

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City
Gas

Docket No. 20220069-GU

Filed: June 30, 2023

**FLORIDA CITY GAS RESPONSE TO
OFFICE OF PUBLIC COUNSEL
MOTION FOR RECONSIDERATION**

Florida City Gas (“FCG” or “the Company”), pursuant to Rule 25-22.060, Florida Administrative Code (“F.A.C.”), submits this Response to the Office of Public Counsel (“OPC”) Motion for Reconsideration (“Motion”) of the Florida Public Service Commission (“Commission”) Order No. PSC-2023-0177-FOF-GU issued on June 9, 2023 (“Rate Order”). As explained below, OPC has failed to meet the standard of review for reconsideration and, therefore, its Motion must be denied. In support, FCG states as follows.

I. BACKGROUND

1. On May 31, 2022, FCG filed a petition seeking Commission approval of a rate increase and associated depreciation rates based on a projected test year ending December 31, 2023. Pertinent to the pending Motion, FCG’s proposed rate plan included a reserve surplus amortization mechanism (“RSAM”) and associated RSAM-adjusted depreciation parameters.¹

2. The Commission acknowledged intervention by OPC, and intervention was granted to the Federal Executive Agencies and the Florida Industrial Power Users Group.

3. An administrative hearing was held on December 12-13, 2022. At the hearing, the parties’ pre-filed written testimony was entered into the record, FCG’s witnesses were cross-examined, and over two hundred exhibits were admitted to the record.

¹ FCG also submitted certain Minimum Filing Requirements that did not reflect the impact of the proposed RSAM, as well as a 2022 Depreciation Study, in the event the Commission did not accept FCG’s proposed rate plan with RSAM.

4. The parties filed voluminous post-hearing briefs, totaling approximately 220 pages combined, which argued their respective positions on the litigated issues, including RSAM.

5. The Commission held Special Agenda Conferences on March 28 and April 25, 2023, to address the litigated issues. At the March 28, 2023 Special Agenda Conference, the Commission discussed and voted to approve FCG's proposed RSAM and RSAM-adjusted depreciation parameters.

6. On June 9, 2023, the Commission issued the Rate Order that granted in part and denied in part FCG's proposed base rate increase. Pertinent to the pending Motion, the Commission's Rate Order discussed and addressed the parties' arguments regarding RSAM and memorialized the Commission's earlier vote approving FCG's proposed RSAM and associated RSAM-adjusted depreciation parameters.

7. On June 23, 2023, OPC filed the pending Motion seeking reconsideration of the Commission's approval of RSAM and associated RSAM-adjusted depreciation parameters.

8. For the reasons explained below, OPC has failed to meet the standard of review required for reconsideration and, therefore, its Motion must be denied.

II. STANDARD OF REVIEW FOR RECONSIDERATION

9. "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." Rule 25-22.060(1)(a), F.A.C.

10. The Commission recently reiterated that the standard of review to be applied to motions for reconsideration is the following:

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 we failed to consider in rendering our Final Order. *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 161 (Fla. 1st DCA 1981). In

a motion for reconsideration, 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*, 294 So. 2d at 317.

Order No. PSC-2021-0240-FOF-SU in Docket No. 20200226-SU (FPSC July 1, 2021). *See also*

Order No. PSC-2021-0364-FOF-EI in Docket No. 20210015-EI (FPSC Sept. 17, 2021).

11. A motion for reconsideration must “be based upon specific factual matters set forth in the record and susceptible to review.” Commission Order No. PSC-02-0878-FOF-TP in Docket No. 001305-TP (quoting *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974)). However, reweighing of the evidence is not a sufficient basis for reconsideration. Commission Order No. PSC-03-0494-FOF-EI in Docket No. 010908 (citing *State ex rel. Jaytex Realty Co. v. Green*, 105 So.2d 817 (Fla. 1st DCA 1958)).

