

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Rate Increase by Florida  
City Gas

DOCKET NO. 20220069-GU

FILED: November 15, 2022

**PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure (Order No. PSC-2022-0224-PCO-GU) issued June 22, 2022, hereby submit this Prehearing Statement.

**APPEARANCES:**

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c/o The Florida Legislature  
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On behalf of the Citizens of the State of Florida

**1. WITNESSES:**

<b>Witness</b>	<b>Subject Matter</b>	<b>Issue #</b>
Helmuth W. Schultz, III	Revenue Requirement	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed Issues A - I
David J. Garrett	Cost of Capital and Depreciation	5-10, 25-30, 32, 51

**2. EXHIBITS:**

<b>Witness</b>	<b>Proffered by</b>	<b>Exhibit No.</b>	<b>Description</b>	<b>Issue #</b>
<b>Direct</b>				
Helmuth W. Schultz, III	OPC	HWS - 1	Resume of Helmuth W. Schultz, III	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed

				Issues A - I
Helmuth W. Schultz, III	OPC	HWS – 2	Schedules	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed Issues A - I
Helmuth W. Schultz, III	OPC	HWS – 3	Composite of RCS Exhibits 4 & 5 from 20220015-EI	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed Issues A - I
Helmuth W. Schultz, III	OPC	HWS – 4	Composite FCG Discovery Responses	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed Issues A - I
David J. Garrett	OPC	DJG - 1	Curriculum Vitae of David J. Garrett	1, 6, 12-14, 16, 18, 23-25,32, 39-42, 45-55, 57, 67, 77, OPC Proposed Issues A - I
David J. Garrett	OPC	DJG – 2	Proxy Group Summary	5-10, 25-30, 32, 51
David J. Garrett	OPC	DJG – 3	DCF Stock Prices	5-10, 25-30, 32, 51
David J. Garrett	OPC	DJG – 4	DCF Dividend Yields	5-10, 25-30, 32, 51
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David J. Garrett	OPC	DJG-18	Summary Accrual Adjustment	5-10, 25-30, 32, 51
David J. Garrett	OPC	DJG-19	Depreciation Parameter Comparison	5-10, 25-30, 32, 51
David J. Garrett	OPC	DJG-20	Detailed Rate Comparison	5-10, 25-30, 32, 51
David J. Garrett	OPC	DJG-21	Depreciation Rate Development	5-10, 25-30, 32, 51
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**3. STATEMENT OF BASIC POSITION**

The Office of Public Counsel’s (OPC) basic position in this case is that Florida City Gas (FCG) has the burden to prove that every aspect of their requested rate increase is appropriate. The case filed by FCG grossly overstates the revenue requirement needed to provide safe and reliable service. The Commission may only approve the parts of FCG’s rate request which are fair, just, and reasonable. In today’s tough economic climate, FCG’s customers are already under great financial pressure, so any increase will have a significant impact on them. Now more than ever, the Commission must consider that impact when evaluating FCG’s rate request. There are aspects of FCG’s rate request, like the inflated equity ratio, excessive profit request, proposed Reserve Surplus Amortization Mechanism (RSAM), and the effort to resurrect an extinguished acquisition adjustment, to name a few, that the Commission must disallow as they are inappropriate and inconsistent with the Commission’s established policy. OPC’s expert witnesses, Helmuth W. Schultz, III and David Garrett, will testify in depth about the flawed aspects of FCG’s requested rate increase. Ultimately, the Commission must hold FCG to its burden and only approve the portions of FCG’s rate request which are fair, just, and reasonable. The Commission does not possess the authority to create the RSAM in a contested hearing by artificially manipulating depreciation parameters and expense. Likewise, the Commission lacks the authority to agree to the unenforceable, illusory four year rate plan proposed by FCG.

**4. STATEMENT OF FACTUAL ISSUES AND POSITIONS**

**ISSUE 1:** Is FCG’s projected test period of the twelve months ending December 31, 2023, appropriate?

OPC Position: No. If there are no imminent plans to merge the company with another and with appropriate adjustments, the proposed 2023 test year may be representative of the period of time in which rates will be in effect. FCG has failed to meet its burden of demonstrating the appropriateness of the test year since it has refused to demonstrate that there will be no merger activities that will affect the appropriateness of the test year. (Schultz)

**ISSUE 2:** Are FCG's forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, appropriate? If not, what adjustments should be made?

