

^bState of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 19, 2025

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Kunkler, Galloway, Richards, Wu) *EJD*
Division of Accounting and Finance (Buys, Higgins, Souchik) *MC*
Office of the General Counsel (Sparks, Harper, Imig) *AEH*

RE: Docket No. 20250035-GU – Petition for approval of 2025 depreciation study and for approval to amortize reserve imbalance, by Florida City Gas.

AGENDA: 07/01/25 – Regular Agenda – Decision on Motion for Reconsideration – Oral Argument Requested

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 24, 2025, Florida City Gas (FCG or Company) filed its Petition for Approval of Depreciation Study and for Approval to Amortize Reserve Imbalance (Petition) in the instant docket in accordance with Rule 25-7.045, Florida Administrative Code (F.A.C.). The 2025 Depreciation Study included with the Petition produces a reserve surplus of \$27.3 million. Accordingly, FCG seeks approval of its 2025 Depreciation Study, and FCG also requests to amortize the resulting surplus of \$27.3 million over a two-year period.

FCG last filed a depreciation study alongside its 2022 request for an increase in base rates. As part of its 2022 Petition, FCG sought approval of certain depreciation parameters that would result in a surplus in the depreciation reserve. A total reserve surplus of \$52,126,500 was

ultimately approved by Order No. PSC-2023-0177-FOF-GU (2023 Final Order), issued June 9, 2023, of which the Commission allowed the Company to address \$25 million through the implementation of a Reserve Surplus Amortization Mechanism (RSAM). The Office of Public Counsel (OPC) filed a Motion for Reconsideration of the 2023 Final Order, which the Commission denied by Order No. PSC-2023-0299-FOF-GU (2023 Clarifying Order). OPC appealed the 2023 Final Order and 2023 Clarifying Order to the Florida Supreme Court, including the approval of the use of the RSAM and the depreciation parameters associated with the 2022 Depreciation Study. Oral argument was heard on December 10, 2024, and a decision is currently pending.

On February 26, 2025, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket pursuant to Section 350.0611, Florida Statutes (F.S.).¹ The following day, OPC filed its Motion to Hold Proceedings in Abeyance (Motion for Abeyance) pursuant to Rule 28-106.211, F.A.C. FCG filed a Response in Opposition to Citizens' Motion for Abeyance (Response) on March 6, 2025. Order No. PSC-2025-0102-PCO-GU denying OPC's Motion was issued on April 1, 2025 (Denial Order). On April 11, 2025, OPC filed its Citizens' Motion for Reconsideration (Motion for Reconsideration) and accompanying Request for Oral Argument. On April 17, 2025, FCG filed its Response in Opposition to Citizens' Motion for Reconsideration and Response to Request for Oral Argument (Reconsideration Response). This recommendation addresses OPC's Motion and corresponding Request for Oral Argument. The Commission has jurisdiction pursuant to Chapter 366, F.S.

¹ OPC's intervention was acknowledged via Order No. 2025-0081-PCO-GU, issued March 17, 2025.

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Discussion of Issues

Issue 1: Should OPC's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-2025-0102-PCO-GU be granted?

Recommendation: No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and rule on the Motion. However, if the Commission chooses to exercise its discretion to hear oral argument, staff recommends that 5 minutes per side is sufficient. (Sparks, Imig)

Staff Analysis:

Law

Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), allows a party to request oral argument before the Commission for any dispositive motion (such as motions for reconsideration) by filing a separate written pleading filed concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

OPC's Position

OPC contends that the issues it raises "involve complex depreciation matters," and OPC states that oral argument "could benefit the Commission's review and deliberation of the issues" and serve to "answer any questions the Commissioners may have." OPC requests 10 minutes for each party should the Commission grant its request.

FCG's Position

FCG states that OPC's Motion for Reconsideration does not involve "complex depreciation matters" that necessitate oral argument. To the contrary, the question appropriately before the Commission as a result of OPC's Motion is whether the Prehearing Officer made a mistake of fact or law in determining that the depreciation issues pending before the Florida Supreme Court are sufficiently distinct from the depreciation study and petition that are the subject of this proceeding such that this docket should be allowed to proceed. Oral argument is unlikely to provide additional insight in that regard.

Conclusion

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide OPC's Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends 5 minutes per side is sufficient.

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Issue 2: Should OPC's Motion for Reconsideration be Granted?

Recommendation: No. Staff recommends denying OPC's Motion for Reconsideration under the Commission's traditional standard of review for such motions as: OPC has failed to articulate a reason to depart from that standard; the Motion fails to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Denial Order; and the Commission has jurisdiction to continue with this docket.

Staff Analysis:

Law

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317.

OPC's Arguments

As an initial matter, OPC "asserts that the Commission practice of applying the same review standard when the full Commission reviews the decision of a single Commissioner is neither in the public interest nor just." OPC argues the ordinary standard for reconsideration should not apply here because these matters have not been previously considered by a majority of the Commission nor have they been the subject of any hearing or public deliberation. OPC, therefore, asks that the Commission apply a de novo standard of review to its motion.

