



(850) 521-1706  
bkeating@gunster.com

February 16, 2018

**BY E-PORTAL**

Ms. Carlotta Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: DOCKET NO. 20170179-GU - Petition for rate increase and approval of depreciation study by Florida City Gas.**

Dear Ms. Stauffer:

Attached, for electronic filing, please find the testimony and exhibits of Florida City Gas' rebuttal witness Terry Deason. (Document 7 of 10)

Sincerely,

A handwritten signature in cursive script, appearing to read 'Beth Keating', written over a horizontal line.

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

**ATTACHMENTS**

cc:// Office of Public Counsel  
FEA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Before the Florida Public Service Commission

Docket No. 20170179-GU: Petition for rate increase by Florida City Gas.

Prepared Rebuttal Testimony of Terry Deason

On behalf of Florida City Gas

Date of Filing: February 16, 2018

**I. INTRODUCTION**

Q: What is your name and business address?

A: My name is Terry Deason. My business address is 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301.

Q: By whom are you employed and in what capacity?

A: I am employed by Radey Law Firm as a Special Consultant specializing in the fields of energy, telecommunications, water and wastewater, and public utilities generally.

Q: Please describe your educational background and professional experience.

A: I have over forty years of experience in the field of public utility regulation spanning a wide range of responsibilities and roles. I served a total of seven years as a consumer advocate in the Florida Office of Public Counsel (“OPC”) on two separate occasions. In that role, I testified as an expert witness in numerous rate proceedings before the Florida Public Service Commission (“Commission”). My tenure of service at OPC was

1 interrupted by six years as Chief Advisor to Florida Public Service  
2 Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory  
3 Analyst when I was first appointed to the Commission in 1991. I served as  
4 Commissioner on the Commission for sixteen years, serving as its  
5 chairman on two separate occasions. Since retiring from the Commission  
6 at the end of 2006, I have been providing consulting services and expert  
7 testimony on behalf of various clients, including public service commission  
8 advocacy staff, county and municipal governments, and regulated utility  
9 companies. I have also testified before various legislative committees on  
10 regulatory policy matters. I hold a Bachelor of Science Degree in  
11 Accounting, summa cum laude, and a Master of Accounting, both from  
12 Florida State University.

13

14 Q: Are you sponsoring an exhibit?

15 A: Yes. I am sponsoring the following exhibit:

- 16 • TD-1, Biographical Information for Terry Deason

17

18 Q: For whom are you appearing as a witness?

19 A: I am appearing as a witness for Florida City Gas Company ("FCG" or "the  
20 Company").

21

22 **II. PURPOSE OF TESTIMONY**

23 Q: What is the purpose of your rebuttal testimony?

1 A: The purpose of my rebuttal testimony is to address the regulatory policy  
2 considerations of two positions taken by OPC witnesses Dismukes and  
3 Willis in their direct testimonies, respectively. The first is Witness  
4 Dismukes's position that the Commission should reject FCG's proposals  
5 to secure additional firm natural gas capacity through a new Florida Gas  
6 Transmission ("FGT") system expansion and the development of a  
7 liquefied natural gas ("LNG") facility. The second is Witness Willis's  
8 position that an amount of employee compensation associated with the  
9 Company's long-term incentive program should be disallowed.

10

11 **III. Additional Firm Gas Capacity**

12 Q: What is the basis of Witness Dismukes's position that the Commission  
13 should reject the Company's proposal to obtain additional firm gas  
14 capacity?<sup>1</sup>

15 A: Essentially, Witness Dismukes bases his position on his belief that FCG  
16 already has adequate firm capacity and that adding new capacity would  
17 be inconsistent with its tariff. He also criticizes FCG's proposal because  
18 FCG did not issue a Request for Proposal ("RFP") for its proposed LNG  
19 facility.

20

21 Q: Is FCG's proposal to add new firm capacity inconsistent with its tariff?

22 A: No. To the contrary, FCG's proposal is very much consistent with its tariff  
23 and its overarching requirement as a regulated public utility to provide safe

---

<sup>1</sup> Direct Testimony of David E. Dismukes, 2:17-3:17; 28:1-22.

1 and reliable service. This requirement is set out in Rule 25-7.048(1),  
2 Florida Administrative Code, which states:

3 Each utility shall make all reasonable efforts to prevent  
4 interruptions of service and when such interruptions occur shall  
5 endeavor to re-establish service with the shortest possible delay  
6 consistent with the safety of its consumers and the general  
7 public.

8 As required by the Commission, all of the Company's tariffs must be  
9 consistent with all applicable rules and should be so interpreted. This is  
10 certainly the case for FCG's transportation service tariff which is  
11 consistent with Rule 25-7.048 as well as the Commission's rule on  
12 transportation service, Rule 25-7.0335. By inference, it is Rule 25-7.0335  
13 on transportation service, which Witness Dismukes incorrectly relies upon  
14 as his basis to reject FCG's proposed firm capacity additions.