OPC Position: No. FPL appears to have misstated these elements of the forecast and an adjustment should be made based on information being developed in discovery and at hearing.

**ISSUE 3:** Are FCG's estimated revenues from sales of gas by rate class at present rates for the projected test year appropriate? If not, what adjustments should be made?

OPC Position: No. FPL appears to have misstated these elements of the revenue estimate and an adjustment should be made based on information being developed in discovery and at hearing.

### **QUALITY OF SERVICE**

**ISSUE 4:** Is the quality of service provided by FCG adequate?

OPC Position: At least one customer has submitted a comment to the Commission in this docket and expressed dissatisfaction with the quality of service provided by FCG. Furthermore it is unclear if some of the testimony of the individuals who appeared at the customer service hearings reflect actual service provided by FCG. The merits of this testimony and other customer information adduced through the hearing should be considered. The OPC reserves the right to update its position based on customer testimony.

### **DEPRECIATION STUDY**

**ISSUE 5:** Based on FCG's 2022 Depreciation Study, what are the appropriate depreciation parameters (e.g. service lives, remaining life, net salvage percentage, and reserve percentage) and resulting depreciation rates for each distribution and general plant account?

OPC Position: The depreciation parameters and resulting depreciation rates are shown in OPC Witness Garrett's testimony and Exhibits DJG-19 and DJG-20. These parameters and rates are proposed for the legitimate establishment -- in the Commission's litigated ratemaking process -- of depreciation expense to the lives of the assets and not for the purpose of creating an artificial earnings manipulation device. (Garrett)

**ISSUE 6:** If the Commission approves FCG's proposed RSAM (Issue 67), what are the appropriate depreciation parameters (e.g. service lives, remaining lives, net salvage percentages, and reserve percentages) and depreciation rates?

OPC Position: The Commission does not have the authority to, and should not, approve FCG's proposed RSAM. The Commission may not establish depreciation rates in a general rate case for the express purpose of creating a depreciation imbalance (surplus) based on parameters which are not factually based on a depreciation study. Such a practice would be a departure from generally accepted accounting principles. It would also eliminate any incentive for FCG to generate efficiencies, and it would be grossly unfair to FCG's current and future customers. (Schultz; Garrett)

**ISSUE 7:** Based on the application of the depreciation parameters that the Commission has deemed appropriate to FCG's data, and a comparison of the theoretical reserves to the book reserves, what, if any, are the resulting imbalances?

OPC Position: The depreciation parameters and resulting depreciation rates are shown in OPC Witness Garrett's testimony and Exhibits DJG-19 and DJG-20. The resulting imbalance, if any, with these adjustments is a fallout number. (Garrett)

**ISSUE 8:** What, if any, corrective depreciation reserve measures should be taken with respect to any imbalances identified in Issue 7?

OPC Position: Any imbalances identified by adoption of the depreciation parameters and resulting depreciation rates shown in OPC Witness Garrett's testimony and exhibits should, consistent with Commission practice, be allocated over the service life of the assets using the parameters included in OPC Witness Garrett's testimony and exhibits. The Commission may not establish depreciation rates in a general rate case for the express purpose of creating a depreciation imbalance (surplus) based on parameters which are not factually based on a depreciation study. Such a practice would be a departure from generally accepted accounting principles. It would also eliminate any incentive for FCG to generate efficiencies, and it would be grossly unfair to FCG's current and future customers. (Garrett)

**ISSUE 9:** What should be the implementation date for revised depreciation rates and amortization schedules?

OPC Position: The depreciation parameters and resulting depreciation rates are as shown in OPC Witness Garrett's testimony and exhibits and should be implemented upon approval by the Commission, effective January 1, 2023. (Garrett)

**ISSUE 10:** Should FCG's depreciation rates approved in this proceeding remain in effect until base rates are reset in FCG's next general base rate proceeding?

