

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-2025-0102-PCO-GU  
ISSUED: April 1, 2025

ORDER DENYING THE OFFICE OF PUBLIC COUNSEL'S  
MOTION TO HOLD PROCEEDINGS IN ABEYANCE

In 2022 Florida City Gas (FCG or Company) filed a Petition for Approval of Rate Increase and Request for Approval of Depreciation Rates (2022 Petition). On June 9, 2023, the Florida Public Service Commission (PSC or Commission) issued Order No. PSC-2023-0177-FOF-GU (2023 Final Order) resolving the 2022 Petition.<sup>1</sup> 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 in the 2023 Final Order, 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 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, specifically the approval of the use of the RSAM and the depreciation parameters, to the Florida Supreme Court and a decision is currently pending after oral argument was heard on December 10, 2024.<sup>2</sup>

On February 24, 2025, FCG 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.). With its Petition, FCG does not seek a rate increase but instead seeks approval of a new 2025 Depreciation Study, one with depreciation rates that have been developed consistent with previously filed depreciation studies and that results in a reserve surplus of \$27.3 million. FCG also seeks to amortize the full amount of this \$27.3 million surplus over a two-year period.

On February 26, 2025, OPC filed a Notice of Intervention pursuant to Section 350.0611, Florida Statutes (F.S.), which was acknowledged by Order PSC-2025-0081-PCO-GU, issued March 17, 2025. 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.

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<sup>1</sup> Order No. PSC-2023-0177-FOF-GU, issued June 9, 2023, in Docket No. 20220069-GU, *In re: Petition for rate increase by Florida City Gas*.

<sup>2</sup> Florida Supreme Court Docket Nos. SC2023-0988 and SC2023-1433.

Motion for Abeyance

In its Motion for Abeyance, OPC states that under Rule 28-106.211, F.A.C. the presiding 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.” OPC requests that this Commission hold all proceedings in the instant docket in abeyance until a decision is issued by the Florida Supreme Court.

In support of its Motion for Abeyance, OPC argues that FCG is seeking “approval of a 2025 depreciation study and approval to amortize the remainder (\$27.3 million) of the reserve surplus created” under the 2023 Final Order. OPC notes that FCG is not required to file a new depreciation study until 2027, and further states “it 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 reserve surplus is pending before the Florida Supreme Court.” Additionally, OPC states that the efforts and resources of the Commission and parties to this docket “could be unnecessarily burdened” if proceedings continue prior to the resolution of the appeal, and that, should the Commission be directed to reverse its prior decision, the instant Petition could become moot and “could implicate the existence and consideration of synergies known and being identified as noted in the pending petition.” OPC argues that holding this proceeding in abeyance “would promote the just and inexpensive determination of this matter by conserving the resources of the Commission and the parties.”

FCG’s Response

In its Response, FCG acknowledges that while it is not yet required to do so by rule, it is both necessary and appropriate for it to file a new depreciation study for two reasons. First, the Company is now under new ownership and the new study aligns with other entities owned by FCG’s new parent company, Chesapeake Utilities Corporation. Second, as reflected in the new depreciation study, certain account activity data indicates a need to conduct a new study.

Additionally, FCG argues that OPC has mischaracterized its current request when it stated that “FCG filed a petition that is the subject of this docket, which requests approval of a 2025 depreciation study and approval to amortize the remainder (\$27.3 million) of the reserve surplus” established in the 2023 Final Order. FCG states “the reserve surplus at issue in this case is not the reserve surplus referenced in the [2023 Final Order] .... Rather, it is a new reserve surplus resulting from a new depreciation study conducted by a different depreciation expert than that utilized in the prior proceeding” (emphasis omitted). FCG further states that the “current filing is not tied to or dependent upon the prior depreciation study and rate case issues pending before the [Florida Supreme] Court.” FCG therefore argues that, even if the Florida Supreme Court were to reverse and remand the Commission’s 2023 Final Order, the Petition in the instant case would not be moot as neither the new depreciation study nor the resulting reserve imbalance would be eliminated by a reversal of the prior 2023 Final Order.

Finally, FCG alleges that, as identified in its Petition, amortization of the reserve imbalance will reduce downward pressure on FCG’s earnings and that an extended delay in processing the

instant Petition will necessitate the filing of a petition to establish new base rates, an action FCG does not believe to be in its customer's best interest or the Company's.

Decision

While OPC argues there is a risk of an "unnecessary burden" on the Commission and the parties should this proceeding continue while the appeal of the 2023 Final Order and 2023 Clarifying Order is pending, FCG alleges the two matters are separate and distinct. Based on the representations of FCG in its Response, that this is a new study conducted by a different expert and in accord with previous practices, I agree that the two are sufficiently distinct and the matter shall proceed.

There has been no stay of the 2023 Final Order or 2023 Clarifying Order, and OPC seeks to avoid a burden that may or may not come to fruition. Granting the abeyance in this proceeding, however, will result in unnecessary administrative delay and potential financial harm or uncertainty to FCG and its customers. Prompt disposition of matters in this docket enhances regulatory certainty, stability, and predictability, factors valued equally by both the regulated utility and their customers. Moving forward with this docket pragmatically balances regulatory efficiency, fairness to all the concerned parties, and the public interest in general as any potential risk of an unnecessary burden is counterbalanced by the risk of a negative impact to FCG and its customers. As previously noted, OPC has intervened in the instant docket and will be able to represent its interests accordingly.

Denial of the Motion of Abeyance does not diminish the necessity that this Commission respond appropriately to guidance issued by the Florida Supreme Court. The Commission must be acutely aware that adherence to judicial directives is not merely a procedural formality, but a fundamental requirement of responsible governance. The Commission also recognizes, however, the inherent uncertainty surrounding the timeline for an appellate court's definitive resolution of a pending appeal. Given this and the previously mentioned inherent uncertainties, it would not be prudent for the Commission to suspend indefinitely its regulatory responsibilities pending external judicial findings. Accordingly, the Motion for Abeyance is denied.

Therefore, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Office of Public Counsel's Motion to Hold Proceedings in Abeyance is hereby denied.

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By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 1st day of April, 2025.



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ANDREW GILES FAY

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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.