

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

FILED: November 21, 2025

RESPONSE TO FLORIDA CITY GAS'S MOTION TO STRIKE EXHIBIT TO STAFF'S
TESTIMONY OR, IN THE ALTERNATIVE, MOTION IN LIMINE

Commission Staff, by and through undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code (F.A.C.), hereby files this Response to Florida City Gas's Motion To Strike Exhibit To Staff's Testimony Or, In The Alternative, Motion In Limine, (Motion) and states as follows:

1. On February 24, 2025, Florida City Gas (FCG) filed a Petition for Approval of Depreciation Study and for Approval to Amortize Reserve Imbalance under Rule 25-7.045, F.A.C.

2. On November 13, 2025, Commission Staff filed the Testimony and Exhibits of Edwin A. Kunkler. The purpose of Staff Witness Kunkler's testimony is to present alternative depreciation parameters applicable to certain plant accounts, specifically Accounts 3762: Mains-Steel and 3801: Services-Plastic, contained within FCG's 2025 Depreciation Study (2025 Study). Exhibit EAK-5 was a reproduction of an exhibit that was entered into the record in Docket No. 20220069-GU as part of the testimony of Ned Allis on behalf of FCG (2022 Study or Exhibit).

3. On November 14, 2025, FCG filed its Motion To Strike Exhibit To Staff's Testimony Or, In The Alternative, Motion In Limine (Motion), stating that Exhibit EAK-5 attached to the testimony of Edwin A. Kunkler is both irrelevant and immaterial and including it in the record would be unduly prejudicial as well as unusable hearsay contrary to Rule 28-106.213, F.A.C.

4. On November 19, 2025, the Office of Public Counsel (OPC) submitted Citizens' Response to Florida City Gas's Motion to Strike Exhibit To Staff's Testimony or, in the Alternative, Motion in Limine (OPC Response).

5. In regard to FCG's first argument, the general rule of evidence in administrative proceedings, as acknowledged by FCG, is found in Section 120.569(2)(h), which states, "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence

of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida.”¹

6. FCG argues three main points in its contention that the 2022 Study is irrelevant and immaterial and that its inclusion is unduly prejudicial.

7. FCG's first argument is that the Exhibit in question “clearly falls within the category of ‘irrelevant, immaterial, and unduly repetitious’ and is not otherwise ‘evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs’ given that it is dated, was not the preferred or primary recommendation when filed, and was not approved or accepted by the Commission at that time.”²

8. FCG submitted two depreciation studies its 2022 rate case Petition; the 2022 Study here at issue, and an alternative study. In that case, FCG represented to the Commission that both followed generally accepted principles in the field of depreciation. Importantly, FCG requested that the Commission approve the 2022 Study if the alternative was rejected. FCG's submission of the 2025 Depreciation Study to be approved in this docket does not render the 2022 Study irrelevant or immaterial.

9. To the contrary, the fact that the 2022 Study was offered in its last rate case makes the study highly relevant and material to the instant case. This position is supported by OPC as well.³ While the 2022 Study may not have been accepted by the Commission, that does not change the fact that the 2022 Study offers insight into how FCG has evaluated the life of its assets in the past, offering if nothing else a potential baseline from which to compare the instant study both in process and substance.

10. In addition, the simple fact that FCG's own witness Lee cites to the 2022 Study no less than four times makes its inclusion in the record essential. FCG Witness Lee testifies that the proposed curve shapes are based, at least in part, on a review of the curve shapes proposed in the

¹ See *Florida Industrial Power Users Group v. Graham*, 209 So.3d 1142, 1144 (Fla. 2017); *Jackson v. Florida Birth-Related Neurological*, 932 So.2d 1125, 1130 (Fla. 4th DCA 2006).

² Motion at page 3.

³ OPC Response at page 2.

2022 Study.⁴ Given the liberal rules of evidence applicable to Florida Administrative Proceedings, Staff asserts it is improper for FCG's witness to invoke the 2022 Study on one hand, but for FCG itself to argue the 2022 Study should be excluded on the other.⁵

11. FCG's second argument states that "[i]ntroduction of a 3.5-year old depreciation study conducted by a witness who is not appearing on behalf of any party in this proceeding and which is based upon books and records that predate the acquisition of FCG by CUC [Chesapeake Utilities Company] certainly constitutes the introduction of evidence that is 'irrelevant, immaterial, and unduly repetitions.'" ⁶

12. FCG has not shown any way in which the acquisition of FCG by CUC would impact its depreciation study such as to make the 2022 Study unreliable. If such were to be the case, one would think the company would submit an updated analysis to support the new study for what it seeks approval of in this docket. Staff acknowledges that a study conducted by FCG's own witness in the instant docket would have been preferable to relying on the older study, but that does not mean the older study is "immaterial, irrelevant, or unduly repetitious."

