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DANIEL PEREZ
*Speaker of the House of
Representatives*

November 19, 2025

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

Dear Mr. Teitzman:

Attached for electronic filing in the above referenced docket, please see the Citizen's Response to Florida City Gas's Motion to Strike Exhibit to Staff's Testimony or, in the alternative, Motion in Limine.

Please contact the undersigned at 850.488.9330 with any questions you may have.

Sincerely,

/s/ Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel
Florida Bar No.: 527599
rehwinkel.charles@leg.state.fl.us

Enclosure

CC: Certificate of Service

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO.: 20250035-GU

FILED: November 19, 2025

CITIZEN’S RESPONSE TO FLORIDA CITY GAS’S MOTION TO STRIKE EXHIBIT TO STAFF’S TESTIMONY OR, IN THE ALTERNATIVE, MOTION IN LIMINE

The Citizens of the State of Florida, by and through the Office of Public Counsel (“OPC”), pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), hereby file this Response to Florida City Gas’s Motion To Strike Exhibit To Staff’s Testimony Or, In The Alternative, Motion In Limine (“Motion”). The Florida Public Service Commission (“Commission”) should deny the Motion in its entirety, including the alternative relief sought, for the reasons stated below.

The OPC seeks denial of the motion to strike because it is not supported by the law or the facts of the case, it is contrary to the evidence in the still pending FCG 2022 rate case. The Staff Exhibit EAK-5 is relevant to the proceedings. FCG is mistaken in its characterization of Ned Allis’ 2022 Depreciation Study (“2022 Depreciation Study”) filed in Docket No. 20220069-GU (“2022 Rate Case”). FCG has or should have access to the workpapers supporting the 2022 study in the public record and under the terms of the sale of the utility in December 2023. The 2022 Depreciation Study has already been accepted by the Commission as sworn evidence that was taken when the agency, the OPC and FCG had the opportunity to fully explore the basis for the study. It is not hearsay and it supplements and explains the depreciation data and information

that is at issue in this case.¹ The Staff's use of the exhibit falls squarely within the role that the Commission designated for it.

Despite wanting to distance itself from the former owners (see, e.g., Motion at Paragraph 9), FCG now asks the Commission to accept and rely upon the narrative about the “preferred” and “lesser” alternatives of those former owners in its effort to block the Staff's role in bringing relevant evidence to the Commission's attention in development of the record. The fact of the matter is that the very motivation and intent of the former owners is at issue in the appeal that is very briefly and inadequately touched upon by the Motion. The Commission's action in selecting an artificial reserve surplus in the 2022 Rate Case through reference parameters from a different gas utility's stipulated, compromise parameters contained in PSC Order No. PSC-2023-0177-FOF-GU, issued June 9, 2023, Docket No. 20220069-GU (“2023 Order”), is on appeal before the Florida Supreme Court in *Citizens of Florida v. Florida Public Service Com.*, SC2023-0988 (Fla. argued Dec. 10, 2024). Accordingly the issue about what depreciation parameters, rates and resulting depreciation reserve surplus was approved in the 2022 FCG rate case has not been finally decided. The study attached to Exhibit EAK-5 is thus highly relevant and not at all “irrelevant, immaterial, or unduly repetitious” since the parameters currently in effect for FCG have not been finally determined.

Even if the Florida Supreme Court is to ultimately approve the Commission's decision in the 2023 Order, such a decision would not invalidate the complete 2022 Depreciation Study submitted on behalf of FCG, nor render it irrelevant, immaterial or unduly repetitious. To the contrary, the study was submitted by FCG as a complete study pursuant to Rule 25-7.405, F.A.C.

¹ Section 120.57(1)(c), Florida Statutes.

