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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City Gas	Docket No. 20220069-GU

POST-HEARING BRIEF
FLORIDA CITY GAS

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. STANDARD OF REVIEW 6

III. STATEMENT OF POSITIONS AND ARGUMENT 8

TEST PERIOD AND FORECASTING 8

Issue 1: Is FCG's projected test period of the twelve months ending December 31, 2023, appropriate? 8

Issue 2: Are FCG's forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, appropriate? If not, what adjustments should be made? 8

Issue 3: Are FCG's estimated revenues from sales of gas by rate class at present rates for the projected test year appropriate? If not, what adjustments should be made? 10

QUALITY OF SERVICE 10

Issue 4: Is the quality of service provided by FCG adequate? 10

DEPRECIATION STUDY 11

Issue 5: Based on FCG's 2022 Depreciation Study, what are the appropriate depreciation parameters (e.g., service lives, remaining life, net salvage percentage, and reserve percentage) and resulting depreciation rates for each distribution and general plant account? 11

A. The Depreciation Parameters and Resulting Depreciation Rates in FCG's 2022 Depreciation Study Are the Most Reasonable in the Context of a Single-Year Rate Plan 13

B. The Depreciation Parameters Proposed by OPC Are Less Reasonable in the Context of a Single-Year Rate Plan 15

Issue 6: If the Commission approves FCG's proposed RSAM (Issue 67), what are the appropriate depreciation parameters (e.g., service lives, remaining lives, net salvage percentages, and reserve percentages) and depreciation rates? 17

Issue 7: Based on the application of the depreciation parameters that the Commission has deemed appropriate to FCG's data, and a comparison of the theoretical reserves to the book reserves, what, if any, are the resulting imbalances? 19

Issue 8: What, if any, corrective depreciation reserve measures should be taken with respect to any imbalances identified in Issue 7? 20

Issue 9: What should be the implementation date for revised depreciation rates and amortization schedules? 21

RATE BASE 21

Issue 11: Should FCG's proposed Advanced Metering Infrastructure (AMI) Pilot be approved? If so, what adjustments, if any, should be made? 21

Issue 12: What is the appropriate amount of plant in service for FCG's delayed LNG facility that was approved in its last rate case? 25

A. OPC Contentions that Costs Associated with the LNG Facility Should be Disallowed Are Flawed and Reflect a Misunderstanding of the 2018 Settlement and the Efforts that Were Necessary to Complete Construction of the Facility 27

B. OPC Contentions that Costs Associated with the LNG Facility Should Not Be in FCG's Current Rates Reflect a Misunderstanding of the Terms of the 2018 Settlement 31

Issue 13: What is the appropriate level of plant in service for the projected test year? (Fallout Issue) 34

Issue 15: Should any adjustments be made to the amounts included in the projected test year for acquisition adjustment and accumulated amortization of acquisition adjustment? 37

Issue 17: What is the appropriate level of Gas Plant Accumulated Depreciation and Amortization for the projected test year? 42

Issue 19: Should the unamortized balance of Rate Case Expense be included in Working Capital and, if so, what is the appropriate amount to include? 42

Issue 22: What is the appropriate level of working capital for the projected test year? 44

Issue 23: What is the appropriate level of rate base for the projected test year? (Fallout Issue) 45

COST OF CAPITAL 46

Issue 24: What is the appropriate amount of accumulated deferred taxes to include in the projected test year capital structure? 46

Issue 25: What is the appropriate amount and cost rate for short-term debt to include in the projected test year capital structure? 46

Issue 26: What is the appropriate amount and cost rate for long-term debt to include in the projected test year capital structure? 47

Issue 27: What is the appropriate amount and cost rate for customer deposits to include in the capital structure? 48

Issue 28: What is the appropriate equity ratio to use in the capital structure for ratemaking purposes? 49

Issue 29: What is the appropriate authorized return on equity (ROE) to use in establishing FCG's projected test year revenue requirement? 52

Issue 31: What is the appropriate weighted average cost of capital to use in establishing FCG's projected test year revenue requirement? 56

NET OPERATING INCOME 57

Issue 34: Should FCG's proposal to transfer outside service costs incurred for clause dockets from base rates to each of the respective cost recovery clause dockets be approved and, if so, has FCG made the appropriate adjustments to remove all such outside service costs incurred for clause dockets from the projected test year operating revenues and operating expenses? 57

Issue 35: What is the appropriate amount of miscellaneous revenues? 57

Issue 36: Is FCG's projected Total Operating Revenues for the projected test year appropriate? (Fallout Issue) 57