OPC Position: Yes, FCG's appropriately adjusted depreciation rates should remain in effect at least until FCG's next general base rate proceeding. (Garrett)

## RATE BASE

**ISSUE 11:** Has FCG made the appropriate adjustment to Rate Base to transfer the SAFE investments as of December 31, 2022 from clause recovery to base rates?

OPC Position: No position.

**ISSUE 12:** Should FCG's proposed Advanced Metering Infrastructure (AMI) Pilot be approved? If so, what adjustments, if any, should be made?

OPC Position: No, the cost for this experimental program should be borne by shareholders, not customers, since it is not known whether there will be a benefit. The adjustments shown on HWS-2, page 8 of 38, Sch. B-3, of a plant in service adjustment of \$837,500 and related accumulated depreciation adjustment of \$23,456 and should be made. In addition, the related O&M expense of \$20,000 and depreciation expense of \$46,913 should be reduced as shown in Issue 49 and HWS-2, page 8 of 28, Schedule B-3. These amounts are subject to revision based on discovery. (Schultz)

**ISSUE 13:** What is the appropriate amount of plant in service for FCG's delayed LNG facility that was approved in its last rate case?

OPC Position: OPC Witness Schultz's testimony and exhibits address the appropriate amount of plant-in-service. The plant in service for the delayed LNG facility should be reduced by at least \$7,692,308 and the associated accumulated depreciation of \$56,253. Further adjustments may be warranted based on the actual in-service date of the facility. (Schultz)

**ISSUE 14:** What is the appropriate level of plant in service for the projected test year? (Fallout Issue)

OPC Position: OPC Witness Schultz's testimony and exhibits demonstrate that the appropriate amount of plant-in-service to include in the projected test year should be no greater than \$624,911,908. This includes an adjustment to remove \$9,637,988 of overstated projected plant in service plus \$460,884 of accumulated depreciation. (Schultz)

**ISSUE 15:** Has FCG made the appropriate adjustments to remove all non-utility activities from Plant in Service, Accumulated Depreciation, and Working Capital?

OPC Position: No position.

**ISSUE 16:** Should any adjustments be made to the amounts included in the projected test year for acquisition adjustment and accumulated amortization of acquisition adjustment?

OPC Position: Yes, the acquisition adjustment in the amount of \$21,656,835 and the accumulated amortization of acquisition adjustment in the amount of \$13,475,365 should be disallowed pursuant to prior Commission practice. Acquisition adjustments do not survive subsequent purchases of a utility's assets. Amortization expense in the amount of \$721,894 should also be removed from the income statement. (Schultz)

**ISSUE 17:** What is the appropriate level of CWIP to include in the projected test year?

OPC Position: No position at this time.

**ISSUE 18:** What is the appropriate level of Gas Plant Accumulated Depreciation and Amortization for the projected test year?

OPC Position: OPC Witness Schultz addresses this in his testimony and exhibits including, but not limited to, Schedule B. The appropriate level of Accumulated Depreciation and Amortization for the projected test year should be at least \$208,172,408. (Schultz)

**ISSUE 19:** Have under recoveries and over recoveries related to the Purchased Gas Adjustment, Energy Conservation Cost Recovery, and Area Expansion Plan been appropriately reflected in the Working Capital Allowance?

OPC Position: No position.

**ISSUE 20:** Should the unamortized balance of Rate Case Expense be included in Working Capital and, if so, what is the appropriate amount to include?

OPC Position: No, unamortized rate case expense should not be included in working capital for a gas company pursuant to Commission policy.

**ISSUE 21:** What is the appropriate amount of deferred pension debit in working capital for FCG to include in rate base?

OPC Position: No position.

**ISSUE 22:** Should the unbilled revenues be included in working capital?

OPC Position: No position.