(Depreciation Rule), in 2022. It represents a comprehensive and complete depreciation study and was accompanied by sworn testimony submitted by FCG and accepted as such by the Commission. In this case FCG has submitted what it characterizes in its Motion (at Paragraph 9) as a “study.” One of the problems identified in this case is that the “study” submitted by FCG is incomplete and does not meet the definition of a complete depreciation study. The OPC has submitted expert testimony of William Dunkel noting the incomplete nature of actual data otherwise required by subsection (4) of the Depreciation Rule. See witness Dunkel’s direct testimony in Document No. 14947-2025 filed November 5, 2025, beginning at page 26. At a minimum the contrast of the completeness of the 2022 Depreciation Study contained in exhibit EAK-5 to the deficiencies of the “study” filed by FCG in this case is relevant and will be explored at hearing. Additionally, the fact of the existence of actual data provided through the year 2020 raises the question as to why such information was not available to the current owners thereafter, and if not available why the rush to have depreciation expenses adjusted now when such “missing” information is apparently available to the owners and operators of FCG. These issues will be explored at hearing and the existence or absence of actual data will be relevant.

As to FCG’s lament in Paragraph 10 of the Motion that it does not have access to the workbook of Mr. Allis or company personnel, the evidence indicates differently. The OPC does not concede or acknowledge that FCG is unable to (or should be unable to) access the actual data of the company or the necessary support to support the “study” that it has recently filed with the Commission, albeit under different ownership. In Docket No. 20220069-GU Mr. Allis’s testimony was admitted under oath, the 2022 Depreciation Study was identified as hearing Exhibit 40 and

admitted into the record.² The 2,717 pages of workpapers of Mr. Allis were provided in the rate case as a part of the ordinary course of a rate case or in discovery.³ OPC or Staff could have provided this publicly available documentation to FCG if needed.

In addition, the “Stock Purchase Agreement by and among Florida Power & Light Company and Chesapeake Utilities Corporation, dated September 26, 2023” (herein “SPA”)⁴ and on file with the United States Securities and Exchange Commission contains several provisions related to this matter of access to FCG records:

1.1 Definitions

“Action” shall mean any audit, examination, hearing, investigation, claim, action, demand, suit, arbitration, litigation or proceeding (*including any state regulatory proceeding*) by or before any Governmental Entity, whether civil, criminal, administrative, regulatory or otherwise, and whether at law or in equity.

“FCG 2022 Base Rate Case” shall mean the base rate proceeding pending before the Florida Public Service Commission at *Docket No. 20220069-GU* and the associated appeal pending before the Florida Supreme Court at Case No. SC2023-0988.

5.2 Access to Information.

(a) Seller shall, and shall cause the Company to, during ordinary business hours and upon reasonable notice (i) give Purchaser and its Representatives reasonable access, exclusively for purposes related to the transactions contemplated hereby, to the offices, properties and books and records of Seller and its Affiliates (including the Company) (with respect to Seller and its Affiliates other than the Company, solely to the extent related to the Business or the Company); and (ii) permit Purchaser and its Representatives, exclusively for purposes related to the transactions contemplated hereby and solely to the extent related to the Business or the Company, to make such reasonable inspections thereof as Purchaser may reasonably request; provided, however, that (A) any such

² Document No. 00058-0023 at pages 692 (oath administered), 698 (2022 Depreciation Study identified), 726 Exhibit No. 40 assigned), and 773, Exhibit 40 admitted into evidence.

³ See FCG response to Citizens’ First request for Production of Documents, Request No. 7. (Attachment A to this Response.)

⁴ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000019745/000119312523286726/d848856d8k.htm>