15 Simply stated, the issue for the Commission then is to determine whether  
16 FCG's proposal is a reasonable effort to prevent interruptions of service to  
17 all customers. Another equally important consideration is whether FCG's  
18 proposal is supportive of the requirement to re-establish service with the  
19 shortest delay. This is particularly relevant for natural gas utilities like  
20 FCG, who in the face of a complete loss of pressurization, must make in-  
21 premise inspections and reconnections for each and every customer  
22 affected. Under such circumstances, the re-establishment of service  
23 could take many weeks. Such potential losses of pressurization and the  
24 resulting long delays in service restoration can be reasonably minimized

1 by the existence of adequate firm capacity, which FCG's proposal seeks  
2 to obtain for the benefit of all customers.

3

4 Q: On what basis then does Witness Dismukes assert that FCG's proposal to  
5 obtain additional firm capacity is inconsistent with its transportation service  
6 tariff?

7 A: Witness Dismukes quotes from a section of FCG's Third Party Suppliers  
8 ("TPS") tariff entitled CAPACITY ASSIGNMENT, found on Sheet 59 of the  
9 tariff. There is language there which states that Third Party Suppliers will  
10 be responsible for obtaining firm interstate pipeline capacity for their  
11 transportation customers. Based on this provision, Witness Dismukes  
12 leaps to his conclusion that FCG should not plan for a reliable system for  
13 all its customers.<sup>2</sup> By necessary inference, he would have the  
14 Commission adopt a two-tiered planning criteria where transportation  
15 customers would be left on their own to insure that their third party  
16 supplier has adequate firm capacity to serve them, even on high  
17 demand days triggered by cold temperatures. This is a perilous situation  
18 and could put all customers, including sales customers, in jeopardy of  
19 losing service.

20

21 Q: Does FCG's tariff address the situation where the third party supplier  
22 cannot demonstrate sufficient firm capacity?

---

<sup>2</sup> Direct Testimony of David E. Dismukes, 22:19-24:10.

1 A: Yes, it does, to an extent. I understand that FCG has proposed tariff  
2 modifications that more clearly define that process and will require that the  
3 amount of capacity assigned to TPS be verified against their market share  
4 on a monthly basis. The current and proposed tariff provisions imply, if not  
5 require, the planning for adequate capacity for all customers. Thus,  
6 contrary to Witness Dismukes's assertions, the Company is, in essence,  
7 the supplier of last resort for all customers.<sup>3</sup> On this basis, the Company  
8 has applied its planning criteria and concluded that additional firm capacity  
9 is now needed.

10

11 Q: You earlier stated that the Company's tariff is consistent with the  
12 Commission's rule for transportation service. What is the purpose of this  
13 rule and what does it require?

14 A: Rule 25-7.0335 was implemented by the Commission on April 23, 2000. It  
15 was adopted to implement transportation service on a comparable basis  
16 for all regulated natural gas utilities in Florida, often referred to as Local  
17 Distribution Companies ("LDCs"). Subsection (1) requires that all natural  
18 gas utilities offer transportation service to all non-residential customers.  
19 Subsection (1) further allows the option to utilities to provide transportation  
20 service to residential customers when it is cost-effective to do so.  
21 Subsection (2) establishes base line requirements for each utility's  
22 transportation tariff. However, the requirements are minimal so that each  
23 utility can tailor its tariff to its individual needs. Thus, the Rule provides a  
24 considerable amount of flexibility to each utility.

---

<sup>3</sup> Direct Testimony of David E. Dismukes, 26:14-27:6; 28:1-21.

1 Q: Were you serving on the Commission at the time Rule 25-7.0335 was  
2 proposed, adopted, and implemented?

3 A: Yes, I was. In 1992, the Florida Legislature foresaw competition in the  
4 natural gas industry by adopting legislation which exempts from regulation  
5 “any entity selling or arranging for the sales of natural gas which neither  
6 owns nor operates natural gas transmission or distribution facilities within  
7 the state.” Florida Gas Transmission became an open access provider in  
8 1993 as a result of Federal Energy Regulatory Commission Order No.  
9 636, which mandated interstate pipelines to unbundle or separate sales  
10 and transportation services. These events triggered a great deal of  
11 interest from large consumers of natural gas to be able to secure their own  
12 natural gas supply and to rely on utilities to transport their gas to them. As  
13 a result, several (but not all) Florida utilities obtained authority to provide  
14 transportation service. The Commission limited the service to only large  
15 customers with minimum usages ranging from 100,000 to 500,000 therms  
16 per year, depending on the utility. This was the backdrop which resulted  
17 in Docket No. 960725-GU being opened in 1996 to evaluate the costs and  
18 benefits of reducing or removing the volume thresholds and which  
19 eventually led to the adoption of Rule 25-7.0335.

20

21 Q: Why did it take approximately four years from the opening of the  
22 investigation docket to the adoption of the Rule?

23 A: What was being evaluated and proposed was a landmark change in the  
24 way gas service was to be provided to customers that raised many



1 complex issues. The Commission was fundamentally concerned with how  
2 to provide the benefits of competition while protecting all customers.  
3 Among the issues were considerations of stranded investments, the  
4 potential for slamming, excess capacity, marketing affiliations, and the  
5 obligation of regulated utilities to serve all customers as a supplier of last  
6 resort. All of these issues were thoroughly studied by Commission Staff,  
7 including a series of three two-day workshops. The Commission's efforts  
8 culminated in a Commissioner workshop in November 1999 and Staff's  
9 final recommendation in February 2000.