**ISSUE 23:** What is the appropriate level of working capital for the projected test year?

OPC Position: OPC Witness Schultz's testimony and exhibits including, but not limited to, Schedule B, address the appropriate adjustments to the Working Capital Allowance. Working capital should be no more than \$10,103,595. (Schultz)

**ISSUE 24:** What is the appropriate level of rate base for the projected test year? (Fallout Issue)

OPC Position: OPC Witness Schultz's testimony and exhibits including, but not limited to, Schedule B, page 1, address the appropriate adjustments to rate base. The adjusted amount should be no more than \$455,035,463. (Schultz)

### **COST OF CAPITAL**

**ISSUE 25:** What is the appropriate amount of accumulated deferred taxes to include in the projected test year capital structure?

OPC Position: OPC Witness Garrett's testimony and exhibits including, but not limited to, Exhibit DJG-17, as well as OPC Witness Schultz's testimony and exhibits including, but not limited to HWS-2, Schedule D, address the appropriate amount of accumulated deferred taxes to include in the projected test year capital structure. The appropriate amount of accumulated deferred taxes is at least \$50,182,538. (Schultz; Garrett)

**ISSUE 26:** What is the appropriate amount and cost rate for short-term debt to include in the projected test year capital structure?

OPC Position: The appropriate amount of short-term debt \$18,821,767 and cost rate for short-term debt to include in the projected test year capital structure, which is 1.78%. (Garrett)

**ISSUE 27:** What is the appropriate amount and cost rate for long-term debt to include in the projected test year capital structure?

OPC Position: The appropriate amount of long term debt is \$194,277,560 and the cost rate is 4.28%. (Garrett)

**ISSUE 28:** What is the appropriate amount and cost rate for customer deposits to include in the capital structure?

OPC Position: The appropriate amount of customer deposits is \$ \$3,535,924 and the cost rate is 2.64%. (Garrett)

**ISSUE 29:** What is the appropriate equity ratio to use in the capital structure for ratemaking purposes?

OPC Position: The Commission should authorize an equity ratio of no more than 46.9%.  
(Garrett)

**ISSUE 30:** What is the appropriate authorized return on equity (ROE) to use in establishing FCG's projected test year revenue requirement?

OPC Position: OPC Witness Garrett's testimony and exhibits address the appropriate authorized ROE of 9.25% to include in the projected test year capital structure shown on Exhibit HWS-2, Schedule D, page 1 of 2. (Garrett)

**ISSUE 31:** Has FCG made the appropriate adjustments to remove all non-utility investments from the common equity balance?

OPC Position: No position.

**ISSUE 32:** What is the appropriate weighted average cost of capital to use in establishing FCG's projected test year revenue requirement?

OPC Position: OPC Witnesses Garrett and Schultz testimony and exhibits show the appropriate weighted average cost of capital of 5.75% to use in establishing the projected test year revenue requirement. (Schultz; Garrett)

### **NET OPERATING INCOME**

**ISSUE 33:** Has FCG properly removed Purchased Gas Adjustment and Natural Gas Conservation Cost Recovery Clause revenues, expenses, and taxes-other-than-income from the projected test year?

OPC Position: No position.

**ISSUE 34:** Has FCG made the appropriate adjustment to Net Operating Income to remove amounts associated with the transfer of SAFE investments as of December 31, 2022 from clause recovery to base rates?

OPC Position: No position.

**ISSUE 35:** Should FCG's proposal to transfer outside service costs incurred for clause dockets from base rates to each of the respective cost recovery clause dockets be approved and, if so, has FCG made the appropriate adjustments to remove all such outside service costs incurred for clause dockets from the projected test year operating revenues and operating expenses?

OPC Position: No position.

**ISSUE 36:** What is the appropriate amount of miscellaneous revenues?

OPC Position: No position at this time.

**ISSUE 37:** Is FCG's projected Total Operating Revenues for the projected test year appropriate? (Fallout Issue)

OPC Position: No.

**ISSUE 38:** Has FCG made the appropriate adjustments to remove all non-utility activities from operation expenses, including depreciation and amortization expense?

OPC Position: No position.

