

Writer's Direct Dial Number: (850) 521-1706  
Writer's E-Mail Address: bkeating@gunster.com

April 17, 2025

**BY E-PORTAL**

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

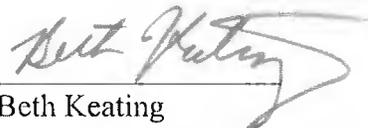
**Docket No. 20250035-GU – Petition for approval of 2025 depreciation study and for approval to amortize reserve imbalance, by Florida City Gas.**

Dear Mr. Teitzman:

Enclosed for filing, please find Florida City Gas's Response in Opposition to Citizen's Motion for Reconsideration and Response to Request for Oral Argument.

As always, thank you for your assistance in connection with this filing. If you have any questions whatsoever, please do not hesitate to let me know.

Sincerely,

A handwritten signature in cursive script that reads 'Beth Keating'.

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

ENCL

CC:// (certificate of service)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Florida City Gas's 2025 Depreciation Study and for Approval to Amortize Reserve Imbalance. ) Docket No.: 20250035-GU  
)  
) Filed: April 17, 2025  
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**FLORIDA CITY GAS'S RESPONSE IN OPPOSITION TO CITIZEN'S MOTION FOR RECONSIDERATION AND RESPONSE TO REQUEST FOR ORAL ARGUMENT**

Florida City Gas ("FCG" or "Company"), by and through its undersigned counsel, hereby submits its Response in Opposition to Citizens' Motion for Reconsideration of Order No. PSC-2025-0102-PCO-GU, Order Denying Office of Public Counsel's Motion to Hold Proceedings in Abeyance, issued in this docket on April 1, 2025 (herein, "Motion for Reconsideration" or "OPC's Motion"). The Company notes that, pursuant to Rule 28-106.204, Florida Administrative Code, a response, if any, to a motion may be filed within seven days of service of that motion and a ruling is not typically made until that response period has run. The Company respectfully requests that the Florida Public Service Commission ("Commission") deny OPC's Motion for Reconsideration. In support of this request, the Company hereby states:

1. As the Commission has recognized time and again, the appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Prehearing Officer failed to consider in rendering his or her decision. 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). This Commission has further recognized that, "Without a specific mistake of fact or law, a motion for reconsideration must be denied, even when there is a "feeling that a mistake may have been made"

or when the reviewing body would have reached a different decision.<sup>1</sup> Applying the foregoing standard, OPC's Motion must be denied, because it fails to identify any mistake of fact or law in the Prehearing Officer's decision, or anything that was overlooked in rendering that decision. Instead, OPC simply disagrees with the Prehearing Officer's conclusion, which is not sufficient to meet the high standard required for reconsideration. A motion for reconsideration is not the appropriate vehicle for merely rearguing issues that have already been considered.<sup>2</sup>

**A. Standard of Review**

2. OPC first contends that because Order No. PSC-2025-0102-PCO-GU, Order Denying Office of Public Counsel's Motion to Hold Proceedings in Abeyance (herein, "Abeyance Order"), was issued by the Prehearing Officer, it should be subject to *de novo* review given that the majority of Commissioners have not reviewed OPC's Motion to Hold Proceedings in Abeyance. To do otherwise, according to OPC, would be unjust and not in the public interest.<sup>3</sup> OPC does not elaborate on why *de novo* review is necessary in this case or why application of the traditional standard is not in the public interest. Nonetheless, this is not a novel argument.

3. The Commission has consistently held that the mistake of fact or law standard applies to reconsideration of a Prehearing Officer's order.<sup>4</sup> As recognized in Order No. PSC-2024-0226-

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<sup>1</sup> Order No. PSC-2016-0231-FOF-EI, issued June 10, 2016, in Dockets Nos. 20160021-EI, 20160061-EI, 20160062-EI, and 20160088-EI, at page 5; *citing* Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

<sup>2</sup> Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3<sup>rd</sup> DCA 1959)(citing State ex. Rel. Jaytex Realty Co v. Green, 105 So. 2d. 817 (Fla. 1<sup>st</sup> DCA 1958).

<sup>3</sup> Motion for Reconsideration, page 2.