10

11 Q. Was the issue of an obligation to serve all customers by the regulated  
12 utilities discussed by the Commissioners at the November 1999  
13 workshop?

14 A: Yes, it received a great deal of discussion by all four of the  
15 Commissioners present, with many questions directed by  
16 Commissioners to industry participants and Commission Staff.  
17 Commission Staff stressed the importance of transportation customers to  
18 understand that a failure on the part of their marketer to inject gas could  
19 cause a disruption of service and that large customers have historically  
20 understood this. The Commissioners were also made aware by numerous  
21 participants that the regulated utilities did not have the capability to turn off  
22 gas to those specific transportation customers whose marketers were  
23 unable to inject gas into their systems for those specific transportation  
24 customers. Thus, as a matter of practicality, the regulated utilities were, in  
25 reality, the providers of last resort. Also of concern was the fact that the

1 Commission has no regulatory authority over the marketers to insure that  
2 they have enough firm capacity to reliably serve their transportation  
3 customers and not jeopardize the reliability of service to all customers.  
4

5 Q: What did the Commission decide on this issue?

6 A: Clearly, the Commission decided that the benefits of competition were  
7 such that the option for transportation service should be available to all  
8 commercial customers. On the question of obligation to serve, the  
9 Commission compromised to a great extent. The Commission did not  
10 place an outright obligation on the regulated utilities to provide  
11 transportation customers with gas supplies in the event of a marketer's  
12 failure to inject sufficient quantities of gas. However, the Commission did  
13 allow regulated utilities the discretion to either disconnect those  
14 transportation customers whose marketers failed to perform or to provide  
15 gas to them in those circumstances. This is set forth in section (2)(a) of  
16 Rule 25-7.0335, which states:

17 The utility is responsible for the transportation of natural gas purchased by  
18 the customer. The utility is not responsible for providing natural gas to a  
19 customer that elects service under the transportation service tariff. If the  
20 customer's marketer, broker, or agent fails to provide the customer with  
21 natural gas, the utility may disconnect service to the customer or provide  
22 natural gas under its otherwise applicable tariff provision. (emphasis  
23 added)  
24

1 Q: What do you believe is the practical application of the Commission's  
2 decision?

3 A: I would like to say that it was a model of clarity and decisiveness. But  
4 obviously it fell way short of that mark. In all candor, I believe I and my  
5 colleagues at the time were trying to balance competing interests and  
6 concerns and wanted to get some experience with the operation of the  
7 Rule and felt confident that the entities that we did have regulatory  
8 authority over, i.e., the fully regulated Local Distribution Companies would  
9 be responsible and "do the right thing." The Commission knew that the  
10 LDCs did not have the ability to turn off service specifically to the  
11 transportation customers of the offending marketers and hoped and  
12 actually had confidence that the LDCs would take all reasonable steps to  
13 meet their obligations under Rule 25-7.048 to prevent interruptions of  
14 service to all customers. Clearly, the wording of the Rule 25-7.0335 gives  
15 them the ability to provide gas to transportation customers when their  
16 marketers fail to perform. It could also be interpreted as a requirement to  
17 do so absent the ability to turn off that service. Under this interpretation,  
18 the LDC would have a requirement to do one of two things, either turn the  
19 service off or continue to provide service.

20

21 Q: Why did the Commission not simply require the LDCs to turn off the  
22 service to the transportation customers of the offending marketers?

23 A: Disconnecting the meters was not a viable option for three reasons. First,  
24 the LDCs would not know which customers to turn off on a real-time basis.

1           Second, it would be impractical and costly to dispatch enough personnel  
2           to manually disconnect the meters. Electronically disconnecting the  
3           meters was not a viable option either. To obtain advanced meters with  
4           that capability would be too costly for smaller commercial customers and  
5           would effectively negate the purpose of the Rule which was to open  
6           competition to all commercial customers. And third, unnecessarily  
7           interrupting service to transportation customers could potentially cause  
8           great harm to the public in terms of their health, safety, welfare, and  
9           economic opportunities.

10

11    Q:     Would the LDCs be able to disconnect service without cause?

12    A:     No, and this is where some of the difficulties of disconnecting service  
13           become apparent. It's true that both the Company's tariff, as well as Rule  
14           25-7.0335, indicate that the Company is not obligated to provide  
15           transportation service customers with the gas commodity. On the other  
16           hand, from my review of the language, neither seems to suggest that the  
17           utility can simply terminate, without cause, the customer's transportation  
18           service. I know that in our discussions to develop the rule, we would not  
19           have intended that the utility simply disconnect or "turn off" transportation  
20           service customers without a clear understanding that the customer's gas  
21           has not been delivered.