**ISSUE 39:** What is the appropriate amount of salaries and benefits to include in the projected test year?

OPC Position: Base payroll should be reduced by \$793,501. Excessive incentive compensation should be reduced by \$524,119. Incentive compensation should be reduced by \$398,746. Long term incentive compensation should be reduced by \$163,461. Benefits should be reduced to match actual employee complement in the amount of \$49,533. Payroll taxes should be reduced by \$122,767 as reflected in Issue 52. Affiliate payroll related expenses should be reduced by the amount of \$405,440, and affiliate SERP expense should be reduced by \$29,576. (Schultz)

**ISSUE 40:** What is the appropriate amount of pensions and post-retirement benefits expense to include in the projected test year?

OPC Position: Affiliate SERP costs in the amount of \$29,576 should be removed as shown in Issue 39. (Schultz)

**ISSUE 41:** Is the injuries and damages expense in the test year reasonable?

OPC Position: No. OPC Witness Schultz addresses this issue in his testimony and exhibits including but not limited to, Schedule C-5. The Commission should adjust the injuries and damages expense by \$212,790. (Schultz)

**ISSUE 42:** Is the insurance expense in the test year reasonable and/or appropriate?

OPC Position: No. OPC Witness Schultz addresses this issue in his testimony and exhibits including but not limited to, Schedule C-6. The Commission should adjust the Directors & Officers Liability (DOL) insurance amount by \$9,431 (Schultz)

**ISSUE 43:** Is the level of projected contractor cost reasonable, appropriate and/or justified?

OPC Position: No position.

**ISSUE 44:** Should the projected test year O&M expenses be adjusted to reflect changes to the non-labor trend factors for inflation and customer growth?

OPC Position: No position.

**ISSUE 45:** Should FCG's proposal to continue the Storm Damage Reserve provision included in the 2018 Settlement Agreement be approved and, if so, what is the appropriate annual storm damage accrual and target reserve amount?

OPC Position: No. The Storm Reserve Accrual in the amount of \$57,500 should be discontinued and removed. (Schultz)

**ISSUE 46:** Is a Parent Debt Adjustment pursuant to Rule 25-14.004, Florida Administrative Code, appropriate, and if so, what is the appropriate amount?

OPC Position: Yes, a Parent Debt Adjustment is appropriate in this case. OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedules C and C-12. The Commission should approve a Parent Debt Adjustment of \$382,452. (Schultz)

**ISSUE 47:** What is the appropriate annual amount and amortization period for Rate Case Expense?

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C-8. Rate case expense should be amortized over four years. The appropriate annual amount of rate case expense should be reduced by \$142,785. (Schultz)

**ISSUE 48:** Should an adjustment be made to Uncollectible Accounts and for Bad Debt in the Revenue Expansion Factor?

OPC Position: No Position.

**ISSUE 49:** What is the appropriate amount of projected test year O&M expenses? (Fallout Issue)

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C. The total amount of O&M expense, including removal of AMI O&M in the amount of \$20,000, should be reduced to no more than \$23,174,085. AMI O&M expense should be removed from the projected test year since the Commission should not grant FCG's request to burden customers with the cost of this experimental program. OPC Witness Schultz addresses this in his testimony and exhibits including, but not limited to, Schedule C-7. (Schultz)

**ISSUE 50:** Should any adjustments be made to the amounts included in the projected test year for amortization expense associated with the acquisition adjustment?

OPC Position: Yes, amortization expense associated with the acquisition adjustment in the amount of \$721,894 should be removed. (Schultz)

**ISSUE 51:** What is the appropriate amount of Depreciation and Amortization Expense for the projected test year?

OPC Position: The total amount of Depreciation and Amortization Expense should be reduced to no more than \$18,189,244, after making the adjustments identified in lines 18-22 of Exhibit HWS-2, Schedule C, page 2 of 2. (Schultz; Garrett)

**ISSUE 52:** What is the appropriate amount of projected test year Taxes Other than Income?

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C. The total amount of Taxes Other than Income should be reduced to no more than \$6,263,843, after the payroll tax adjustment of \$122,767. See also Issue 39. (Schultz)

**ISSUE 53:** What is the appropriate amount of projected test year Income Tax Expense? (Fallout Issue)

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C. The appropriate amount of income tax expense is no more than \$241,372. (Schultz)

**ISSUE 54:** What is the appropriate amount of Total Operating Expenses for the projected test year? (Fallout Issue)

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C. The Total amount of Operating Expenses should be reduced to no more than \$49,398,824. (Schultz)

**ISSUE 55:** What is the appropriate amount of Net Operating Income for the projected test year? (Fallout Issue)

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C. The total amount of Net Operating Income should be increased to at least \$15,342,115. (Schultz)

### **REVENUE REQUIREMENTS**

**ISSUE 56:** What are the appropriate revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FCG?

OPC Position: No position.