Issue 38: What is the appropriate amount of salaries and benefits to include in the projected test year? 58

A. FCG's Projected Test Year Employee Complement is Reasonable and Reflects FCG's Optimal Staffing Needs for the 2023 Test Year 58

B. OPC's Proposed Adjustments to Incentive Compensation are Inappropriate, Flawed, and Should be Rejected 60

Issue 39: What is the appropriate amount of the affiliate expense to be included in the projected test year? 63

Issue 40: What is the appropriate amount of pensions and post-retirement benefits expense to include in the projected test year? 64

Issue 41: Is the injuries and damages expense in the test year reasonable? 65

Issue 42: Is the insurance expense in the test year reasonable and/or appropriate? 66

Issue 45: Should FCG's proposal to continue the Storm Damage Reserve provision included in the 2018 Settlement Agreement be approved and, if so, what is the appropriate annual storm damage accrual and target reserve amount? 67

Issue 46: Is a Parent Debt Adjustment pursuant to Rule 25-14.004, Florida Administrative Code, appropriate, and if so, what is the appropriate amount? 69

Issue 47: What is the appropriate annual amount and amortization period for Rate Case Expense? 72

Issue 49: What is the appropriate amount of projected test year O&M expenses? (Fallout Issue) 75

Issue 50: Should any adjustments be made to the amounts included in the projected test year for amortization expense associated with the acquisition adjustment? 76

Issue 51: What is the appropriate amount of Depreciation and Amortization Expense for the projected test year? 76

Issue 52: What is the appropriate amount of projected test year Taxes Other than Income? 77

Issue 53: What is the appropriate amount of projected test year Income Tax Expense? (Fallout Issue) 77

Issue 54: What is the appropriate amount of Total Operating Expenses for the projected test year? (Fallout Issue) 78

Issue 55: What is the appropriate amount of Net Operating Income for the projected test year? (Fallout Issue) 78

REVENUE REQUIREMENTS 79

Issue 57: What is the appropriate annual operating revenue increase for the projected test year? (Fallout Issue) 79

COST OF SERVICE AND RATE DESIGN 81

Issue 58: Is FCG's proposed cost of service study appropriate and, if so, should it be approved for all regulatory purposes until base rates are reset in FCG's next general base rate proceeding? 81

Issue 59: If the Commission grants a revenue increase to FCG, how should the increase be allocated to the rate classes? 84

Issue 60: Are FCG's proposed Customer Charges appropriate? 87

Issue 61: Are FCG's proposed per therm Distribution Charges appropriate? 87

Issue 62: Are FCG's proposed Demand Charges appropriate? 87

Issue 65: What is the appropriate effective date for FCG's revised rates and charges? 87

Issue 66: Should the Commission give staff administrative authority to approve tariffs reflecting Commission approved rates and charges? 87

OTHER ISSUES 87

Issue 67: Should the Commission approve FCG's requested Reserve Surplus Amortization Mechanism (RSAM)? 87

A. FCG's Proposed Four-Year Rate Plan with RSAM will Provide Significant Customer Benefits and Savings to Customers over the Term of the Four-Year Rate Plan 89

B. The Intervenors' Legal Challenge to the RSAM is without Merit 91

C. Intervenors' Substantive Opposition to the RSAM is Irrelevant and Unsupported 94

Issue 68: Should the Commission approve FCG's proposal for addressing a change in tax law, if any, that occurs during or after the pendency of this proceeding? 96

Issue 71: Should the Commission approve FCG's requested four-year rate plan? 98

IV. CONCLUSION 100

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City Gas	Docket No. 20220069-GU Filed: January 9, 2023

POST-HEARING BRIEF
FLORIDA CITY GAS

I. INTRODUCTION AND SUMMARY

Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG" or the "Company") hereby files with the Florida Public Service Commission ("Commission") its Post-Hearing Brief in the above-referenced docket pursuant to Rules 28-106.215 and 28-106.307, Florida Administrative Code ("F.A.C."), and Commission Order Nos. PSC-2022-0224-PCO-GU, PSC-2022-0275-PCO-GU, and PSC-2022-0413-PHO-GU. Pending before the Commission is FCG's proposed four-year rate plan and associated depreciation rates, which the unrefuted evidence demonstrates will provide customers with tremendous savings, lower rates, and rate stability through at least the end of 2026. For the reasons explained herein, FCG's proposed four-year rate plan is just, fair, reasonable, and should be approved.