In regard to the merits of its Motion, OPC makes three arguments. First, OPC argues that, in its original Motion for Abeyance, it stated "[i]t would be premature of the Commission to initiate proceedings regarding amortization of the remaining \$27.3 million reserve surplus when the legality of the creation of the surplus is pending before the Florida Supreme Court." OPC asserts this is the same as stating the Commission lacks jurisdiction to hear this case at this time. To support this position, OPC argues that "the Commission cannot entertain the transmutation or relabeling of the reserve surplus and associated parameters on appeal without encroaching on the Florida Supreme Court's jurisdiction" and that "[p]roceeding with this docket directly affects the subject matter of the appeal in violation of Florida Law." OPC argues the Prehearing Officer overlooked or failed to consider this point of law.

Second, OPC argues the Commission should reconsider its Order because the Prehearing Officer overlooked or failed to consider that whether FCG conducted its in-house 2025 Depreciation Study "in accord with previous practices" is a legal issue to be litigated in this docket and therefore must not be prejudged.

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Third, OPC argues that the Prehearing Officer failed to consider the fact that the depreciation parameters on appeal and those from the 2025 Depreciation study are from the same source, FCG. OPC states that, as FCG is the source of both the 2022 and the 2025 Depreciation Study, “the Order’s conclusion that the in-house 2025 Depreciation Study ‘is a new study conducted by a different expert’ is not accurate.” OPC additionally argues that this fact further demonstrates how the depreciation parameters on appeal and the proposed depreciation parameters are inextricably intertwined. OPC argues that, as the Prehearing Officer overlooked or failed to consider this point of fact, the Commission should reconsider the Denial Order and hold these proceedings in abeyance.

FCG’s Response

In regard to the standard of review, FCG argues that, as the Commission has recognized time and again, the appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering his or her decision. FCG argues that OPC fails to elaborate on why departing from the norm in this case is necessary or why the application of the traditional standard is not in the public interest, and that some rationale is required to make such a departure. FCG states that the Commission has previously rejected OPC arguments and should reject them again here. Applying the traditional standard, FCG argues that OPC’s Motion must be denied because it fails to identify any mistake of fact or law in the Prehearing Officer’s decision, or anything that was overlooked in rendering that decision. Instead, OPC simply disagrees with the Prehearing Officer’s conclusion, which is not sufficient to merit reconsideration.

FCG states OPC’s first argument regarding jurisdiction is wrong for several reasons, but mainly contends the matter pending before the Commission is FCG’s 2025 Depreciation Study, while the subject matter of the appeal pending before the Florida Supreme Court in Docket SC2023-0988 is FCG’s 2022 Depreciation Study.

FCG argues OPC’s second argument, which claims that the Prehearing Officer prejudged whether FCG’s 2025 Study was conducted “in accord with previous practices” is demonstrably incorrect by the language in the Denial Order itself. As stated in the Denial Order, the Prehearing Officer simply determined that the subject of the appeal and the 2025 Depreciation Study which is the subject of this docket were distinct. In that context, the Prehearing Officer also recognized that the 2023 Final Order, as well as the 2023 Clarifying Order, regarding FCG’s 2022 rate Request and 2022 Depreciation Study, have not been stayed. FCG argues OPC has identified no mistake of fact or law in the Prehearing Officer’s Decision on this point.

Finally, in regard to OPC’s final argument, FCG states that it is a re-argument that should not serve as the basis for reconsideration. The Prehearing Officer both understood and acknowledged that the depreciation study that is the subject of the appeal currently being considered in SC2023-0988 was submitted by the same Company that has submitted the 2025 Depreciation Study in this proceeding. That both were submitted by the same Company does not, however, demonstrate that the parameters and rates are “inextricably intertwined” nor does it demonstrate that the Prehearing Officer’s determination that to allow this case to proceed was erroneous. As OPC has

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failed to identify a mistake of fact or law in the Denial Order on this point and therefore, it must be denied.

Analysis and Recommendation

In regard to the standard of review, staff agrees with FCG that the Commission's traditional standard regarding Motions for Reconsideration should apply here, and OPC failed to provide sufficient rationale to differ from long-standing Commission precedent for review of a Prehearing Officer's decision on a motion for abeyance. OPC contends a mistake of fact or law standard does not fit this scenario because the matters for which OPC seeks review have either not been previously considered by the majority of the Commission, or have not been the subject of a hearing. The Commission has held that a mistake of fact or law standard applies to reconsideration by the Commission of a Prehearing Officer's order.² Pursuant to Rule 28-106.211, F.A.C., the Prehearing Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case. The Prehearing Officer has wide discretion in balancing the interests of parties in the furtherance of the orderly administration of justice.³ OPC has failed to provide a compelling reason to differ from prior practices, and staff does not recommend doing so in this case.

In regard to the merits of the Motion for Reconsideration, OPC has not clearly identified any specific mistakes of fact or law the Prehearing Officer made or overlooked in issuing the Denial Order. Without a specific mistake of fact or law, a motion for reconsideration must be denied, even if the reviewing body would have reached a different decision.⁴

As to OPC's first argument, OPC essentially acknowledges it is simply restating an argument that was considered and rejected by the Prehearing Officer and therefore should be rejected here. Nonetheless, as OPC claims the Commission lacks jurisdiction, staff addresses the merits of this claim.

