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July 10, 2008

VIA HAND DELIVERY

Mr. Tim Devlin
Director of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

> **RE: Docket No. 080163-GU** - Petition for approval to create regulatory subaccount of meter installation to capitalize all incurred and future costs associated with installation of encoder receiver transmitters (ERTs) under provisions of Statement of Financial Accounting Standard No. 71, Accounting for the Effects of Certain Types of Regulation (SFAS 71); and requesting depreciation of installation costs of ERTs over 15-year period beginning January 1, 2008, by Florida City Gas.

Dear Mr. Devlin:

On March 18, 2008, Florida City Gas (FCG or Company) filed its above-referenced petition requesting that the Commission approve the creation of a regulatory sub-account for purposes of capitalizing costs associated with the installation of encoder receiver transmitters (ERTs), including both costs incurred to date as well as costs incurred in the future. FCG also requested approval to depreciate the costs of installing the ERTs over a 15-year period beginning January 1, 2008.

Consistent with its commitment in Docket No. 060657-GU, FCG has not requested any rate adjustment associated with this Petition.

Specifically, by its Petition, FCG has asked permission to take the following actions:

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- allow FCG to create a sub-account for purposes of capitalizing ERT installation costs, which includes contractor, internal labor, and material costs associated with installing ERTs on FCG meters;

- allow FCG to recover the both the costs that have been incurred in 2006 and 2007 for this project, as well as future costs for completion of the ERT installation project; and

- allow FCG to depreciate these costs over a 15-year period, in view of the fact that the ERTs have a 15-year expected life.

At the outset, let me first emphasize that a favorable ruling on this Petition will further endorse that installation of the ERT equipment is ultimately very beneficial to FCG's ratepayers in that the new technology allows FCG to continue to improve its billing processes, to increase its operating efficiency, and to enhance customer service. Specifically, the ERT's greatly improve the accuracy of meter reads, allowing meter readers to read 10,000 meters per day with 100% accuracy and without the challenges of high fences and threatening dogs.

As you know, in recent weeks, the Company became aware that both technical staff of the PSC and the Public Counsel's Office have raised concerns regarding our plan to capitalize the installation costs associated with this project in 2006 and 2007. Your staff was kind enough to meet with us on June 30 to clarify those concerns. The meeting was very helpful, and FCG appreciates the thoughtful discussion had with staff at that meeting. We take the concerns that have been raised very seriously and appreciate the opportunity to respond to those concerns via this letter.

Our understanding is that PSC staff fully appreciates the value and benefits of this program for FCG's customers and supports the requested treatment for expenses incurred in 2008 and beyond. It appears that the sole concern pertains to the timing of the requested capital treatment of the program expenses. The concern expressed is that revising the accounting treatment for the ERT installation costs for prior years does not comply with the standards set forth in the Uniform System of Accounts, Title 18, Subchapter F, Part 201 and Rule 25-7.0461, Florida Administrative Code. We began our internal pilot program in Port St. Lucie in 2006. After a thoughtful assessment of the results there, we moved forward with the ERT installation in other markets in the last quarter of 2007. Staff has, however, suggested that capitalization of these costs would have been appropriate had the sub-account been established in 2006 when these costs were first incurred.

In this very unique, limited circumstance, FCG believes there are overarching policy and practical reasons that justify capitalizing these costs incurred in prior years. We respectfully submit our analysis for your consideration.

Practical Considerations

First and foremost, the ERT program has significant benefits for FCG's customers. FCG proactively sought to improve service quality using the ERT program. However, rather than assume there were benefits, FCG took a meticulous thoughtful approach of selecting target locations for an internal pilot and then studied the results before moving forward. It was only after deliberative consideration of the true costs and benefits of this program that FCG proactively implemented the ERT program in an effort to further improve customer service. Failure to allow FCG to capitalize the costs incurred over the period that FCG was analyzing the efficacy of the program will penalize the company for its thoughtful approach to implementation and perversely incent the implementation of future programs without similar, careful study.