inspection will be conducted in such a manner as not to materially interfere with the operations of the Business or any other Person; and (B) neither Seller nor the Company shall be required to take any action which would constitute or result in a waiver of the attorney-client privilege or violate any Contract entered into prior to the date hereof or any applicable Law. If any material is withheld pursuant to the preceding sentence, Seller shall, to the extent possible without violating legal restrictions or losing attorney-client privilege, inform Purchaser of such fact and the Parties shall use commercially reasonable efforts to obtain any consents necessary, restructure the form of access and/or make other arrangements, so as to permit the access requested. Purchaser shall indemnify and hold harmless Seller from and against any Losses incurred by Seller, its Affiliates or its or their Representatives by any action of Purchaser or its Representatives while present on any premises to which Purchaser is granted access hereunder. Notwithstanding anything in this Section 5.2(a) to the contrary, (x) Purchaser will not have access to personnel records if such access could, in Seller's good faith and reasonable judgment, subject Seller to risk of liability or otherwise violate applicable Law, including the Health Insurance Portability and Accountability Act of 1996 and (y) any inspection relating to environmental matters by or on behalf of Purchaser will be strictly limited to visual inspections and site visits consistent with assessments conducted in conformance with ASTM E1527-13 or E1527-21 standards, and Purchaser shall not have any right to perform or conduct any other investigation or inspection, including sampling or testing at, in, on, around or underneath any of the Real Property.

(b) For a period of seven (7) years after the Closing Date, each Party and its Representatives ***will have reasonable access to all of the books and records relating to the Company*** with respect to any period of time on or before the Closing Date in the possession of the other Party, ***and to the employees of the other Party***, to the extent that such access ***may reasonably be required by such Party in connection with any Action*** relating to the Company or the Business. Such access will be afforded by the applicable Party only upon receipt of reasonable advance notice and during normal business hours, and will be conducted under the supervision of the Party providing such access and in such a manner as not to interfere with the operation of the business of any Party or its respective Affiliates. The Party exercising the right of access hereunder will be solely responsible for any costs or expenses incurred by either Party in connection therewith. Each Party shall retain such books and records for a period of seven (7) years from the Closing Date. Notwithstanding anything to the contrary in this Section 5.2(b), neither Party shall be required to provide any such access or otherwise take any action pursuant to this Section 5.2(b) which would constitute or result in a waiver of the attorney-client privilege or violate any Contract or any applicable Law.

5.20 FCG 2022 Base Rate Case.

Following the Closing, ***Seller shall have the right, but not the obligation, to control, at its sole cost and expense, the FCG 2022 Base Rate Case;*** provided that any counsel retained by Seller in connection therewith shall be reasonably satisfactory to Purchaser; provided further that any counsel engaged by Seller or the Company as of the date hereof in connection with the FCG 2022 Base Rate Case shall be deemed to be satisfactory to Purchaser. In connection with such control, Seller will keep Purchaser reasonably informed with respect to the FCG 2022 Base Rate Case. Purchaser shall, and shall cause its Affiliates (including the Company) to, cooperate with Seller and its counsel, including making available to Seller all witnesses, pertinent records, materials and information in the possession or under control of Purchaser and its Affiliates (including the Company) relating to the FCG 2022 Base Rate Case as is reasonably required by Seller and, in each case, at Seller's sole cost and expense. Purchaser will have the right to participate in the FCG 2022 Base Rate Case, including appointing separate counsel, but the costs of such participation shall be borne solely by Purchaser. ***Seller will, in consultation with Purchaser, make all decisions and determine all actions to be taken with respect to the FCG 2022 Base Rate Case and its settlement;*** provided, however, that Seller shall not settle the FCG 2022 Base Rate Case without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed (it being understood and agreed that any failure by Purchaser to provide such consent to a settlement seeking non-monetary relief against Purchaser, the Company or any of their respective Affiliates shall not be deemed to have been unreasonably withheld, conditioned or delayed).

(Emphasis added.) These provisions make several things clear. There is little if any demarcation between the prior owners and current owners as it relates to the still pending 2022 FCG rate case. The relevant facts and information relating to that case, possible settlement and the pending Supreme Court appeal are very intertwined. Given the pending nature of the case, there is no basis to exclude the 2022 Depreciation Study on the basis of staleness or an old docket. The study is as fresh today as it was when filed.

Additionally FCG's current owners are entitled to full access to the books and records of FCG emanating from prior to the sale, as well as access to the relevant company employees related to an action like this case. "Action" is defined in the SPA as "including any state regulatory proceeding." FCG's complaints about being unable to access necessary information for a "study"

that it chose to file two years early are not well taken. If FCG is not taking full advantage of its rights under the SPA, then that is on them. The 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.