22

23           As more clearly explained in the testimonies of Witnesses Becker and  
24           Bermudez, the challenge in gaining that clear understanding is that

1 determining whether a customer's gas arrived at FCG's system may be  
2 delayed until well into the next service day. This is because assessments  
3 as to whether the gas that was supposed to be delivered to the utility  
4 were, in fact, delivered to the utility are made at the end of the gas  
5 day. Compounding that delay, the utility is not involved in the contractual  
6 arrangements between the customer and the marketer; therefore, while  
7 the utility may know the total amount nominated by the marketer for the  
8 day, the utility will not know about a customer's contractual arrangement  
9 with the marketer that may allow the customer to consume more than was  
10 nominated specifically for that customer. As such, the utility may not have  
11 a clear picture of exactly which transportation customer's supply was  
12 short, and by how much, for some time. Until it can make that  
13 determination, it must continue to provide transportation service to its  
14 customers, delivering gas that may, or may not, be owned by the  
15 customer. If the utility later determines that it previously had a basis for  
16 disconnecting a transportation customer, a belated disconnection does not  
17 allow the utility to remedy any imbalance that previously occurred (nor any  
18 associated system impacts) and could put the utility at risk of a tariff or  
19 rule violation if the basis for doing so has already been remedied. Thus,  
20 the real-world challenge to reliably plan and operate a gas distribution  
21 system with this lack of real-time information further supports the  
22 conclusion that the LDCs must, in essence, be the supplier of last resort  
23 for all customers, regardless if the customer is a sales or transportation  
24 customer.

1 Q: Has the natural gas market changed since the Commission adopted Rule  
2 25-7.0335 in 2000?

3 A: Yes, in at least three significant ways. First, gas reserves have increased  
4 and the commodity price of gas has decreased, primarily by the advent of  
5 advanced drilling and extraction techniques. Second, the use of natural  
6 gas has increased by all customers, especially by electric generators.  
7 Third, gas marketers have successfully marketed to all types of gas  
8 consumers, from small “mom & pop” commercial businesses to very large  
9 consumers of gas, many of which are deemed to be essential use  
10 customers such as hospitals, nursing homes, and water treatment plants.

11

12 Q: Has the success of marketers been beneficial to natural gas consumers in  
13 Florida?

14 A: Yes, both transportation customers and sales customers have benefited.  
15 This is because of the symbiotic relationship that exists between  
16 transportation customers and sales customers. Opening the option of  
17 transportation service to all commercial customers has created economic  
18 opportunities and reductions in the cost of gas for these customers. This  
19 has resulted in a greater throughput of gas, which reduces the amount of  
20 system fixed costs which must be recovered from sales customers. This  
21 makes gas service more accessible and more economic for all customers.

22

23 Q: Would Witness Dismukes’s position do harm to this symbiotic  
24 relationship?

1 A: Yes, Witness Dismukes's position would drive a wedge between  
2 transportation customers and sales customers. He would restrict FCG's  
3 ability to adequately plan for and provision reliable service to all its  
4 customers. Instead, he would leave transportation customers to "fend for  
5 themselves" so to speak. While this may have been reasonable in a  
6 period when only a few very large and sophisticated customers were  
7 taking transportation service, this is no longer the case today. In addition,  
8 the sales customers could very likely be harmed also. This is because of  
9 the fact that FCG does not have the ability to disconnect service to those  
10 specific customers whose marketers fail to inject gas. As a matter of  
11 physics, the gas will continue to flow and those transportation customers  
12 would be consuming gas intended for sales customers. Moreover,  
13 Witness Dismukes's position could result in less throughput and reduce  
14 the benefit of spreading fixed costs over a larger base.

15

16 Q: What then is the issue which the Commission must address?

17 A: In the context of this specific rate case for FCG, the Commission must  
18 determine the amount of firm capacity needed to reliably and cost  
19 effectively serve FCG's customers and to set rates to recover the cost of  
20 acquiring that amount of firm capacity. Witness Dismukes's position  
21 would fundamentally change the Company's planning criteria and would  
22 restrict it to only plan for sales customers. While his position may  
23 temporarily reduce the revenue requirement in this specific case, I do not  
24 believe his approach is in the best interest of all customers in the long  
25 term and is not fundamentally sound from an overall regulatory policy

1 perspective. Nevertheless, if the Commission were so inclined to adopt  
2 his position in this case, I believe it would raise questions for the entire  
3 natural gas industry in Florida and for all LDCs serving customers in  
4 Florida.

5

6 Q: Why would it affect the entire industry and all of the LDCs?

7 A: When something so important and fundamental as how to best plan a  
8 company's system to reliably serve its customers is put at issue, it  
9 naturally creates an amount of regulatory uncertainty. Other LDCs would  
10 be at a loss and would need further guidance. The Commission would  
11 also need to consider whether its rules should be changed, whether there  
12 should be some minimal amount of regulation over marketers to confirm  
13 that they have acquired a sufficient amount of firm capacity, and whether  
14 the ability to disconnect service should be mandated and, if so, the priority  
15 of those disconnections when there is a lack of real-time information.  
16 There would also be the need for policy/regulatory guidance on the priority  
17 of disconnections for essential use customers. For example, is it better to  
18 disconnect a water treatment plant before a hospital? There would be a  
19 myriad of other issues as well, such as whether efforts should be made to  
20 better educate all transportation customers of the operations of the market  
21 and their potential to lose service, whether there would be a significant  
22 move by customers from transportation service to sales service, whether  
23 there would be a continuing obligation to serve all customers who seek to  
24 return to being a sales customer, and if there is a continuing obligation,  
25 whether such a move would result in an even greater need for firm



1 capacity than presently exists. There undoubtedly would be many more  
2 such issues that would be raised and would need to be addressed to re-  
3 establish a reasonable amount of regulatory certainty for the LDCs to  
4 effectively plan and operate their systems. I could easily foresee the need  
5 for the Commission to open an industry-wide investigation to consider all  
6 of these issues. So, the issue being raised by Witness Dismukes is much  
7 larger than a simple revenue requirements issue in a single rate case.