**ISSUE 57:** What is the appropriate annual operating revenue increase for the projected test year? (Fallout Issue)

OPC Position: The Commission should authorize a base rate revenue increase of no more than \$4,805,981. (Schultz)

### **COST OF SERVICE AND RATE DESIGN**

**ISSUE 58:** Is FCG's proposed cost of service study appropriate and, if so, should it be approved for all regulatory purposes until base rates are reset in FCG's next general base rate proceeding?

OPC Position: No position.

**ISSUE 59:** If the Commission grants a revenue increase to FCG, how should the increase be allocated to the rate classes?

OPC Position: No position.

**ISSUE 60:** Are FCG's proposed Customer Charges appropriate?

OPC Position: No Position.

**ISSUE 61:** Are FCG's proposed per therm Distribution Charges appropriate?

OPC Position: No Position.

**ISSUE 62:** Are FCG's proposed Demand Charges appropriate?

OPC Position: No Position.

**ISSUE 63:** Are FCG's proposed connect and reconnection charges appropriate?

OPC Position: No Position.

**ISSUE 64:** Is FCG's proposed per transportation customer charge applicable to Third Party Suppliers appropriate?

OPC Position: No Position.

**ISSUE 65:** What is the appropriate effective date for FCG's revised rates and charges?

OPC Position: The effective date of FPUC's revised rates and charges should allow for time for implementation promptly after the Commission's final order in this matter.

**ISSUE 66:** Should the Commission give staff administrative authority to approve tariffs reflecting Commission approved rates and charges?

OPC Position: No Position.

### **OTHER ISSUES**

**ISSUE 67:** Should the Commission approve FCG's requested Reserve Surplus Amortization Mechanism (RSAM)?

OPC Position: FCG's requested rate increase is built around the RSAM. Absent the agreement of the parties, the Commission lacks the authority to approve the request as filed. The Commission cannot and should not approve the RSAM. OPC Witness Schultz extensively demonstrates in his testimony why the Commission should deny this request. In addition, the Commission may not establish depreciation rates in a general rate case for the express purpose of creating a depreciation imbalance

(surplus) based on parameters which are not factually based on a depreciation study. Such a practice would be a departure from generally accepted accounting principles. It would also eliminate any incentive for FCG to generate efficiencies, and it would be grossly unfair to FCG's current and future customers. (Schultz; legal issue)

**ISSUE 68:** Should the Commission approve FCG's proposal for addressing a change in tax law, if any that occurs during or after the pendency of this proceeding?

OPC Position: No. This issue should be stricken from the case based on Commission precedent.

**ISSUE 69:** Should the Commission approve FCG's proposal to continue the SAFE program to include additional mains and services to be relocated from rear property easements to the street front? If so, what adjustments, if any, should be made?

OPC Position: No position.

**ISSUE 70:** Should the Commission approve FCG's proposal to expand the SAFE program to include replacement of "orange pipe"? If so, what adjustments, if any, should be made?

OPC Position: No position.

**ISSUE 71:** Should the Commission approve FCG's requested four-year rate plan?

OPC Position: No. The so-called four-year rate plan cannot be lawfully implemented because the Commission lacks the authority to deny the company rate-relief if it demonstrates that it is earning outside of its established range. This type of plan is an illusion and is cannot be defined. FCG's commitment is unenforceable against the current owners and any future owners of the company. Regarding portions of FCG's requested rate increase, including FCG's request to maintain the acquisition adjustment, the Commission does not have the authority, absent an agreement of the parties, to approve the request as filed. (Schultz; legal issue)

**ISSUE 72:** Should FCG be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case?

OPC Position: Yes, the Commission should require FCG to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case.



