

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of 2025
depreciation study and for approval to amortize
reserve imbalance, by Florida City Gas.

DOCKET NO. 20250035-GU
ORDER NO. PSC-2025-0442-PCO-GU
ISSUED: December 2, 2025

ORDER GRANTING IN PART FLORIDA CITY GAS'S
MOTION TO STRIKE EXHIBIT TO STAFF'S TESTIMONY

Background

Florida City Gas (FCG) filed a Petition for Approval of 2025 Depreciation Study and for Approval to Amortize Reserve Imbalance on February 24, 2025. On November 13, 2025, Commission Staff submitted the direct testimony of Edwin A. Kunkler, along with five exhibits. On November 14, 2025, FCG filed its Motion to Strike Exhibit to Staff's Testimony or, in the Alternative, Motion in Limine (FCG Motion). On November 19, 2025, the Office of Public Counsel (OPC) filed Citizens' Response to FCG's Motion to Strike Exhibit to Staff's Testimony, or, in the Alternative, Motion in Limine (OPC Response). On November 21, 2025, Commission Staff filed its Response to FCG's Motion to Strike Exhibit to Staff's Testimony or, in the Alternative, Motion in Limine (Staff's Response).

The FCG Motion seeks to strike Exhibit EAK-5 from the direct testimony of Edwin A. Kunkler. Exhibit EAK-5 was a reproduction of the 2022 Depreciation Study (2022 Study or Exhibit) that was entered as an exhibit as part of the testimony of Ned Allis on behalf of FCG.¹ FCG argues that Exhibit EAK-5 is irrelevant and immaterial and that its inclusion in the instant case is unduly prejudicial to FCG. FCG also argues that the exhibit constitutes hearsay under Rule 28-106.213, Florida Administrative Code (F.A.C.), and should therefore be excluded. This matter is currently set for hearing on December 11, 2025.

Arguments

FCG argues that the study is dated, was not the preferred or primary recommendation when filed, nor was it approved or accepted by the Commission, and therefore, it is not a type of evidence commonly relied upon by reasonably prudent persons as required under applicable Florida Statutes. Commission staff argues the 2022 Study still offers insight into FCG's instant Petition in this case.² Likewise, OPC argues that, at a minimum, the contrast of the 2022 Study to the one submitted in the instant docket makes the 2022 Study relevant.³ OPC also points to FCG's own Witness Lee referencing the study multiple times, therefore seeming to rely on it to at least some degree.⁴ FCG also argues that the acquisition of FCG by Chesapeake Utilities

¹ Docket No. 20220069-GU, Petition for Rate Increase by Florida City Gas.

² Staff Response at page 2.

³ OPC Response at page 3.

⁴ Id. at page 7.

Company results in the 2022 Study being irrelevant, immaterial, and unduly repetitious.⁵ Commission Staff argued in response that nothing about the acquisition makes the study unreliable. OPC argues there is no basis to exclude the 2022 Depreciation Study for staleness and that “[t]he study is as fresh today as it was when filed.”⁶

FCG additionally argues allowing entry of the exhibit would be prejudicial to FCG as there would not be any ability to conduct discovery or cross-examination of its original preparer, Ned Allis. Commission Staff argued that FCG has created the conditions which required Staff to submit the 2022 Study, and FCG’s own witness referring to the study would prejudice other parties who are not able to introduce the 2022 Study as an exhibit. OPC argues, “[t]he customers of FCG who were not privy to the sale negotiations or the decision that the Company should be sold immediately after the base rates were set, should not be deprived of the benefit of the completeness of information that the Staff is rightfully providing.”⁷

FCG finally argues the exhibit constitutes hearsay and therefore should be excluded. Commission Staff argues, regardless of whether or not the exhibit is hearsay, it is inappropriate to strike the exhibit entirely, as hearsay evidence may be allowed to supplement or support other evidence. OPC argues it is not hearsay, and the study has already been accepted as sworn evidence by the Commission, and that OPC and FCG had the opportunity to fully explore any basis of the study.⁸

Analysis and Decision

Section 120.569(2)(h), Florida Statutes (F.S.), states, “[i]rrelevant, 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.” Additionally, Rule 28-106.213(3), Florida Administrative Code (F.A.C.), states:

Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-805, F.S.

Exhibit EAK-5 is relevant under Section 120.569(2)(h), F.S., where it supplements and explains the testimony of both Staff Witness Kunkler and FCG Witness Lee. As hearsay, however, any use of the exhibit beyond supplementing or explaining testimony must fit within the confines of one of the exceptions to the hearsay rule as set out in Section 90.903, F.S., and as proscribed by Rule 28-106.213, F.A.C. In this case, FCG argued that admitting the exhibit in its entirety is problematic without a showing that the entire exhibit supplements non-hearsay testimony or is relevant.

⁵ FCG Motion at page 4.

⁶ OPC Response at page 6.

⁷ OPC Response at page 7.

⁸ OPC Response at page 1.

As an alternative to striking the entire exhibit, FCG requests that the admission of EAK-5 be limited to just pages 35 and 47. In its Response to this alternative request, Commission Staff argued, in addition to pages 35 and 47, pages 20, 57-69, and 155-156 should also be included as these are the only pages that Witness Kunkler relied upon in preparing his testimony, and thus, its admission would not create inadmissible hearsay or relevancy issues. Moreover, there is no prejudice to allowing the entry of only the relevant portions of the exhibit.

Based on the arguments and authority set forth above, the Motion to Strike is granted, in part. Exhibit EAK-5, attached to the testimony of Edwin A. Kunkler shall be stricken, with the exception of pages 20, 35, 47, 57-69, and 155-156. These pages were relied upon by Witness Kunkler and support his testimony. The remainder of Exhibit EAK-5 was not relied upon by Witness Kunkler and, therefore, is not relevant.

Therefore, it is

ORDERED by Commissioner Gabriella Passidomo Smith, as Prehearing Officer, that the Motion to Strike Exhibit to Staff's Testimony is hereby granted in part, such that all pages from Exhibit EAK-5 with the exception of pages 20, 35, 47, 57-69, and 155-156, are stricken.

By ORDER of Commissioner Gabriella Passidomo Smith, as Prehearing Officer, this 2nd day of December, 2025.



Gabriella Passidomo Smith
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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.