<sup>4</sup> See, Order No. PSC-2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Order No. PSC-2002-1442-FOF-EI, issued October 21, 2002, in Docket Nos. 20020262-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Martin County by Florida Power & Light Company* and 20020263-EI, *In re: Petition to Determine Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company*; Order No. PSC-2001-2021-FOF-TL, issued October 9, 2001, in Docket No. 19960786A-TL, *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*; Order No. PSC-1997-0098-FOF-EU, issued January 27, 1997, in Docket No. 19930885-EU, *In re: Petition to Resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company*; Order No. PSC-1996-0133-FOF-EI, issued January 29, 1996, in Docket No. 19950110- EI, *In re: Standard offer contract for the purchase of firm capacity and energy from*

FOF-EI, issued July 8, 2024, in Docket No. 20240025-EI, the Prehearing Officer is the procedural administrator of a proceeding docketed by the Commission and in that role, resolves motions, procedural matters, and conducts prehearing conferences prior to referral of a case to the full Commission for final decision.<sup>5</sup> To apply a different standard of review in this instance, contrary to long-standing Commission precedent, would require, at a minimum, some rationale as to why a different approach is necessary in this instance – rationale which OPC has largely failed to provide.<sup>6</sup> OPC argues only that the full commission has not had an opportunity to consider the issues raised in OPC’s Motion for Abeyance nor has it been the subject of a hearing, which is an argument the Commission has previously addressed, and rejected, in Order No. PSC-2024-0187-FOF-EI, issued June 10, 2024, in Docket No. 20240025-EI. It should likewise be rejected in this case.

**B. Jurisdiction**

4. Citing Dep’t of Revenue ex rel. Simmons v. Wardlaw, 25 So. 3d 80, 82 (4th DCA 2009), OPC argues that the Prehearing Officer failed to consider that the Commission does not have jurisdiction to set new depreciation rates for FCG or even to hear this case, because the prior depreciation study and resulting reserve imbalance are the subject of an appeal still pending before the Florida Supreme Court. As such, OPC contends “it is indisputable that the Commission lacks jurisdiction to proceed with determining whether to change depreciation rates in this docket since doing so directly affects the very same depreciation rates currently being reviewed by the Florida Supreme Court.”<sup>7</sup> OPC’s argument is wrong for several reasons. First, OPC did not argue that the

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*a qualifying facility between Panda-Kathleen, L.P., and Florida Power Corporation*, Order No. PSC-2024-0187-FOF-EI, issued June 10, 2024, in Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC*.

<sup>5</sup> Order No. PSC-2024-0226-FOF-EI at page 4.

<sup>6</sup> It would also, quite arguably, run afoul of Section 120.68(7)(e)3, F.S., which OPC has itself argued on more than one occasion. See, for instance, page 30, of Post Hearing Brief of Office of Public Counsel, filed January 9, 2023, in Docket No. 20220069-GU.

<sup>7</sup> Motion at pages 5-6.

Commission does not have jurisdiction to consider FCG's 2025 Depreciation in its underlying Motion to Hold Proceedings in Abeyance. The Commission has determined in prior cases that new arguments are not appropriate within the context of a Motion for Reconsideration.<sup>8</sup> Second, in the Simmons v. Wardlaw case relied upon by OPC, the subject matter of the appeal before the First District Court of Appeals was, quite literally, the very same order abated by the Broward County Circuit Court.<sup>9</sup> In contrast, the current matter pending before the Commission is FCG's 2025 Depreciation Study, while the subject matter of the appeal pending before the Florida Supreme Court in Docket SC2023-0988 is FCG's 2022 Depreciation Study. The prehearing officer determined that the two matters were sufficiently distinct for this matter to proceed.<sup>10</sup> Third, the Prehearing Officer appropriately recognized the purview of the Court in the Abeyance Order, acknowledging that denial of OPC's Motion to Hold Proceedings in Abeyance did not diminish the fact that the Commission must respond to the guidance of the Court and that such directives are "not merely a procedural formality."<sup>11</sup> For these reasons, the Commission should reject OPC's argument regarding the Commission's jurisdiction to proceed.

**C. Prejudged the Study**

5. OPC also suggests that the Prehearing Officer prejudged whether FCG's 2025 Study was conducted "in accord with previous practices."<sup>12</sup> The language in the Order demonstrates, however, that this statement is incorrect. As stated clearly in the Abeyance Order, the Prehearing

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<sup>8</sup> Order No. PSC-1992-0132-FOF-TL, issued March 31, 1992, in Docket No. 900633-TL, *In re: Development of Local Exchange Company cost study methodology(ies)*, ("This Commission has previously found that where a motion for reconsideration 'more fully develops the arguments in the initial request and adds entirely new arguments ... not included in the Company's initial pleading,' such new arguments and explanations are not appropriate matters for reconsideration."). See also, Order No. PSC-2011-0097-FOF-WS, issued in Docket No. 20100318-WS, on February 2, 2011, at page 11.

<sup>9</sup> Dep't of Revenue ex rel. Simmons v. Wardlaw, 25 So. 3d at 82.

<sup>10</sup> Order Denying Office of Public Counsel's Motion to Hold Proceedings in Abeyance, Order No. PSC-2025-0102-PCO-GU, issued April 1, 2025, in Docket No. 20250035-GU, at page 3.

<sup>11</sup> Order at page 3.

<sup>12</sup> Motion at page 6.

