is permitted to take judicial notice of the records of any state or United States court under Section 90.202(6), Florida Statutes.

6. OPC’s position misses the mark upon a plain reading of Section 90.202(6), which applies to “[r]ecords of any *court* of this state or of any *court* of record of the United States or of any state, territory, or jurisdiction of the United States.” Section 90.202(6), Fla. Stat. (emphasis added). This section only applies to court records, whether a Florida Court, a United States Court, or the court of any other state or territory of the United States. Section 90.202(6) does not apply to other governmental bodies or agencies of the State of Florida, any other State, or the United States. Exhibit P is not a record of a court of the State of Florida or another State.

7. OPC’s argument, if accepted, would be akin to this Commission taking judicial notice of a press release describing its actions and decisions rather than relying on the language of the Commission’s actual orders. This is nonsensical – especially, given that OPC has in fact requested official notice of the Georgia Public Service Commission order that is the subject of the press release in Exhibit P, which could qualify under Section 90.202(5).<sup>1</sup> See OPC Second Motion,

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<sup>1</sup> Section 90.202(5) provides that the Commission may, but is not required, to take official notice of “[o]fficial actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.” Section 90.202(5), Fla. Stat.

Exhibit R. FPL has not opposed OPC's request for official notice of Exhibit R to its Second Motion.

8. Importantly, if the press release contained in Exhibit P to OPC's Second Motion were granted official notice and permitted to be part of the record in this proceeding, FPL would have no opportunity to conduct discovery or cross-examine the author(s) of the press release or otherwise validate the statements or underlying data on the record in this proceeding. Thus, as a matter of due process, FPL submits that it would not be appropriate for this Commission to take official notice and accept the facts and statements in the press release contained in Exhibit P to OPC's Second Motion.

9. For these reasons, OPC request for this Commission to take official notice of the press release in Exhibit P to its Second Motion should be denied.

**Exhibit R – Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Responses to the North Carolina Utilities Commission's Questions Regarding Large Load Customers (Order Initiating Proceeding and Requesting Comments, Docket No. E-100, Sub 208)**

10. Exhibit R to OPC's Second Motion appears to be the responses of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively "Duke") to data requests or requests for information from the North Carolina Utilities Commission. OPC contends that these responses to data requests consist of "records of the North Carolina Utilities Commission, a regulatory tribunal" and argues that the Commission is permitted to take judicial notice of the records of any state or United States court under Section 902.202(6), Florida Statutes.

11. As explained above, Section 90.202(6) applies to court records and does not apply to other governmental bodies or agencies of the State of Florida, any other State, or the United States. Exhibit P is not a record of a court of the State of Florida or another State.

12. Further, other than its conclusory statement, OPC has failed to offer any

explanation or legal support to demonstrate that responses to data requests constitute the official record of the North Carolina Utilities Commission or otherwise explain how it is relevant and should be admissible in this proceeding. Notably, these responses are the statements, claims, and opinions of Duke, and not those of the North Carolina Utilities Commission.

13. OPC's argument, if accepted, would be akin to this Commission taking judicial notice of another Florida utility's discovery responses and accepting them as true in a different docket for an unrelated utility. The fact that an entirely different utility has made a representation or has an opinion in a different jurisdiction should not be accepted as true in this docket and imputed to FPL. OPC's request is nothing more than an attempted proverbial "end-run" around the fundamental rules of evidence and admissibility, including relevance and hearsay.

14. The parties to this docket have propounded voluminous discovery on FPL and had more than sufficient opportunity to elicit facts, statements, and opinions from FPL on all matters related to this docket, including questions similar to the data requests set forth in Exhibit R to OPC's Second Motion. Parties should not be permitted to use official notice as a vehicle to establish facts and opinions that are not present in this docket and could not be established through relevant discovery.

15. Importantly, if the Duke responses to the North Carolina Utilities Commission's data requests/requests for information contained in Exhibit R to OPC's Second Motion were granted official notice and permitted to be part of the record in this proceeding, FPL would have no opportunity to cross-examine the declarant of the responses or otherwise validate the statements or underlying data on the record in this proceeding. Thus, as a matter of due process, FPL submits that it would not be appropriate for this Commission to take official notice and accept the facts and statements in Duke responses to the North Carolina Utilities Commission's data requests/requests

for information in Exhibit R to OPC's Second Motion.

16. For these reasons, OPC request for this Commission to take official notice of the press release in Exhibit R to its Second Motion should be denied.

WHEREFORE, FPL respectfully requests that the Prehearing Officer deny in part OPC's Second Request for Official Recognition consistent with this Response, and provide any other relief deemed necessary.

Respectfully submitted this 5th day of August 2025,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

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