

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish rate base value of wastewater system of Forest Utilities, Inc. in Lee County, using alternative valuation procedure, by CSWR-Florida Utility Operating Company, LLC.

DOCKET NO. 20260083-SU
ORDER NO. PSC-2026-0357-PCO-SU
ISSUED: October 14, 2026

ORDER DENYING CITIZENS' EXPEDITED MOTION FOR MODIFICATION
OF THE ORDER ESTABLISHING PROCEDURE
AND
ORDER ON CITIZENS' MOTION TO STRIKE PORTIONS OF
JOSIAH COX'S DIRECT TESTIMONY, REBUTTAL TESTIMONY, AND
EXHIBITS AND DAUBERT CHALLENGE

On September 23, 2026, the Office of Public Counsel ("OPC") filed its Expedited Motion for Modification of the Order Establishing Procedure ("Motion to Modify"). In its Motion to Modify, OPC, pursuant to Rule 28-102.604(4), Florida Administrative Code (F.A.C.), requested the deadline for filing any Motions to Strike Testimony be moved from September 30 to October 9, 2026. On September 25, 2026, CSWR-Florida Operating Utility Operating Company, LLC (CSWR) filed a Response in Opposition to the Expedited Motion. On September 29, 2026, OPC filed its Addendum to Citizens' Expedited Motion for Modification of the Order Establishing Procedure ("Addendum"). On September 30, 2026, I denied the Motion to Modify.

OPC then filed its Motion To Strike Portions Of Josiah Cox's Direct Testimony, Rebuttal Testimony, And Exhibits And Daubert Challenge ("Motion to Strike") on September 30, 2026. Pursuant to Rule 28-106.204(1), "[w]hen time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition." Given that under this calculation the deadline for responses to the Motion is October 7, 2026, and that the Prehearing Conference in this matter was also set for October 7, 2026, I ruled that any response to the Motion to Strike must be filed by October 6, 2026, at 12:00 p.m. (noon). CSWR filed its Response in Opposition to Office of Public Counsel's Motion to Strike Portions of Josiah Cox's Direct Testimony, Rebuttal Testimony, and Exhibits and Daubert Challenge ("Response") on October 6, 2026. The Prehearing Conference was held on October 7, 2026, where argument from both parties was heard on OPC's Motion to Strike.

Motion to Modify

Motion

OPC filed its Motion to Modify prior to the expiration of the deadline it sought to extend pursuant to Rule 28-106.204, F.A.C. The deadline the OPC sought to extend is controlled by the

Order Establishing Procedure in this case, Order No. PSC-2026-0242-PCO-SU (“OEP”). The OEP states:

Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than seven days prior to the Prehearing Conference and identify with specificity the page and line numbers of the information to be stricken. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown.

Decision

Nothing in OPC’s Motion demonstrates the necessary good cause to extend the motion to strike deadline. The good cause pleaded by OPC is speculative and the phrase “absent good cause shown” within the OEP already contemplates the situation by providing an opportunity for a party to argue good cause has arisen for a motion to strike portions of prefiled testimony after the expiration of the deadline set by the OEP, even as late as the formal evidentiary hearing. While that may require a showing of good cause, it also affords OPC the opportunity to adequately prepare and file a factually supported motion. Therefore, OPC’s Motion to Modify is hereby denied.

Motion to Strike

Motion

OPC’s Motion to Strike argues that certain portions of CSWR witness Cox’s direct and rebuttal testimony and five sponsored exhibits should be stricken from, or not admitted to, the record. OPC argues that the Commission has previously followed Rule 1.140(f), Fla. R. Civ. P., when considering motions to strike, which provides that “a party may move to strike redundant, immaterial, impertinent, or scandalous matters from any pleading at any time.” OPC also cites the language from the OEP regarding motions to strike quoted above.

OPC argues:

It is uncontested that CSWR needs to introduce the three appraisal reports and the reports authored by the engineer in order to meet the requirements under the alternative procedure for establishing rate base value of an acquired utility system. However, there is no carve out in section 367.0811, [F.S.] stating the Florida Rules of Evidence in Chapter 90 of Florida Statutes do not apply.

OPC points to several provisions of Chapter 90 of the Florida Statutes, otherwise known as the Florida Evidence Code, including Sections 90.604, 90.701, and 90.702, F.S. which OPC cites as limitations on what Witness Cox may or may not permissibly testify to. OPC argues, relying on Section 90.701, F.S., that “Mr. Cox is not permitted to provide inference or opinion testimony as

a lay witness when it prejudices the objecting party, and those inferences or opinions require special knowledge, skill, experience, or training.”

In addition, OPC argues that the portions of the Florida Evidence Code that deal with hearsay, including Sections 90.801(1)(b) and 90.803(6) apply, which define hearsay and the business record hearsay exception, respectively, and operate to preclude the admission of the exhibits in question. OPC argues that “applying the various Sections of chapter 90, [F.S.], CSWR has failed to lay the foundation for Josiah Cox’s testimony relating to the five exhibits as well as for the five exhibits themselves.”

OPC’s Motion to Strike also argues the *Daubert*¹ standard should apply “assuming arguendo that CSWR changes their mind and calls Mr. Cox as an expert witness.” OPC argues that “[w]hen an expert’s testimony acts as a conduit for inadmissible hearsay, the evidence is presented to the jury without affording the opposing party an opportunity to cross-examine and impeach the source of the hearsay.” *Doctors Co. v. Dep’t of Ins.*, 940 So.2d 466, 470 (Fla. 1st DCA 2006).