8

9 Q: You earlier stated that Witness Dismukes criticized FCG's proposal to  
10 obtain firm capacity through an LNG facility because there was not a  
11 competitive solicitation. What is the basis for his criticism?

12 A: Witness Dismukes references Rule 25-22.082, Florida Administrative  
13 Code, commonly referred to as the Bid Rule. He cites this as an example  
14 of the need for competitive solicitations in the form of a request for  
15 proposal ("RFP").<sup>4</sup>

16

17 Q: Is the Bid Rule applicable to an LNG facility used to provide firm gas  
18 capacity to an LDC?

19 A: No, the Bid Rule is only applicable to electrical power plants under the  
20 Florida Electrical Power Plant Siting Act ("PPSA"). The Commission is the  
21 exclusive forum for the determination of need for additional generating  
22 units under the PPSA and the bid rule is used, under certain  
23 circumstances, to assist the Commission in making its determination of

---

<sup>4</sup> Direct Testimony of David E. Dismukes, 49:9; 55:9 -56:18.

1           need. There is no statutory requirement to make a determination of need  
2           for an LNG facility used to provide firm gas capacity for an LDC.

3

4    Q:    Is an RFP required in all situations for new electrical power plants subject  
5           to the PPSA?

6    A:    No, there is an exemption allowed by the Bid Rule when certain conditions  
7           are met. The exemption is allowed when the utility can demonstrate that it  
8           has a lower cost alternative or a more reliable alternative than that which  
9           would reasonably result from an RFP.

10

11   Q:    Has the Commission recently granted an exemption from the  
12          requirements of an RFP?

13   A:    Yes, in Docket No. 20170122-EI, the Commission granted an exemption  
14          to Florida Power & Light for its modernization of its Lauderdale Plant. The  
15          Commission applied the exemption criteria found in the Bid Rule to grant  
16          the exemption. The Commission specifically found that the Lauderdale  
17          site provided access to transmission, natural gas pipelines, and water  
18          supply facilities near a major load pocket that can be utilized by the new  
19          generating unit.

20

21   Q:    Do you see any similarities with FCG's proposed LNG facility?

22   A:    Yes. Clearly the Bid Rule does not apply to the proposed LNG facility.  
23          However, if it did apply, the proposed LNG facility may very well be found

1 to be exempt from the RFP requirements. Like the site of the Lauderdale  
2 modernization, the proposed LNG facility is located at a large load pocket  
3 at the end of FCG's service area. And like the Lauderdale site, the  
4 proposed LNG facility has access to needed transmission infrastructure,  
5 i.e., the Jet Fuel Line, to enable the gas to be delivered at a number of city  
6 gates at the southern end of FCG's service area. I understand that FCG  
7 witnesses Becker and Wassell address the matter of the LNG facility  
8 being the lower cost alternative.

9

#### 10 **IV. INCENTIVE COMPENSATION**

11 Q: Please address the recommendation made by OPC Witness Willis to  
12 disallow a portion of FCG's incentive compensation.<sup>5</sup>

13 A: Witness Willis is recommending that \$383,105 (fully loaded) or 100  
14 percent, of FCG's long-term incentive pay be disallowed for ratemaking  
15 purposes. He also recommends a disallowance of capitalized long-term  
16 pay in the amount of \$558,275 (fully loaded). If his recommendations  
17 were adopted, it would mean that FCG would be making payments to  
18 employees consistent with its obligations to those employees and yet not  
19 have sufficient revenues to cover those obligations.

20

21 Q: Do you agree with the opinions offered by Witness Willis on incentive  
22 compensation?

---

<sup>5</sup> Direct Testimony of Marshall W. Willis, 12:1-14:16.

1 A: Witness Willis does not actually express any opinions of his own on the  
2 merits of incentive compensation. He merely cites to three previous  
3 Commission orders to conclude that 100 percent of long-term incentive  
4 pay should be disallowed for FCG in this case. As such, he has not made  
5 any evaluation or expressed any opinions on the importance of sound  
6 compensation policy for recruitment, retention, and overall financial  
7 viability of the company. His recommendations are inconsistent with  
8 sound regulatory policy and basic principles of ratemaking, and, if  
9 accepted, would be detrimental to the long-term best interests of FCG's  
10 customers.

11

12 Q: How are the recommendations by Witness Willis inconsistent with sound  
13 regulatory policy and basic principles of ratemaking?

