

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City
Gas.

DOCKET NO. 20220069-GU

FILED: June 23, 2023

CITIZENS' MOTION FOR RECONSIDERATION

The Citizens of Florida, through the Office of Public Counsel (“Citizens” or “OPC”), pursuant to Rule 25-22.060, Florida Administrative Code, request the Florida Public Service Commission (“FPSC” or “Commission”) to reconsider its decision in Order No. PSC-2023-0177-FOF-GU, Docket No. 20220069-GU, issued on June 9, 2023 (“Order”). In support, Citizens provide the following arguments.

The standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. *See e.g., In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Order No. PSC-06-0949-FOF-EI (Issued Nov. 13, 2006). OPC is only requesting reconsideration of the aspects of this order that satisfy this reconsideration standard. To the extent that OPC may pursue further review of the issues in this motion or any other issues in the Order, OPC’s maintains and does not waive any appellate rights despite not addressing such other issues here.

- I. **The Commission Should Reconsider its Decision to Approve the Reserve Surplus Amortization Mechanism (RSAM) Resulting from its Erroneous Adoption of RSAM-Adjusted Depreciation Parameters.**
 - a. **The Commission did not consider that adopting another company’s depreciation parameters instead of depreciation parameters based on Florida City Gas’s (FCG) actual property violated Sec. 366.06(1), Fla. Stat.**

OPC respectfully requests that the Commission reconsider the order approving the so-called RSAM-adjusted depreciation parameters¹ and resulting RSAM.² In OPC’s post-hearing brief, OPC cited to Sec. 366.06(1), Fla. Stat., and argued against FCG’s request that the Commission establish a depreciation reserve surplus by creating depreciation rates that were not based on FCG’s depreciation study, which actually reflected a depreciation deficit.³ OPC argued that doing so would violate, “Commission rules, policy and practices, and Section 366.06(1), Fla. Stat.”⁴ However, there is an important but only implicitly articulated argument embedded in this overall OPC position that was not specifically considered by the Commission. That argument is that using a different utility company’s depreciation parameters instead of the depreciation parameters of FCG’s actual, used and useful property violates Sec. 366.06(1), Fla. Stat.

OPC’s brief cited to Sec. 366.06(1), Fla. Stat., with certain portions in bold and italics as follows:⁵

366.06 Rates; procedure for fixing and changing.—

(1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. ***All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed***, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. ***The***

¹ The decision to approve the so-called RSAM-adjusted depreciation rates is reflected in the Commission’s votes on Issues 5-8 at the March 28, 2023 Agenda. Document No. 02621-2023, pp 10-24.

² The decision to approve the RSAM is reflected in the Commission’s vote on Issue 67 at the March 28, 2023 Agenda. Document No. 02621-2023, pp. 10-19.

³ Document No. 00144-2023, pp. 8-15.

⁴ *Id.* at p. 15.

⁵ *Id.* at pp 10-11.

commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, *less accrued depreciation*, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.

The statute explicitly states that the Commission must consider the actual legitimate costs of the property of each utility company, and that each company’s net investment value of the property “...shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public....”⁶ When read in harmony and together, these two portions of the statute clearly require that the Commission must consider each utility’s net investment in their *own* property. This statutory mandate is key to the proper adjudication of the issue of setting depreciation parameters in this case. In Staff’s recommendation, Staff acknowledged that, “[b]ased on its plain meaning, the statute requires a utility’s depreciation study to be based upon data specific to its property used and useful in serving customers.”⁷ However, when Staff specifically referenced FCG’s adoption of People’s Gas System’s (PGS) depreciation parameters, Staff stated that, “[f]urther, there is no historical precedent for supplanting the depreciation rates resulting from a utility-specific depreciation study in its entirety with rates not based on the utility’s plant.”⁸ Staff’s recommendation concluded that, “[a]pproval of the RSAM depreciation parameters would deviate from past Commission practice in rate cases by not using

⁶ *Id.* at p. 11.

⁷ Document No. 01163-2023, p. 200.

⁸ *Id.*

depreciation rates from a utility-specific depreciation study based on that utility's plant,"⁹ but Staff's recommendation did not specifically state that the Commission's approval of FCG's adoption of another company's depreciation parameters would also violate Sec. 366.06(1), Fla. Stat. Considering whether there is precedent for adopting another company's depreciation parameters is different from considering whether adopting another company's depreciation parameters violates Sec. 366.06(1), Fla. Stat. While the Commission did consider the former argument, it did not consider the latter. This crucial distinction is a matter of law which warrants reconsideration. Without consideration of the investment of a different utility, there is no depreciation surplus; in fact, there is a significant deficiency. Without a surplus, there is not an opportunity to create an RSAM. Absent unlawful creation of this condition precedent, the RSAM (Issue 67) is moot. Alternatively, the OPC addresses the need to reconsider the merits of Issue 67 below.

b. The Commission's primary reason for approving the RSAM -- rate stability -- was eliminated subsequent to the Commission's approval.