13. Third and finally, FCG argues that "allowing entry of this dated exhibit into the record of this proceeding would be highly prejudicial to FCG." FCG states this is because "while Mr. Allis' testimony and exhibit NWA-1 were filed on behalf of the entity 'FCG,' the [FCG] in 2022 was very different from the [FCG] that exists today as a subsidiary of CUC" and also that FCG would not be able to conduct discovery and cross-examination of Mr. Allis.⁷

14. FCG's own failure to conduct a life analysis has created this situation, as well as its own failure to provide all of the documents supporting its own witness' testimony. As acknowledged in FCG's own Motion, FCG's Witness Lee stated "she reviewed the historical statistical analysis and determined that a similar analysis was not necessary."⁸ Additionally, as argued above, the study is referenced by FCG's own witness' testimony and, therefore, FCG has also contributed to if not created the relevance and the materiality of the study, and the need for it to be provided by the Staff Witness. It is equally prejudicial for FCG and its own witness to be able to rely on the

⁴ If the Exhibit is stricken from the testimony of Staff Witness Kunkler, it may be equally necessary to strike some or all of Witness Lee's testimony that is based on documents not contained in the record.

⁵ OPC Response at page 7.

⁶ Motion at page 4.

⁷ Motion at page 4.

⁸ Motion at page 7.

2022 Study while precluding both other parties from being able to, as well as precluding any consideration of the study for any purpose by the Commission, which is what striking the exhibit would do.

15. FCG also argued that the exhibit constitutes unusable hearsay under Rule 28-106.213, F.A.C., arguing that because Witness Kunkler relied upon the data from the prior depreciation study, Exhibit EAK-5 is not merely offered to supplement or explain evidence, but instead is itself evidence that should be stricken.

16. Without regard to whether or not Exhibit EAK-5 actually is hearsay, FCG misapplies the rule as provided in Rule 28-106.213(3), F.A.C., which states:

(3)Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-805, F.S.

17. This rule proscribes what can and cannot be done with hearsay evidence but makes no reference to striking evidence. Accordingly, the evidence should be admitted and the Commission can give the evidence its appropriate weight when it issues its ultimate Order in this matter.

18. In the alternative, in its Motion in Limine FCG argues the Commission should limit the admissibility of Exhibit EAK-5 and specify that only limited portions, specifically, pages 35 and 47, can be used and only for limited, though unspecified, purposes.

19. The introduction of an incomplete document into the record could lead to additional issues, and therefore, Commission Staff submitted the entire document. Staff acknowledges that Section 120.569(2)(h) authorizes documentary evidence to be received in the form of an excerpt. As such, and in the alternative, Staff believes that the following pages in addition to those identified by FCG should be in the record: 20, 57-59, and 155-156. Staff maintains its position that it is proper to enter the entire exhibit into the record, particularly as FCG's own witness acknowledges using it.

20. As argued by OPC in its Response, the role of Staff is to ensure that all pertinent facts are brought to the Commissioners' attention.⁹ FCG's own witness acknowledged reviewing the

⁹ Response at page 8, citing Florida Public Service Commission Administrative Procedures Manual, section 13.13E.

study and using data from the study to propose curve shapes. It would be improper to allow FCG to rely on the study while precluding other parties from even introducing it into the record.

Accordingly, for the reasons stated above, Commission Staff respectfully request FCG's Motion be denied. If the alternative Motion in Limine is granted, Staff respectfully submits that the additional pages identified herein should also be included.

/s/ Timothy Sparks

TIMOTHY SPARKS

Senior Attorney, Office of the General Counsel

JACOB IMIG

Senior Attorney, Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION

2540 Shumard Oak Blvd.

Tallahassee, FL 32399-0850

(850) 413-6199

jimig@psc.state.fl.us

tsparks@psc.state.fl.us

discovery-gcl@psc.state.fl.us

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

DATED: NOVEMBER 21, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of RESPONSE TO FLORIDA CITY
GAS'S MOTION TO STRIKE EXHIBIT TO STAFF'S TESTIMONY OR, IN THE
ALTERNATIVE, MOTION IN LIMINE, has been served by electronic mail to the following
this 21st day of November, 2025:

Miguel Bustos
Manager Regulatory Affairs
Florida City Gas
208 Wildlight Avenue
Yule, Florida 32097
mbustos@chpk.com

Beth Keating
Gunster Law Firm
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301
bkeating@gunster.com

Walt Trierweiler /
Charles Rehwinkel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400
Trierweiler.walt@leg.state.fl.us
Rehwinkel.charles@leg.state.fl.us

/s/Timothy Sparks

TIMOTHY SPARKS
Senior Attorney, Office of the General Counsel
JACOB IMIG
Senior Attorney, Office of the General Counsel
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6199
jimig@psc.state.fl.us
tsparks@psc.state.fl.us
discovery-gcl@psc.state.fl.us