14 A: A fundamental tenet of sound regulatory policy is to provide recovery of all  
15 reasonable and necessary costs expected to be incurred to provide  
16 service to customers. And a basic principle of ratemaking is to include all  
17 such costs as test year expenses in calculating a regulated company's net  
18 operating income. Only if the Commission finds that the expenses in  
19 question are unreasonable, unnecessary or not expected to be incurred,  
20 should they be disallowed in calculating the company's revenue  
21 requirement. In addition, another fundamental tenet of sound regulatory  
22 policy is to encourage regulated utilities to be efficient and provide high  
23 quality service to their customers. Sacrificing efficiency and quality of  
24 service in the long run to achieve temporary rate reductions is not in the  
25 customers' interest. All regulatory decisions have consequences, and

1 good regulatory policy results when these consequences are adequately  
2 considered. The recommendations by Witness Willis violate both of these  
3 tenets of sound regulatory policy. Even further, he has not presented any  
4 analysis of the employment market to determine what amount of  
5 compensation is reasonable and necessary to attract the workforce FCG  
6 seeks to retain.

7

8 Q: And you believe Witness Garvie's testimony results in sound regulatory  
9 policy for compensation programs?

10 A: Absolutely. By stark contrast to Witness Willis, Witness Garvie explains in  
11 detail that the overall compensation, including long-term incentive  
12 compensation, is reasonable, that it is necessary to attract and retain a  
13 qualified workforce, and that it is at or near the median of employee  
14 compensation paid by other regulated utilities. Witness Garvie also  
15 explains how incentive compensation tied to financial metrics is  
16 appropriate as part of a well-designed compensation package and is  
17 beneficial to customers.

18

19 Q: Is it your position that Commission precedent and policy supports the  
20 recovery of incentive pay tied to financial measures?

21 A: Yes. While the Commission reviews each utility's compensation costs on  
22 the facts unique to that utility, the Commission has recognized that  
23 incentive pay tied to financial metrics is an accepted and desirable way to  
24 simultaneously achieve corporate goals and to control costs for the benefit

1 of customers. The Commission has also determined that incentive  
2 compensation tied to financial metrics is an appropriate component to  
3 include within overall compensation to judge whether the overall  
4 compensation paid to employees is reasonable.

5

6 Q: Is there a Commission decision reflective of this policy?

7 A: Yes. There is a Florida Power Corporation rate case that provided for cost  
8 recovery of incentive compensation. There, the Commission found:

9 Incentive plans that are tied to the achievement of corporate  
10 goals are appropriate and provide an incentive to control costs.  
11 (Order No. PSC-92-1197-FOF-EI, issued October 22, 1992, in  
12 Docket No. 910890-EI, In re: Petition for a rate increase by  
13 Florida Power Corporation)

14 The Commission has also approved incentive compensation in rate cases  
15 for FCG's sister company, Gulf Power Company. The Commission's  
16 finding in the 2001 Gulf rate case, Order No. PSC-02-0787-FOF-EI (Page  
17 45), states:

18 To only receive a base salary would mean Gulf employees would  
19 be compensated at a lower level than employees at other  
20 companies. Therefore, an incentive pay plan is necessary for  
21 Gulf salaries to be competitive in the market. Another benefit of  
22 the plan is that 25% of an individual employee's salary must be  
23 re-earned each year. Therefore, each employee must excel to

1           achieve a higher salary. When the employees excel, we believe  
2           that the customers benefit from a higher quality of service.

3

4   Q:    Why has this been the policy of the Commission?

5   A:    I believe there are a number of reasons for this. First, the Commission's  
6       policy is consistent with the basic tenets of sound regulatory policy which I  
7       described earlier. Second, the Commission has recognized that having  
8       good management at utilities is essential for regulators to achieve their  
9       mission of having safe, reliable, and reasonably-priced service delivered  
10      to customers. The Commission has further understood that management  
11      needs sufficient tools and incentives to achieve these goals and that  
12      regulators should not attempt to "micro-manage" their regulated utilities.  
13      Finally, the Commission has appropriately recognized that not all issues in  
14      a rate proceeding are a simple situation of "us vs. them," where every  
15      issue has a clear winner and a clear loser. In reality, incentive  
16      compensation is a good example of a "win-win" situation.

17

18   Q:    What do you mean by a "win-win" situation?

19   A:    Incentive compensation facilitates an outcome where all stakeholders win.  
20       Shareholders get to invest in a company with employees motivated to  
21       achieve appropriate corporate goals. Management gets to apply  
22       compensation tools that they think are best to motivate and fairly  
23       compensate employees. And most importantly, customers pay no more  
24       than a reasonable amount in their rates and get a workforce that is

1 motivated to be efficient, to reduce costs where possible, and to maintain  
2 a high level of safe and reliable service. A financially healthy utility benefits  
3 all of its stakeholders – customers, employees and investors – by  
4 delivering quality service and earning a fair return on investment. A utility’s  
5 ability to earn a fair return assists in attracting the capital required to  
6 provide services to the customer. A financially healthy utility provides  
7 access to capital on reasonable terms and provides the ability to withstand  
8 financial adversity. Moreover, a financially healthy utility will also provide a  
9 lower cost of funds for necessary infrastructure investment, resulting in a  
10 lower price for the customer. These benefits are consistent with the goals  
11 of the Commission. In Gulf’s 2012 test year rate case, the Commission  
12 specifically recognized that ratepayers benefit from Gulf and Southern  
13 Company maintaining a healthy financial position:

14 We recognize that the financial incentives that Gulf employs as  
15 part of its incentive compensation plans may benefit ratepayers if  
16 they result in Gulf having a healthy financial position that allows  
17 the company to raise funds at a lower cost than it otherwise  
18 could.