Second, FCG has been unable to identify an absolute prohibition on revised accounting treatment applied for prior years. FCG does not deny that such treatment is not common, nor should it be. FCG does, however, believe that in this case, a thoughtful and reasoned analysis of the benefits of allowing such revised accounting treatment, as opposed to the detrimental impact associated with rejecting FCG's request, will lead staff to conclude that the benefits significantly outweigh any concerns staff may have about the revised accounting.

Third, capitalization of these costs for prior years will not cause FCG to exceed its approved ROE for either period and will have no impact on customer rates. It will also ensure continued corporate shareholder confidence in the value of the ERT program to AGL Resources as a whole. On the other hand, if the costs for 2006 and, more crucially 2007, cannot be capitalized, corporate shareholders will be required to assume the costs of the implementation of a program that benefits, primarily, FCG's customers.

Legal Considerations

Courts over the years have recognized that while there are certainly legitimate reasons for strictly construing and applying accounting regulations, there are circumstances in which the agency should also give equal consideration to the policy impacts of such strict application. Courts have also emphasized that one of the fundamental principles of ratemaking is that costs should be borne by those who benefit from them.[1] In this limited situation, FCG asks that the Commission staff balance its concerns regarding strict application of the USOA rules with due consideration for: (1) the customer benefits derived from this ERT program; (2) the impact that failure to allow the revised accounting treatment will have on that program; and (3) the proper allocation of costs associated with the program. Furthermore, we believe the accounting

[1] See Minnesota Power & Light Co. v. FERC, 852 F. 2d 1070 (8th Cir. 1988)(addressing the proper accounting treatment of attorneys' fees, the Court concluded it was inequitable for the company to bear the burden of expenses associated with obtaining refund benefiting wholesale customers of the company and remanded to the FCC for further review on that issue). See also Gulf Power Co. v. FERC, 983 F.2d 1095 (DC Cir. 1993)(in addressing FERC's denial of retroactive waiver in the context of a pass through clause, the Court noted that FERC failed to take into account the fact that Gulf did not receive a windfall by passing on the costs, and has only recovered costs incurred in producing savings for customers.)

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treatment is identical to that which the Commission allowed for Florida Power and Light in approving the Stipulation and Settlement of FPL's 2005 Depreciation Study.[2] Thus, the requested treatment is by no means a case of first impression for this Commission. FCG asks only that it be allowed to implement the same accounting approach accepted in that proceeding in order to fully recognize the benefits of this program.

Based on the foregoing, FCG urges the Commission to approve our petition to capitalize the costs associated with the ERT program for all prior years. In the alternative, in an effort to move this forward and work within Staff's concerns, FCG would agree that the $142,821 in costs associated with the installation of ERTs from our Port St. Lucie pilot program in 2006 could be excluded from consideration of FCG's Petition and would not be included in the regulatory sub-account created for the purpose of capitalizing ERT installation costs. FCG emphasizes that it would maintain its request with regard to 2007, particularly in view of the fact that the 2007 costs were incurred in the 4th quarter of that year. FCG suggests this alternative in the interest of facilitating further fruitful discussion regarding the requested accounting treatment. *This alternative approach will not impact the Company's ability or desire to move forward with the ERT installation program in 2008 and beyond.*

As always, we appreciate the opportunity to work to address concerns raised by PSC staff and the productive discussions we have had on this issue to date. If you have any questions or concerns, please do not hesitate to call. We look forward to your thoughts regarding the analysis and options set forth in this letter.

Sincerely,

Beth Keating
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cc: Office of Public Counsel (J.R. Kelly, Charles Beck)
Division of Economic Regulation (Marshall Willis, Cheryl Bulecza-Banks)
Commission Clerk

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[2] Order No. PSC-05-0902-S-EI, September 14, 2005.