**ISSUE 73:** Should this docket be closed?

OPC Position: No position at this time.

### **OPC PROPOSED ISSUES:**

#### **Legal:**

**ISSUE A:** Does the Commission have the statutory authority to grant FCG's requested rate increase?

OPC Position: Regarding portions of FCG's requested rate increase, including FCG's request to maintain the acquisition adjustment, the Commission does not have the authority, absent an agreement of the parties, to approve the request as filed. The so-called four-year rate plan cannot be lawfully implemented because the Commission lacks the authority to deny the company rate relief if it demonstrates that it is earning outside of its established range. This type of plan is an illusion and it cannot be defined. FCG's commitment is unenforceable against the current owners and any future owners of the company. (Schultz; legal issue)

**ISSUE B:** Does the Commission have the statutory authority to grant FCG's requested four-year plan?

OPC Position: Regarding portions of FCG's requested rate increase, including FCG's request to maintain the acquisition adjustment, the Commission does not have the authority, absent an agreement of the parties, to approve the request as filed. The so-called four-year rate plan cannot be lawfully implemented because the Commission lacks the authority to deny the company rate relief if it demonstrates that it is earning outside of its established range. This type of plan is an illusion and it cannot be defined. FCG's commitment is unenforceable against the current owners and any future owners of the company. (Schultz; legal issue)

#### **Net Operating Income:**

**ISSUE C:** Should an adjustment be made to the amount of Directors and Officers Liability Insurance expense that FCG included in the test year?

OPC Position: Yes, OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C-6. (Schultz)

**ISSUE D:** Should the AMI O&M expense be removed from the projected test year O&M expenses?

OPC Position: Yes, AMI O&M expense should be removed from the projected test year since the Commission should not grant FCG's request to burden customers with the cost of this experimental program. OPC Witness Schultz addresses this in his testimony and exhibits including, but not limited to, Schedule C-7. (Schultz)

**ISSUE E:** What is the appropriate amount of the affiliate expense to be included in the projected test year?

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C-9. The amount of affiliate expense should be reduced by \$405,440 to \$851,787. (Schultz)

**ISSUE F:** What is the appropriate amount of incentive compensation expense to include in the projected test year?

OPC Position: OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule C-2. The incentive compensation amount should be reduced by \$1,086,326. (Schultz)

#### **Depreciation Study:**

**ISSUE G:** Absent a stipulation of the parties, does the Commission have the authority to establish depreciation rates in a general rate case for the express purpose of creating a depreciation imbalance (surplus) and which are based on parameters which are not factually based on a depreciation study?

OPC Position: No, the Commission may not establish depreciation rates in a general rate case for the express purpose of creating a depreciation imbalance (surplus) based on parameters which are not factually based on a depreciation study. Such a practice would be a departure from generally accepted accounting principles. It would also eliminate any incentive for FCG to generate efficiencies, and it would be grossly unfair to FCG's current and future customers. (Schultz; legal issue)

#### **Rate Base:**

**ISSUE H:** Has FCG properly accounted for the LNG facility?

OPC Position: No. OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule B-2. (Schultz)

**ISSUE I:** Are all LNG costs that are included in the Minimum Filing Requirements prudent?

OPC Position: No. OPC Witness Schultz addresses this issue in his testimony and exhibits including, but not limited to, Schedule B-2. (Schultz)

#### **5. STIPULATED ISSUES**

None at this time.

#### **6. PENDING MOTIONS**

OPC expects to file a motion soon regarding witness scheduling.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

OPC has no pending requests of claims for confidentiality at this time.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT**

OPC has no objections to the qualification of any witnesses as an expert in the field which they pre-filed testimony as of the present date.

9. **SEQUESTRATION OF WITNESSES**

OPC does not request the sequestration of any witness at this time.

10. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE**

There are no requirements of the Order Establishing Procedure with which OPC cannot comply.

Respectfully submitted,

Richard Gentry  
Public Counsel

*/s/ Mary A. Wessling*

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**CERTIFICATE OF SERVICE**  
**DOCKET NOS. 20220069-GU**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 15<sup>th</sup> day of November 2022, to the following:

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