19 (Order No. PSC-12-0179-FOF-EI, Page 94)

20

21 Q: Are financial goals an important component of both the short-term and  
22 long- term portions of FCG’s at-risk compensation?

23 A: Yes, they are. My testimony concerning the appropriateness and the  
24 associated customer benefits of incentive compensation based on



1 financial goals applies equally to both short-term and long-term  
2 compensation. Once again, the test is whether the amount is reasonable.  
3 As Mr. Garvie states in his testimony, the long-term portion of FCG's at-  
4 risk compensation is part of a balanced compensation plan, and when  
5 combined with short-term incentive compensation and base pay, the entire  
6 amount of compensation is at the median of the market. Therefore,  
7 customers get the benefits of motivated and focused utility employees and  
8 are paying no more than the market level of overall compensation.

9

10 Q: Do you agree with Witness Willis that the shareholders should bear the  
11 cost of long-term incentive compensation?

12 A: No. To me the most relevant issue is whether long-term incentive  
13 compensation is a cost of providing service to customers. It is, and as  
14 such, it is properly paid for by customers in their rates just like any other  
15 cost of providing service and should be based on its reasonableness.  
16 Witness Willis would have the Commission abandon its reasonableness  
17 standard and instead would impose a strict standard of disallowing an  
18 otherwise reasonable amount because of how it is paid.

19

20 Q: Doesn't Witness Willis refer to the same Gulf Power order to which you  
21 earlier referred to support his position that 100 percent of long-term  
22 incentive compensation should be disallowed?<sup>6</sup>

---

<sup>6</sup> Direct Testimony of Marshall W. Willis, 13:6-17.

1 A: Yes, he does and it is Order No. PSC-12-0179-FOF-EI. He relies on this  
2 Order as a policy pronouncement that long-term incentive pay should be  
3 automatically disallowed and borne totally by stockholders in every  
4 situation and for all companies. However, a careful reading of this Order  
5 reveals that the Commission did not abandon its reasonableness  
6 standard. Rather, the Commission evaluated the overall compensation  
7 levels of all employees receiving long-term incentive pay. The  
8 Commission determined that after removing long-term incentive pay from  
9 the amount of total compensation received that their salaries would still be  
10 at a reasonable level and at the market median. Witness Willis undertook  
11 no so evaluation. By contrast, Witness Garvie has made that evaluation  
12 and has determined that for FCG the overall compensation levels would  
13 be well below market median.

14

15 Q: You earlier indicated that Witness Willis was also recommending a  
16 substantial reduction to FCG's rate base tied to long-term incentive  
17 compensation. What is the basis for this recommendation and is it  
18 appropriate?

19 A: The basis for Witness Willis's adjustment is to account for the amount of  
20 long-term incentive compensation that is capitalized. As a general matter,  
21 if there is an adjustment to a test year expense, it is appropriate to adjust  
22 test year plant in service on a 13-month average basis for the amount of  
23 the test year costs that are capitalized. This is standard and is  
24 appropriate. However, Witness Willis' recommended adjustment goes  
25 way beyond the test year impacts. His adjustment retroactively reaches

1 back and includes capitalized amounts of long-term incentive  
2 compensation for the years 2014-17. This is not appropriate.

3

4 Q: Why is this inappropriate?

5 A: It is inappropriate for two reasons. First, it is a retroactive adjustment  
6 beyond the test year. Second, it somehow presupposes that the amount  
7 of long-term incentive compensation that was capitalized in previous years  
8 was inappropriate or imprudent. Witness Willis has made no such  
9 evaluation and determination. More importantly, neither has the  
10 Commission.

11

12 **V. CONCLUSION**

13 Q: What is your conclusion with regard to Witness Dismukes's testimony?

14 A: Contrary to Witness Dismukes's assertion, FCG's proposal to plan for the  
15 reasonable needs of all customers and to acquire additional firm capacity  
16 when needed is very much consistent with its tariff and its overarching  
17 requirement as a regulated public utility to provide safe and reliable  
18 service. By operation of its tariff and the Commission's rule on  
19 transportation service, FCG has effectively been operating as a provider of  
20 last resort to all its customers. This has enabled the development of a  
21 robust market for transportation services which has benefited all  
22 customers, including sales customers.

23

1           If adopted, Witness Dismukes's position would drive a wedge between  
2           transportation customers and sales customers. He would restrict FCG's  
3           ability to adequately plan for and provision reliable service to all its  
4           customers. Instead, he would leave transportation customers to "fend for  
5           themselves" so to speak, at a time in the market when many  
6           transportation customers are unsophisticated consumers of gas and  
7           others are essential use customers.