Officer merely determined that the subject of the appeal and the 2025 Depreciation Study were sufficiently distinct to allow this docket to proceed.<sup>13</sup> In that context, the Prehearing Officer also recognized that the Final Order, as well as the Clarifying Order, regarding FCG's 2022 rate request and 2022 Depreciation Study have not been stayed. Given the inherent uncertainty regarding the timeline for an appellate decision, as well as the uncertainty as to what that decision will be, the Prehearing Officer concluded that, "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."<sup>14</sup> OPC has identified no mistake of fact or law in the Prehearing Officer's decision on this point.

**D. Same Source**

6. In addition, OPC argues that the Prehearing Officer failed to consider that FCG is the "singular source" of the depreciation parameters and rates on appeal before the Florida Supreme Court, as well as those put forth in the 2025 Study. Because the same entity filed each of the studies, OPC contends that the Prehearing Officer failed to consider that the parameters and rates on appeal are "inextricably intertwined" with those reflected in the 2025 Study.<sup>15</sup> This is a transparent re-argument that should not serve as the basis for reconsideration.

7. First, the Prehearing Officer acknowledged OPC's argument that FCG was not required to file a new depreciation study until 2027, and that to move forward with consideration of this new study would be premature given that the previous study and parameters for FCG are on appeal. He likewise noted that FCG acknowledged it was not yet required by Rule to file a new Study, but

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<sup>13</sup> Order at page 3.

<sup>14</sup> Order at page 3.

<sup>15</sup> Motion at page 7.

was doing so due to its new ownership and certain changes in account activity.<sup>16</sup> The Prehearing Officer clearly understood and acknowledged that the RSAM-parameters and associated depreciation study that are the subject of the appeal currently being considered in SC2023-0988 were submitted by the same Company that has submitted the 2025 Depreciation Study for consideration in this proceeding; hence, his assessment that “any potential risk of an unnecessary burden is counterbalanced by the risk of a negative impact to FCG and its customers.”<sup>17</sup>

8. Moreover, the Prehearing Officer did not conclude that FCG’s 2025 Study is a “new study conducted by a different expert,” as OPC contends; rather, the Prehearing Officer concluded that “the two are sufficiently distinct and the matter shall proceed” based upon FCG’s assertions in that regard. [Emphasis added].<sup>18</sup> The fact that both were submitted by the same Company does not, however, demonstrate that the parameters and rates are “inextricably intertwined” or that the Prehearing Officer’s determination that “the two are sufficiently distinct” to allow this case to proceed was erroneous. OPC has failed to identify a mistake of fact or law in the Prehearing Officer’s Abeyance Order; therefore, it must be denied.

**E. Oral Argument Request**

9. OPC’s Motion for Reconsideration does not involve “complex depreciation matters” that necessitate oral argument.<sup>19</sup> To the contrary, the question appropriately before the Commission as a result of OPC’s Motion is whether the Prehearing Officer made a mistake of fact or law in determining that the depreciation issues pending before the Florida Supreme Court are sufficiently distinct from the depreciation study and petition that are the subject of this proceeding such that

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<sup>16</sup> Order at page 2.

<sup>17</sup> Order at page 3.

<sup>18</sup> Order at page 2.

<sup>19</sup> OPC’s Request at paragraph 1.

this docket should be allowed to proceed. Oral argument is unlikely to provide additional insight in that regard.

**WHEREFORE**, in light of the foregoing, Florida City Gas asks that the Commission deny OPC's Motion for Reconsideration, as well as its Request for Oral Argument on its Motion.

Respectfully submitted this 17th day of April, 2025.



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Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 S. Monroe Street, Suite 601  
Tallahassee, FL 32301-1804  
(850) 521-1706  
[bkeating@gunster.com](mailto:bkeating@gunster.com)  
*For Florida City Gas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by Electronic Mail this 17<sup>th</sup> day of April, 2025.

Walter Trierweiler Mary Wessling Charles Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 <a href="mailto:Trierweiler.walt@leg.state.fl.us">Trierweiler.walt@leg.state.fl.us</a> <a href="mailto:Wessling.mary@leg.state.fl.us">Wessling.mary@leg.state.fl.us</a> <a href="mailto:Rehwinkel.charles@leg.state.fl.us">Rehwinkel.charles@leg.state.fl.us</a>	Adria Harper Timothy Sparks Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 <a href="mailto:aharper@psc.state.fl.us">aharper@psc.state.fl.us</a> <a href="mailto:tsparks@psc.state.fl.us">tsparks@psc.state.fl.us</a> <a href="mailto:discovery-gcl@psc.state.fl.us">discovery-gcl@psc.state.fl.us</a>
Mike Cassel 208 Wildlight Avenue Yulee, FL 32097 <a href="mailto:Mcassel@fpuc.com">Mcassel@fpuc.com</a>	Michael Bustos 208 Wildlight Ave Yulee FL 32097 <a href="mailto:mbustos@chpk.com">mbustos@chpk.com</a>

By:   
Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706