In addition to the legal prohibition against creating the foundation for the RSAM by reference to another utility's property, the OPC submits that the Commission overlooked the elimination of an essential factual predicate to the putative establishment of the mechanism. During the March 28, 2023 agenda conference when the Commission considered and deliberated over its decision in this case, the Commissioners made many references to rate stability and/or certainty being the driving force behind the decision to approve the RSAM and the RSAM-adjusted depreciation parameters. Some examples of those references include:

Analyzing witnesses within this case, I think, going back to kind of where I started in – in trying to create and preserve rate stability long-term, I think that we should propose the RSAM adjusted

⁹ *Id.* at p. 201.

depreciation rates as what's been reasonably alternative [sic] to support the RSAM mechanism.¹⁰

I think – I think ultimately the case was laid out led me [sic] to – to lean towards creating that rate stability.¹¹

I think we have seen in the past that the RSAM can really be a tool utilities use to, as Commissioner LaRosa alluded to, rates certainty and continuity are really important for customers, [sic] and they value that...¹²

The Order itself concluded that, “FCG’s evidence showed that the RSAM will provide customer benefits including rate stability and certainty.”¹³ It was clear that the promise of rate stability and certainty was fundamental to the Commission’s approval of the RSAM and RSAM-adjusted depreciation parameters.

However, the Commission overlooked or failed to consider the fact that FCG only committed¹⁴ to rate stability if *all* elements of FCG’s requested four-year plan were approved. In FCG Witness Kurt Howard’s direct testimony, he stated that FCG’s four-year rate plan include the following “core” elements, including: (1) an incremental base revenue increase of \$19.4¹⁵ million based on a projected 2023 Test Year; (2) a 10.75% mid-point ROE and an equity ratio of 59.6%; (3) new base rates and charges that would become effective February 1, 2023 and continue at least

¹⁰ Document No.02621-2023, p. 10.

¹¹ *Id.* at p. 11.

¹² *Id.* at p. 13.

¹³ Order, p. 17.

¹⁴ In reality, FCG’s commitment not to come in for another rate case for four years greatly vacillated over the course of litigation, with FCG Witness Kurt Howard at the final hearing responding to the question of, “So am I correct that your commitment does not obligate you to stay out for four years?” by saying, “I do not know.” Document No. 0057-2023, p. 673.

¹⁵ FCG amended this requested amount to \$18.8 million in Ex. 111.

until the last billing cycle of December 2026; (4) the RSAM and RSAM-adjusted depreciation rates; (5) the continuation and expansion of the existing SAFE program; (6) implementation of an AMI Pilot; (7) a mechanism to account for the potential of tax reform legislation; and (8) continuation of FCG’s existing Storm Damage Reserve provision.¹⁶

FCG Witness Kurt Howard testified at the hearing in this matter that, “[w]e’ve proposed a rate plan that, *in its entirety*, will allow us to stay out for four years.” (Emphasis added.)¹⁷ FCG’s post-hearing brief repeated that, “Use of the RSAM, together with the other components of FCG’s proposed four-year rate plan, will enable FCG to avoid increasing base rates through at least the end of 2026.”¹⁸

At the time the Commissioners voted to approve the RSAM and RSAM-adjusted depreciation parameters, all portions of FCG’s proposed four-year rate plan were pending approval. However, as the Commission moved through the votes on the various issues, the Commission rejected FCG’s requested ROE of 10.75% and instead awarded an ROE of 9.5%,¹⁹ and the Commission also rejected FCG’s requested mechanism to account for the potential of tax reform legislation.²⁰ Therefore, the Commission did not approve the entirety of FCG’s requested four-year plan. The record does not support the rationale that underlies the approval of the RSAM. The Commission also expressly acknowledged that FCG’s so-called commitment to providing rate stability and certainty was unenforceable.²¹ By correctly finding that the four-year plan was unenforceable and by failing to approve the entirety of FCG’s proposed four-year plan, the

¹⁶ *Id.* at pp. 569-70.

¹⁷ *Id.* at p. 639.

¹⁸ Document No. 00142-2023, p. 88.

¹⁹ Document No. 02621-2023, p. 46.

²⁰ *Id.* at p. 53.

²¹ *Id.* at p. 17, 51-53.

Commission eliminated the primary basis for approving the RSAM; therefore, the Commission should reconsider its approval of the RSAM. As set out (in subpart a.) above, the Commission also overlooked the legal prohibition on adopting the so-called RSAM-adjusted depreciation parameters and rates. Together, the proper consideration of these two elements requires reconsideration and reversal of the vote adopting the RSAM-adjusted depreciation rates and the RSAM itself.

OPC has consulted with counsel for FCG, Florida Industrial Power Users Group (“FIPUG”), and the Federal Executive Agencies (FEA) on this motion. FIPUG and FEA do not object to this motion. FCG does object to this motion.

WHEREFORE, the Citizens hereby request the Commission grant this Motion for Reconsideration of Order No. PSC-2023-0177-FOF-GU, and Citizens request the Commission issue an amended order disallowing FCG’s requested use of an RSAM and RSAM-adjusted depreciation parameters.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

DOCKET NO. 20220069-GU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 23rd day of June 2023, to the following:

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