8

9           Sales customers could very likely be harmed also. This is because of the  
10          fact that FCG does not have the ability to disconnect service to those  
11          specific customers whose marketers fail to inject gas. Moreover, Witness  
12          Dismukes's position could result in less throughput and reduce the benefit  
13          of spreading fixed costs over a larger base.

14

15          In the context of this specific rate case for FCG, the Commission must  
16          determine the amount of firm capacity needed to reliably and cost  
17          effectively serve FCG's customers and to set rates to recover the cost of  
18          acquiring that amount of firm capacity. Witness Dismukes's position  
19          would fundamentally change the Company's planning criteria and would  
20          restrict it to only plan for sales customers. While his position may  
21          temporarily reduce the revenue requirement in this specific case, I do not  
22          believe his approach is in the best interest of all customers in the long  
23          term and is not fundamentally sound from an overall regulatory policy  
24          perspective. Nevertheless, if the Commission were so inclined to adopt

1 his position in this case, I believe it would raise questions for the entire  
2 natural gas industry in Florida. In short, Witness Dismukes raises a  
3 fundamental regulatory policy issue that is much larger than a single  
4 revenue requirements issue in a single rate case.

5

6 Q: What is your conclusion with regard to Witness Willis's testimony?

7 A: Witness Willis has not made any evaluation or expressed any opinions on  
8 the importance of sound compensation policy for recruitment, retention,  
9 and overall financial viability of the company. Neither has he opined on  
10 the amount of compensation that is reasonable. Rather, he relies on a  
11 limited reading of a Commission order to essentially recommend that all  
12 long-term incentive compensation should be disallowed for every  
13 company in every circumstance, regardless of the reasonableness of the  
14 overall expenditures. His recommendations are inconsistent with sound  
15 regulatory policy and basic principles of ratemaking, and, if accepted,  
16 would be detrimental to the long-term best interests of FCG's customers.

17

18 In addition, Witness Willis attempts to increase the amount of his rate  
19 base disallowance associated with capitalized long-term incentive  
20 compensation by retroactively applying it to the years 2014-17. This is  
21 inappropriate and should be rejected.

22

23 Q: Does this conclude your testimony?

24 A: Yes.

# Terry Deason\*



## Special Consultant (Non-Lawyer)\*

Phone: (850) 425-6654

Fax: (850) 425-6694

E-Mail: [tdeason@radeylaw.com](mailto:tdeason@radeylaw.com)

### Practice Areas:

- Energy, Telecommunications, Water and Wastewater and Public Utilities

### Education:

- United States Military Academy at West Point, 1972
- Florida State University, B.S., 1975, Accounting, summa cum laude
- Florida State University, Master of Accounting, 1989

### Professional Experiences:

- The Radey Law Firm, Special Consultant, 2007 - Present
- Florida Public Service Commission, Commissioner, 1991 - 2007
- Florida Public Service Commission, Chairman, 1993 - 1995, 2000 - 2001
- Office of the Public Counsel, Chief Regulatory Analyst, 1987 - 1991
- Florida Public Service Commission, Executive Assistant to the Commissioner, 1981 - 1987
- Office of the Public Counsel, Legislative Analyst II and III, 1979 - 1981
- Ben Johnson Associates, Inc., Research Analyst, 1978 - 1979
- Office of the Public Counsel, Legislative Analyst I, 1977 - 1978
- Quincy State Bank Trust Department, Staff Accountant and Trust Assistant, 1976 - 1977

### Professional Associations and Memberships:

- National Association of Regulatory Utility Commissioners (NARUC), 1993 - 1998,  
*Member, Executive Committee*
- National Association of Regulatory Utility Commissioners (NARUC), 1999 - 2006,  
*Board of Directors*



## Terry Deason\*

- National Association of Regulatory Utility Commissioners (NARUC), 2005-2006,  
*Member, Committee on Electricity*
- National Association of Regulatory Utility Commissioners (NARUC), 2004 - 2005,  
*Member, Committee on Telecommunications*
- National Association of Regulatory Utility Commissioners (NARUC), 1991 - 2004,  
*Member, Committee on Finance and Technology*
- National Association of Regulatory Utility Commissioners (NARUC), 1995 - 1998,  
*Member, Committee on Utility Association Oversight*
- National Association of Regulatory Utility Commissioners (NARUC) 2002 *Member,*  
*Rights-of-Way Study*
- Nuclear Waste Strategy Coalition, 2000 - 2006, *Board Member*
- Federal Energy Regulatory Commission (FERC) South Joint Board on Security  
*Constrained Economic Dispatch, 2005 - 2006, Member*
- Southeastern Association of Regulatory Utility Commissioners, 1991 - 2006, *Member*
- Florida Energy 20/20 Study Commission, 2000 - 2001, *Member*
- FCC Federal/State Joint Conference on Accounting, 2003 - 2005, *Member*
- Joint NARUC/Department of Energy Study Commission on Tax and Rate  
*Treatment of Renewable Energy Projects, 1993, Member*
- Bonbright Utilities Center at the University of Georgia, 2001, *Bonbright Distinguished Service*  
*Award Recipient*
- Eastern NARUC Utility Rate School - Faculty Member