12. Further, a motion for reconsideration is not a vehicle to raise new arguments or issues not previously raised by the moving party. *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962). *See also* Commission Order No. PSC-04-0228-FOF-TP in Docket No. 981834-TP; Commission Order No. PSC-02-0878-FOF-TP in Docket No. 001305-TP; Commission Order No. PSC-97-0374-FOF-WS in Docket No. 950495-WS. A party that raises an argument or issue for the first time in a motion for reconsideration has not identified anything that the Commission overlooked or failed to consider in rendering its decision. *See* Order No. PSC-99-1453-FOF-TP in Docket No. 981008-TP.

III. ARGUMENT

13. In its Motion, OPC makes two arguments for reconsideration of the Rate Order. First, OPC claims that the Commission failed to consider whether approval of the RSAM-adjusted

depreciation rates violates Section 366.06(1), Florida Statutes, because they purportedly are not based on FCG's net investment in its own property. (OPC Motion, pp. 2-4.) Second, OPC claims the Commission's reliance on rate stability in approving RSAM overlooks that FCG only committed to rate stability if all elements of its four-year rate plan were approved. (OPC Motion, pp. 5-6.) As explained below, OPC's Motion fails to identify any point of fact or law that was overlooked or not considered by the Commission when reaching its decision to approve RSAM. Rather, OPC improperly attempts to reargue the merits of RSAM that have already been considered by this Commission.

A. RSAM and Section 366.06(1), Florida Statutes

14. The RSAM-adjusted depreciation rates, with the exception of the Liquefied Natural Gas Facility, are based on the depreciation parameters reflected for similar assets in the recent Peoples Gas System ("PGS") base rate case settlement agreement approved by Commission Order No. PSC-2020-0485-FOF-GU in Docket No. 20200051-GU. (Tr. vol. 4, pp. 791-92; Tr. vol. 6, p. 1101.) OPC argues that "using a different utility company's depreciation parameters instead of the depreciation parameters of FCG's actual, used and useful property violates Section 366.06(1), Fla. Stat." (OPC Motion, p. 3.) OPC's first argument for reconsideration fails for multiple reasons.

15. Nowhere in OPC's testimony, prehearing statement,² or post-hearing brief does OPC assert that the RSAM-adjusted depreciation parameters violate Section 366.06(1), Florida Statutes, because they purportedly are not based on FCG's net investment in its own property.³

² Pursuant to Section VI.C of the Order Establishing Procedure, Order No. PSC-2022-0224-PCO-GU, any issue not raised by a party either before or during the Prehearing Conference has been waived by that party except for good cause shown.

³ Permitting OPC to raise and argue this specific issue for the first time on reconsideration could raise serious due process concerns. *See* Section 120.57(1)(b), Fla. Stat. ("All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative"); *See also Bresch v. Henderson*, 761 So.2d 449, 451 (Fla. 2d

(Continued on next page)

OPC attempts to obfuscate this fact by noting that its post-hearing brief cited to Section 366.06(1), Florida Statutes. (OPC Motion, p. 2.) However, a review of the relevant portions of OPC's post-hearing brief clearly reveals that OPC did not previously raise this specific argument.⁴ (*See* OPC Post-Hearing Br., pp. 10-11.) FCG submits that simply citing to a statute in a post-hearing brief and expecting the Commission to engage in conjecture and assume the presence of a party's unstated argument or position is not a sufficient basis for reconsideration. Having raised this argument for the first time on reconsideration, Commission precedent is clear that OPC's Motion must be denied. *See* Commission Order No.PSC-04-0228-FOF-TP in Docket No. 981834-TP (a motion for reconsideration is not a vehicle to raise new arguments or issues not previously raised by the moving party).