Furthermore, the relevance of the 2022 Depreciation Study is demonstrated by the Company testimony in several places. For example, FCG witness Lee mentions the 2022 Depreciation Study in her testimony as being relevant to, and relied upon, in this case:

- On page 13, lines 7-9 of her November 4, 2025 direct testimony, witness Lee testifies:

I reviewed the 2022 Depreciation Study sponsored by Ned Allis for FCG in Docket No. 20220069-GU, which I will refer to as the “Gannett Fleming Depreciation Study”

- On page 21, lines 13-15 of her November 4, 2025 direct testimony, witness Lee testifies:

First, data was assembled from the last depreciation review. Next, I reviewed the statistical analyses and data contained in the 2022 Gannett Fleming Depreciation Study.

- On page 22, lines 16-17 of her November 4, 2025 direct testimony, witness Lee testifies:

I reviewed the statistical analysis presented in the 2022 Gannett Fleming Depreciation Study and decided there was no need for additional statistical analysis.

- On page 23, lines 13-18 of her November 4, 2025 direct testimony, witness Lee testifies:

In this Study, the “Proposed” curve shapes shown in the workbook on amended Exhibit PSL-2, Schedule B, are based on existing curve shapes underlying the currently prescribed average remaining life for each account, a review of the curve shapes proposed in the 2022 Gannett Fleming Depreciation Study...

Each of these references indicates that either affirmatively or by implication FCG *relied* on the 2022 Depreciation Study to support their case and requested depreciation parameters. The

testimony at page 22, lines 16-17 (third bullet) is especially supportive of the relevance of the 2022 Depreciation Study as it clearly indicates not only FCG's review of, but reliance on, the study in advocacy of its position in this case.

With regard to the Motion in Limine, given the status of the 2022 Depreciation Study as still relevant to the current depreciation parameters and expenses, as well as because the study is directly relevant to the case as FCG filed it, there is no reason for the Commission to preemptively foreclose the consideration of the 2022 Depreciation Study in this case. To the extent that the Commission is faced with a question at hearing or in discovery that is irrelevant or seeks to introduce irrelevant information, it can be addressed at that time and the Commission can give it the weight it deserves or strike it as needed.

Finally, and perhaps most importantly, the Commission Staff has a different role than the parties in that it provides the in-house, independent professional expertise for the agency to make determinations. Said another way "[s]taff's duty is to ensure that all pertinent facts are brought to the Commissioners' attention through development of the record."⁵ This historically has included the role of developing the record or providing alternatives that are based on competent substantial evidence. The OPC views that the testimony of witness Kunkler and supporting exhibits fit squarely in this expected role. Indeed, witness Kunkler's meticulous work product is a laudable example of the beneficial value of staff's contributions to the deliberative process and as such should be emphasized rather than casually discarded.

⁵ See Commission's Administrative Procedures Manual, section 13.13E.1. (Attachment B to this Response.)

Accordingly, for the reasons stated, the OPC urges the Commission to deny both motions.

Respectfully submitted,

WALT TRIERWEILER
Public Counsel
Florida Bar No. 912468

/s/Charles J. Rehwinkel
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CERTIFICATE OF SERVICE
DOCKET NO. 20250035

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 19th day of November, 2025, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
City Gas

Docket No. 20220069-GU

Served: July 11, 2022

**FLORIDA CITY GAS NOTICE OF SERVICE OF OBJECTIONS AND RESPONSES TO
THE OFFICE OF PUBLIC COUNSEL'S FIRST SET INTERROGATORIES (Nos. 1-108)
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (Nos. 1-27)**

Florida City Gas hereby gives notice of service of its Objections and Responses to the the
Office of Public Counsel's First Set of Interrogatories (Nos. 1-108) and First Request for
Production of Documents (Nos. 1-27).

