

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 20250011-EI

Filed: October 1, 2025

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

Florida Power & Light Company ("FPL") hereby responds in partial opposition to the Office of Public Counsel's ("OPC") Third Motion and Notice of Intent to Seek Official Recognition ("Third Motion"). In the Third Motion, OPC seeks official recognition of hundreds of customer comments filed in this Docket. FPL does not object to the Commission taking official recognition of the fact that the comments were filed, but FPL objects to the use of official recognition to establish the contents of the written comments as facts. As explained below, OPC has failed to meet the requirements necessary to establish entitlement to official recognition of contents of the comments. OPC's Motion should be denied to the extent it seeks official recognition of the contents of the written comments as facts.

1. On July 24, 2015, OPC filed a Motion and Notice of Intent to Seek Official Recognition of various exhibits, including Exhibit J, which consisted of "[a]ll written customer comments filed in Florida Public Service Commission Docket 20250011-EI through July 16, 2025" ("First Motion"). FPL did not object to taking Official Recognition of Exhibit J to the First Motion upon its understanding that official recognition would be taken only regarding the existence of the customer comments in the docket, not to establish the truth of the contents of the comments. By Order No. PSC-2025-0329-PCO-EI, dated September 4, 2025, the prehearing officer granted OPC's request as to Exhibit J but did not specify whether the Commission was simply taking official recognition of the entry of the written comments in the record or was recognizing the contents of the comments as established facts.

2. On September 29, 2025, OPC filed its Third Motion and Notice of Intent to Seek Official Recognition. OPC's Third Motion asks the Commission to officially recognize Exhibit S, which consists of "[a]ll written customer comments filed in Florida Public Service Commission Docket 20250011-EI between and including July 17, 2025, through August 18, 2025." During the pre-filing conferral, FPL stated that it does not oppose the Third Motion to the extent the Commission would be taking official recognition that the written comments have been filed in the docket. OPC advised that it also seeks official recognition of the contents of the comments. FPL objects to the extent OPC is requesting that the matters asserted in the written customer comments be officially recognized.

3. 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."

4. Section 90.202 of the Florida Evidence Code identifies matters subject to mandatory or permissive official recognition by a court or administrative agency. Pertinent to this response, OPC claims that Exhibit S is 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).

5. 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) (“‘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); *see also Stoll*, 762 So. 2d 870, 877 (Fla. 2000) (“Although a trial court may take judicial notice of court records . . . it does not follow that this provision permits the wholesale admission of all hearsay statements contained within those court records.”).

6. Exhibit S to OPC’s Third Motion contains written customer comments filed in this docket between July 17, 2025, through August 18, 2025. OPC contends that these documents consist of records of any court of this state 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.

7. 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 S is not a record of a court of the State of Florida or another State.¹

8. Additionally, the comments contained in Exhibit S to OPC's Third Motion are "out-of-court" statements that OPC is requesting be offered for the truth of the matter asserted therein. If the contents of the written customer comments contained in Exhibit S to OPC's Third 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 authors of the written comments or otherwise validate the statements or underlying data on the record in this proceeding. Thus, the comments contained in Exhibit S to OPC's Third Motion are classic hearsay, which, although admissible, should be subject to greater scrutiny. As a matter of due process, FPL submits that it would not be appropriate to use official recognition as a vehicle for establishing that as facts the statements in the written comments contained in Exhibit S to OPC's Third Motion.

9. For these reasons, OPC's request for this Commission to take official notice of the contents of the written comments in Exhibit S to its Third Motion should be denied. To the extent the written comments are officially recognized, they should be given the weight they are due as hearsay.

¹ As noted above, FPL would have agreed to official recognition of the fact that the comments were filed notwithstanding this provision of the statute, but not under the terms OPC seeks here.

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

Respectfully submitted this 1st day of October 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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