16. Regardless of whether OPC properly raised this issue before the Commission, it is clear the Commission nonetheless considered and addressed this issue in deciding whether to approve RSAM and the associated RSAM-adjusted depreciation parameters. Staff's Recommendation unequivocally raised the issue of whether the RSAM-adjusted depreciation parameters violated Section 366.06(1), Florida Statutes. *See, e.g.*, Staff Recommendation, pp. 7-8, 24, and 29. The transcript from the March 28, 2023 Special Agenda Conference clearly reflects that the Commission considered this issue in deliberating whether to approve the RSAM-adjusted depreciation parameters. Specifically, Chairman Fay explicitly raised the issue at the March 28, 2023 Special Agenda Conference and stated that FCG's 2022 Depreciation Study, OPC's

DCA 2000) (holding that it is established law that due process requires that parties to a proceeding be given adequate notice and an opportunity to be heard).

⁴ Citing Section 366.06(1), Florida Statutes, OPC's Post-Hearing Brief argues: "[t]his statute establishes two bedrock principles in gas utility ratemaking in Florida. The first mandates that the rate case petition must be filed by the company pursuant to the prescribed rules and regulations. These rules and regulations must be faithfully followed, absent a waiver, granted pursuant to Section 120.542, Fla. Stat. The second is that when considering an application for a change in rates, the Commission is required to set rates based on cost and account for that cost in a uniform and systematic way, including the net investment which is investment 'less accrued depreciation.'" (OPC Post-Hearing Br., p. 11.)

depreciation parameters, and FCG's RSAM-adjusted depreciation parameters all meet the requirements of Chapter 366. (Special Agenda Conf. Tr. pp. 11-12, Mar. 28, 2023.) Commissioner Passidomo also acknowledged the concern raised by Staff regarding FCG's reliance on another utility's depreciation parameters. (Special Agenda Conf. Tr. pp. 11-12, Mar. 28, 2023.) Commissioner Passidomo went on to emphasize that the RSAM can be a useful tool and could provide customer with a "reprieve" from higher rates. (Special Agenda Conf. Tr. pp. 13-15, Mar. 28, 2023.) Thus, the record in this proceeding clearly demonstrates that the Commission in fact considered not only whether the RSAM-adjusted depreciation parameters violate Section 366.06(1), Florida Statutes, but also the reliance by FCG on the PGS depreciation parameters in reaching its conclusion that the RSAM-adjusted depreciation parameters do not violate Section 366.06.

17. The Commission's decision comports with Commission precedent. Clearly, and contrary to OPC's contention (*see* OPC Motion, p. 3), there is nothing in Chapter 366.06(1), Florida Statutes, that precludes the Commission from approving depreciation lives and net salvage based on the application of depreciation parameter data for a similar Florida natural gas utility with assets similar to the utility's property used and useful in serving customers.⁵ Indeed, the Commission very recently approved a depreciation study for Florida Public Utilities Company in Docket No. 20220067-GU that, in fact, relied on the service life estimates of other similar utilities.⁶

⁵ If that were the correct legal standard, which it is not, the Commission would be limited to approving the depreciation lives and net salvage from the utility's depreciation study and would be precluded from approving alternative lives and net salvage proposed by other parties or included in settlements if they are not based on the utility's own depreciation study.

⁶ As explained by FCG's outside independent depreciation expert, selecting the most reasonable depreciation parameters and resulting depreciation rates comes down to a matter of informed judgment. (Tr. vol. 4, pp. 705, 768-69.) FCG's depreciation expert further explained that service life estimates should incorporate factors such as general knowledge of the property studied, information obtained from site visits and meetings with company subject matter experts, and an understanding of estimates used for similar property for other utilities. (Tr. vol. 4, p. 734.) FCG's depreciation expert also explained that in the case of FCG where the historical data set is more limited, it is even more
(Continued on next page)

18. Further, OPC is incorrect that the RSAM-adjusted depreciation parameters are not based on FCG's net investment in its own property. The RSAM-adjusted depreciation parameters are service life estimates *applied to FCG's used and useful plant in-service.*⁷ The plant and accumulated depreciation reserve balances as well as the depreciation calculations, including the resulting depreciation rates and surplus, are based solely on FCG's assets.