In support of its claim, OPC argues that taking up FCG's petition in this docket would violate the Florida Supreme Court's exclusive jurisdiction over the matters on appeal from FCG's 2023 rate

² See Order No. PSC-2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Order No. PSC-2002-1442-FOF-EI, issued October 21, 2002, in Docket Nos. 20020262-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Martin County by Florida Power & Light Company* and 20020263-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company*; Order No. PSC-2001-2021-FOF-TL, issued October 9, 2001, in Docket No. 19960786A-TL, *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*; Order No. PSC-1997-0098-FOF-EU, issued January 27, 1997, in Docket No. 19930885-EU, *In re: Petition to Resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company*; Order No. PSC-1996-0133-FOF-EI, issued January 29, 1996, in Docket No. 19950110-EI, *In re: Standard offer contract for the purchase of firm capacity and energy from a qualifying facility between Panda-Kathleen, L.P., and Florida Power Corporation*.

³ Order No. 25245, issued October 23, 1991, in Docket No. 19880069-TL, *In re: Petitions of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief* (balancing competing interests of new counsel desiring more time to prepare and party seeking to proceed with discovery by delaying deposition).

⁴ *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315, 317 (Fla. 1974); Order No. PSC 2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company* (page 5).

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case. Florida law recognizes that during the pendency of an appeal, the appellate court has exclusive jurisdiction over the subject matter covered by the appeal. *See Willey v. W.J. Hoggson Corp.*, 105 So. 126, 128 (Fla. 1925) (“When the jurisdiction of the appellate court attaches, it is exclusive *as to the subject covered by the appeal.*”) (emphasis added); *Thursby v. Stewart*, 138 So. 742, 751 (Fla. 1931) (stating that “when an appeal is perfected . . . [t]he authority of the lower court is terminated . . . *at least as to the subject-matter of the appeal*, until the appeal is heard and determined”) (emphasis added). However, “the test to determine loss of jurisdiction is not whether the trial court is proceeding in matters *related* to the final judgment, but rather the proper test is whether the trial court is proceeding in a matter which *affects* the subject matter on appeal.” *Dep’t of Revenue ex rel. Simmons v. Wardlaw*, 25 So. 3d 80, 82 (Fla. 4th DCA 2009) (quoting *Casavan v. Land O’Lakes Realty, Inc. of Leesburg*, 526 So.2d 215, 21516 (Fla. 5th DCA 1988) (emphasis in original)).

Staff recommends that the Commission has jurisdiction to consider the petition. Although FCG’s petition for approval of the 2025 Depreciation Study is *related* to the Commission’s final order that is currently on appeal, it cannot be said that a decision in the present docket would *affect* the subject matter on appeal. In other words the Commission’s decision in this case would not alter any part of its prior orders. Assuming arguendo the Commission agrees with OPC that it loses jurisdiction over all matters related to a case on appeal, such a limitation would impact any docket in which a previous docket was still under appeal, including entire base rate proceedings.

As to OPC’s second argument, staff submits that a plain reading of the Order does not reflect any prejudgment in regard to the study or the veracity of any of the claims made by FCG, nor of any of the claims made by OPC. Instead, the Denial Order merely concludes that the two matters are sufficiently distinct to proceed “[b]ased on the representations of FCG,” and that moving forward “pragmatically balances regulatory efficiency, fairness to all the concerned parties, and the public interest in general.” Accordingly, OPC has identified no mistake of fact or overlooked point of law in the decision on this point, and therefore, no relief should be granted on these grounds.

As to OPC’s third argument, staff submits that the Prehearing Officer correctly denied the abeyance motion because there has been no demonstration that the cases are “inextricably intertwined” so much so that it would affect the matter on appeal. The Denial Order acknowledges that FCG filed both the depreciation study that is the subject in this docket and the depreciation study that is the subject of the appeal currently being considered in SC2023-0988. That alone sufficiently demonstrates that the Prehearing Officer did not overlook or fail to consider this fact. Furthermore, the fact that both were submitted by the same Company does not demonstrate that the parameters and rates are “inextricably intertwined.” Nor does it render “the Order’s conclusion that the in-house 2025 Depreciation Study ‘is a new study conducted by a different expert’” inaccurate, as the Denial Order explicitly states this conclusion is based on FCG’s representations. OPC has failed to identify a mistake of fact or law in the Prehearing Officer’s Denial Order and therefore, the Motion for Reconsideration should not be granted on these grounds.

Conclusion

Staff recommends denying OPC's Motion for Reconsideration under the Commission's traditional standard of review for such motions as: OPC has failed to articulate a reason to depart from that standard; the Motion fails to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Denial Order; and the Commission has jurisdiction to continue with this docket.

Issue 3: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final resolution of FCG's proposed depreciation study.

Staff Analysis: This docket should remain open pending the Commission's final resolution of FCG's proposed depreciation study.