Response

CSWR’s Response argues that OPC’s reliance on the Florida Evidence Code is misplaced, and that while Section 367.0811, F.S., does not contain any carve out for the Florida Evidence Code, Chapter 120 does contain such a carve out, specifically, Section 120.569(2)(g), F.S. This Section states:

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.

While agreeing that the standard for granting a motion to strike is “redundant, immaterial, impertinent, or scandalous”, CSWR argues that striking prefiled testimony is strongly disfavored and that nothing in Witness Cox’s testimony meets the standard for such an extreme measure, CSWR points to the Prehearing Order issued in Docket 20260020-EI as support and further argues that a motion to strike should only be granted “if the matters that are subject to the motion are completely irrelevant and have no bearing on the decision.” See Order No. PSC-2026-0091-PHO-EI, issued April 15, 2026, in Docket No. 20260020-EI, *In Re: Petition for determination of need for Andytown-Oasis transmission lines project in Broward and Miami-Dade Cntys., by Florida Power & Light Co.* CSWR contends that Witness Cox testifies to his personal knowledge of CSWR’s compliance with the applicable statute, and his testimony is authenticated with appropriate supporting exhibits. In regard to OPC’s *Daubert* argument, CSWR affirmed that

¹ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993).

it is not offering Mr. Cox as an expert witness, and therefore the *Daubert* standard is not applicable as it does not apply to lay testimony.

Decision

Rule 1.140(f), Florida Rules of Civil Procedure, states that a party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. Although Rule 1.140(f), Fla. R. of Civ. P., does not control in administrative proceedings, we have used the rule as guidance when ruling on motions to strike testimony. *E.g.*, Order No. PSC-99-1809-PCO-WS, issued September 20, 1999, in Docket 971220-WS, *In re: Application for transfer of Certificates Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc. in Polk County*. A motion to strike should only be granted if the matters that are subject to the motion are completely irrelevant and have no bearing on the decision. *See Bay Colony Office Bldg. Joint Venture v. Wachovia Mortgage Co.*, 342 So. 2d 1005 (Fla. 5th DCA 1977). An order granting a motion to strike is reviewed for abuse of discretion. *Upland Dev. Of Cent. Florida, Inc. v. Bridge*, 910 So. 2d 942, 944 (Fla. 5th DCA 2005). In *Parrish & Yarnell, P.A. v. Spruce River Ventures, LLC*, 180 So. 3d 1198, 1200 (Fla. 2d DCA 2015), the Second District Court of Appeal explained that:

[B]ecause a motion to strike only tests the legal sufficiency of a claim, it is reversible error for a court to grant a motion to strike where the pleading presents a bona fide issue of fact that may be supported by evidence. A claim should not be stricken simply because the judge believes that its proponent will ultimately be unable to produce sufficient evidence to support it. To the contrary, the trial court must resolve all doubts in favor of the pleading and keep in mind that striking a pleading is an extreme measure that is disfavored.

(internal citations omitted).

In ruling on a party's motion to strike, there are several important statutory requirements to consider, including that the Florida Evidence Code does not strictly apply to administrative proceedings in Florida. *Florida Industrial Power Users Group v. Graham*, 209 So. 3d 1142, 1145 (Fla. 2017). In proceedings held under Sections 120.569 and 120.57(1), F.S., all parties must be given an opportunity to respond, to present evidence and argument on all issues, and to conduct cross-examination, and to submit rebuttal evidence. Pursuant to Section 120.569(2)(g), F.S., irrelevant, immaterial, or unduly repetitious evidence must 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 Florida courts.

While it appears neither party disputes the testimony and exhibits do contain hearsay, hearsay is permissible in administrative proceedings. The only limitation on hearsay in administrative proceedings is that an agency may use it to supplement or explain other competent, substantial evidence, and may not use hearsay alone to support a finding of fact unless it would be admissible over objection in civil actions. Section 120.57(1)(c), F.S. Rule 28-

106.213(3) further specifies that hearsay shall not be sufficient to support a finding unless the evidence falls within an exception as found in Sections 90.801-805, F.S. Rule 28-106.213(3), F.A.C. Whether circumstances exist which would allow the use of hearsay is a determination that occurs by the agency after all the evidence has been received. *Miller v. State*, 96 So. 2d 644, 646 (Fla 1st DCA 2001). Thus, to exclude the hearsay at this point in time is premature. CSWR reaffirmed Witness Cox is being offered as a fact witness and not in the role of expert engineer or appraiser, so to the extent OPC has challenged his status as an expert *arguendo*, that challenge is likewise premature. Furthermore, OPC's concerns about what information is presented to a jury are unfounded in the current proceeding. The Commission will give any testimony or evidence admitted at hearing the weight it is due, including no weight at all if appropriate. Accordingly, OPC's Motion to Strike is hereby denied, and that the prefiled testimony and exhibits should be considered by the full Commission which can give it the proper weight that it is due, if any.

Therefore, it is

ORDERED by Commissioner Michael La Rosa, as Prehearing Officer, that the Office of Public Counsel's Expedited Motion for Modification of the Order Establishing Procedure is hereby denied. It is further,

ORDERED by Commissioner Michael La Rosa, as Prehearing Officer, that the Office of Public Counsel's Motion To Strike Portions Of Josiah Cox's Direct Testimony, Rebuttal Testimony, And Exhibits And Daubert Challenge is hereby denied. It is further,

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 14th day of October, 2026.



MIKE LA ROSA
Commissioner 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.

TPS

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.