19. Based on the foregoing, OPC's first argument fails to identify any points of fact or law that were overlooked or not considered by the Commission in concluding to approve RSAM and the associated RSAM-adjusted depreciation parameters. Instead, OPC is improperly using its Motion as a vehicle to raise a new argument and rehash an issue already considered and determined by the Commission.

B. RSAM and Rate Stability

20. As OPC concedes in its Motion (OPC Motion, pp. 4-5), the Commission approved RSAM and the associated RSAM-adjusted depreciation parameters finding that RSAM will provide rate stability and rate certainty to customers. Rate Order, pp. 16-17. OPC, however, claims that the Commission overlooked or failed to consider, according to OPC, that FCG only committed to rate stability if all elements of FCG's requested four-year plan were approved. (OPC Motion, p. 5.) OPC's argument is a proverbial red herring that is unsupported by the record.

important to properly consider these other relevant factors. (Tr. vol. 4, p. 733, 735-36.) In this case, the RSAM-adjusted depreciation parameters based on the approved PGS depreciation parameters are only slightly longer than those proposed by OPC witness Garrett and, moreover, are nearly identical to the longer depreciation lives he recommended for Florida Public Utilities Company in the fully litigated rate case pending in Docket No. 20220067-GU. (Tr. vol. 6, p. 1101; CEL Ex. 105, p. 13.)

⁷ In this proceeding, there were three different depreciation proposals with slightly different depreciation parameters: (1) FCG's 2022 Depreciation Study; (2) OPC's depreciation parameters; and (3) FCG's RSAM-adjusted depreciation parameters. The record in this proceeding clearly demonstrated that the depreciation lives included in each of these three proposals are relatively close, within the range of reasonableness, and not materially different. (Tr. vol. 4, pp. 768-69, 771-72; Tr. vol. 6, pp. 1101, 1163-64; CEL Ex. 105, p. 13.) Only *one* of these depreciation proposals is based on FCG's depreciation study; however, *each* of these alternative depreciation proposals apply service life estimates to the same FCG plant.

21. According to OPC, “FCG only committed to rate stability only if *all* elements of FCG’s requested four-year rate plan were approved,” not just RSAM. (OPC Motion, p. 5 (emphasis in original).) OPC goes on to contend that by finding the four-year plan unenforceable, the Commission eliminated the primary basis for approving RSAM. (OPC Motion, pp. 6-7.) OPC misinterprets the Commission’s denial of FCG’s four-year rate plan as a determination, wholly unsupported by the record, that RSAM is not effective in providing a measure of rate stability to customers.

22. A review of the record in this proceeding clearly demonstrates that FCG proposed to commit to a four-year base rate case *stay-out* if the elements of its four-year rate plan were approved. There is nothing in the record, and notably OPC failed to identify anything in the record, where FCG stated RSAM would not provide *rate stability or rate certainty* to customers unless all elements of the proposed four-year rate plan were approved. The Commission clearly cannot overlook or fail to consider something that does not exist. *See* Commission Order No. PSC-02-0878-FOF-TP in Docket No. 001305-TP (a motion for reconsideration must be based on record evidence susceptible to review).

23. Further, the Commission clearly considered whether RSAM would provide rate stability to customers. At the March 28, 2023 Special Agenda Conference, Commissioner Passidomo discussed the expectation that RSAM would deliver rate stability to FCG’s customers over a multi-year period even without approval of the Company’s proposed four-year rate plan. (Special Agenda Conf. Tr. pp. 16-17, Mar. 28, 2023.) Further, even though the Commission concluded it could not enforce a rate case stay-out under the circumstances presented, the Commission nonetheless concluded as follows:

We have the authority to approve an RSAM and accordingly approve FCG’s proposed use of the RSAM along with its Reserve

Surplus of \$25 million. *We find the RSAM will result in a reduction of revenue requirement, save customers money on their utility bills, and give FCG the ability to manage its day-to-day business fluctuations, and allow FCG to take on the risk of increases in interest rates and inflation.*

Rate Order, p. 17 (emphasis added).