Respectfully submitted this 11th day of July 2022,

By: /s/ Joel T. Baker

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Attorneys for Florida City Gas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 11th day of July 2022:

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/s/ Joel T. Baker

Joel T. Baker

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Attorney for Florida City Gas

QUESTION:

Please provide all exhibits, schedules, and workpapers utilized or relied upon in preparing the depreciation study and testimony in this case.

RESPONSE:

Please see responsive documents provided.

13.13 DEVELOPMENT OF THE RECORD

To explain staff's role and provide general guidelines in the development of policy upon a complete record without undue advocacy.

A. STAFF'S ROLE

Staff's ultimate responsibility is to make a recommendation for final action based on an impartial evaluation of the evidence presented, regardless of staff's participation in the development of a record. At various times staff is called upon to neutrally balance the respective interests of a company and its customers, to help shape Commission policy, and occasionally, to advocate positions at hearing through testimony and cross-examination. Throughout the process parties should never be justified in perceiving staff's recommendation for final action as the mere confirmation of a predisposition formed along the way. Therefore, staff's function is to assure quality and the development of policy on a complete record without undue advocacy.

B. QUALITY OF WORK

Quality is the guiding consideration for all staff activities. Decisions governing staff participation should be based on an appraisal of whether quality can be maintained, particularly at the recommendation stage of proceedings. Staff shall testify or advocate specific positions in one docket only when to do so will not jeopardize quality in all dockets.

C. EVOLVING POLICY

Staff plays an essential role in the formulation of policy in many cases. In some cases, viable alternatives that may best protect the public interest in the long run may not be put forth by the opposing parties in a case. In such situations, staff is responsible for developing these alternatives for inclusion in the record. The recommendation to the Commissioners should then be based on an unbiased appraisal of evidence presented and the appropriate weight given to each position.

D. ADVOCATING A POSITION

Only when absolutely necessary, should staff act as an advocate. In situations where plausible alternatives exist outside the range of alternatives presented by the opposing parties, staff should step in to further develop the record.

Staff must advocate effectively and with a full appreciation of the attendant burdens. Staff will be subject to the same obligations as any other party advocating a position. They may have to assume the burden of proof that normally rests on the party seeking "affirmative relief." Staff must put on the kind of case that, if presented by another party, would compel staff to recommend in their favor based upon the quality of the factual and legal presentations. This requires a thoroughly

professional development of fact and law. No allowance can be made for any deference to which staff is thought to be entitled.

Staff's initial presentation should be sufficient to establish staff's entitlement to relief and presented in a dispassionate manner. After staff has put on their case and been subject to cross-examination, a significant burden to come forward with evidence must shift to any opposing party. There must never be a failure in staff's case at the initial stage to support a decision in staff's favor, not because staff must ultimately prevail, but because, otherwise, staff should not have taken the issue to hearing.

E. STANDARDS

1. Staff appears neither for nor against any party in a case. Staff's duty is to ensure that all pertinent facts are brought to the Commissioners' attention through development of the record. This can be accomplished by prehearing discovery procedures, cross-examination, etc. Staff recommendations must be based on factual evidence, and their professional opinion supported by facts, without bias towards either the company or the ratepayers.
2. Staff should play predominately an advisory role rather than an advocacy role, except in show cause proceedings. The staff is and should act as independent professionals. The Commissioners want the professional staff to call it the way they see it.
3. Staff should balance the interest of the ratepayers with the interests of the investors. The role of the investor should be considered when evaluating the long-run interests of the consumers. That is, capital-intensive utilities must be able to attract capital at reasonable costs if they are to continue to provide adequate, reliable service. At the same time, the ratepayer's interest in the setting of reasonable rates must also be considered.
4. If it is determined that there is a perceived need for staff to testify, i.e., where the record is deficient, every effort should be made to prepare the testimony in an unbiased manner. The testimony should describe and fully explain the issue, listing both the pros and cons.

[History: New ED 12/02/03; APM Reformatted and Reissued 12/01/04]