24. The Commission's finding that RSAM will provide rate stability is supported by record evidence. Indeed, after discussing the parties' respective arguments and evidence on RSAM, the Commission found as follows:

We are persuaded by the testimony that the RSAM would allow FCG to manage its day-to-day fluctuations as well as take on the risk of both actual current as well as potential future increases in interest rates and inflation....

...FCG offered evidence that its rate plan with the RSAM would result in fair, just, and reasonable rates. By approving the proposed RSAM, we believe FCG is in the best position to maintain its ROE within the approved range and thus reduce the likelihood of additional rate increases in the near future. As we expressed at our Agenda Conference on April 25, 2023, we are mindful of today's economy and the effects of inflation on customers and their utility bills. FCG offered testimony that adopting the proposal allows FCG to manage typical day-to-day fluctuations associated with running a utility business, while also having to absorb potentially higher costs resulting from inflation and rising interest rates. FCG also offered testimony that the use of the RSAM reduces the average residential bill by approximately \$0.94 per month, the average commercial and industrial bill by approximately \$5.15 per month, and the average GS-1 bill by approximately \$465.83 per month.

Rate Order, p. 16 (emphasis added). Thus, the Commission's finding that RSAM will provide rate stability and rate certainty to FCG's customers was clearly supported by record evidence specific to RSAM and wholly independent of the fact that the Commission rejected certain components of FCG's proposed four-year rate plan.

25. Based on the foregoing, OPC's second argument also fails to identify a mistake of fact or law or identify anything the Commission overlooked when considering the RSAM. Instead,

OPC is improperly asking the Commission to reweigh the evidence already considered and reach a different conclusion.

IV. CONCLUSION

For the foregoing reasons, OPC’s Motion fails to identify any point of fact or law that was overlooked or not considered by the Commission when reaching its decision to approve RSAM. Further, OPC’s arguments are incorrect, unsupported, and improperly ask this Commission to reweigh the evidence already considered and reach a different conclusion regarding RSAM and the associated RSAM-depreciation parameters. OPC’s Motion clearly fails on its face to meet the threshold requirements for reconsideration and, therefore, OPC’s Motion must be denied in its entirety.

Respectfully submitted this 30th day of June 2023,

By: /s/ Christopher T. Wright
Christopher T. Wright
Fla. Auth. House Counsel No. 1007055
Joel T. Baker
Fla. Bar No. 0108202
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
Email: christopher.wright@fpl.com
Email: joel.baker@fpl.com

Beth Keating
Fla. Bar No. 0022756
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite
601 Tallahassee, FL 32301
Email: BKeating@gunster.com

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 30th day of June 2023:

<p>Adria Harper, Esquire Timothy Sparks, Esquire Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 AHarper@psc.state.fl.us TSparks@psc.state.fl.us</p> <p><i>For Commission Staff</i></p>	<p>Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 Gentry.richard@leg.state.fl.us rehwinkel.charles@leg.state.fl.us wessling.mary@leg.state.fl.us</p> <p><i>For Office of Public Counsel</i></p>
<p>Jon C. Moyle, Jr. Karen A. Putnal Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, Florida 32301 jmoyle@moylelaw.com kputnal@moylelaw.com mqualls@moylelaw.com</p> <p><i>For Florida Industrial Power Users Group</i></p>	<p>T. Jernigan/H. Buchanan/E. Payton/R. Franjul/M.Duffy 139 Barnes Drive, Suite 1 Tyndall AFB FL 32403 thomas.jernigan.3@us.af.mil holly.buchanan.1@us.af.mil ebony.payton.ctr@us.af.mil rafael.franjul@us.af.mil ULFSC.Tyndall@us.af.mil marcus.duffy.3@us.af.mil</p> <p><i>For Federal Executive Agencies</i></p>

/s/ Christopher T. Wright
Christopher T. Wright
Fla. Auth. House Counsel No. 1007055
Attorney for Florida City Gas