The Company's last base rate case resulted in a settlement that became effective on June 1, 2018. It is undisputed that FCG has earned below the bottom of the current authorized return on equity ("ROE") range since its last rate case, and that the Company projects it will continue to earn below the current authorized ROE range without base rate relief. It also cannot be credibly disputed that inflation, interest rates, capital costs, and overall market risk are substantially higher than the levels experienced since the Company's last base rate case – in fact, the rate of inflation and interest rates have increased significantly from the August 2021 and December 2021 vintages, respectively, used to develop the forecast underpinning the Minimum Filing Requirements ("MFRs") for the 2023 Test Year. This confluence of economic impacts has, in fact, remained on

the rise since FCG filed this base rate case on May 31, 2022.

In an effort to avoid multiple back-to-back rate increases and the associated rate case expenses, FCG elected to propose a four-year rate plan to provide its customers with rate stability and rate certainty, and to unlock tremendous customer benefits and savings that would not be available under a single-year rate plan. The Company's proposed four-year rate plan includes the following eight core elements:

- First, the Company is requesting a single incremental base revenue increase of $18.8 million based on a projected 2023 Test Year as explained by FCG witness Fuentes.
- Second, the Company is requesting a 10.75% mid-point ROE and an equity ratio of 59.6% as described by FCG witnesses Campbell and Nelson.
- Third, the Company proposes to allocate the revenues based on a class cost of service study and applying the Commission's guideline on gradualism and accounting for the competitive nature of the natural gas industry as described by FCG witness DuBose.
- Fourth, a critical and essential component of FCG's proposed four-year rate plan is the adoption of a reserve surplus amortization mechanism ("RSAM") as explained by FCG witness Campbell.
- Fifth, the Company proposes to continue and expand its existing Safety Access Facility Enhancement ("SAFE") program, which will allow FCG to further improve safe and reliable service as described by FCG witness Howard.
- Sixth, the Company proposes to implement a new limited Advanced Metering Infrastructure ("AMI") Pilot that will enable FCG to test and evaluate whether it would be appropriate in the future to deploy AMI technology across its entire system as described by FCG witness Howard.
- Seventh, the Company proposes a mechanism to account for future potential tax reform legislation as explained by FCG witness Campbell.
- Finally, the Company proposes to continue its existing Storm Damage Reserve approved in its last rate case as explained by FCG witnesses Campbell and Howard.

The record evidence in this case demonstrates that FCG's proposed four-year rate plan will: (i) provide customers with rate stability and certainty through at least the end of 2026; (ii) save customers nearly $10.8 million over the term of the four-year rate plan due to the implementation of RSAM-adjusted depreciation rates; (iii) avoid repetitive and costly rate

proceedings, saving customers an additional $2.0 million in rate case expenses in 2024; (iv) avoid an additional $15.4 million of cumulative cash revenue collected from customers in 2025 and 2026; (v) enable the Company to continue to meet the natural gas needs of existing and new customers; (vi) allow the Company to continue to provide safe, reliable, and high-quality customer service; and (vii) provide FCG a reasonable opportunity to earn a fair rate of return on the Company's necessary capital investments. Importantly, FCG's financial forecast and proposed ROE should be viewed as conservative given the substantial change in the capital market environment since FCG filed this case.

In the event that the Commission declines to approve the proposed four-year rate plan, FCG has also put forth evidence to support a single-year rate plan and associated depreciation rates. However, if the Commission declines to approve the proposed four-year rate plan, the record demonstrates that FCG would need to file another rate case in 2024 to support an additional base rate increase in 2025. Further, the unrefuted record in this proceeding demonstrates that even if the Commission approves FCG's alternative single-year rate plan in full, the overall net cumulative increase in cash that will be paid by customers over the period 2023-2026 would be approximately $27 million more than under FCG's proposed four-year rate plan.

Intervenors Office of Public Counsel ("OPC"), Federal Executive Agencies ("FEA"), and the Florida Industrial Power Users Group ("FIPUG") (hereinafter, collectively referred to as "Intervenors" unless otherwise noted) ignore and do not refute the significant customer savings and benefits under FCG's proposed four-year rate plan. Instead, the Intervenors attack the essential components of the Company's proposed four-year rate plan and propose various adjustments to FCG's rate base, operations and maintenance ("O&M") expenses, and net operating income. As explained below, the Intervenors' criticisms of the proposed four-year rate plan are shortsighted

and seek to remove a host of significant customer benefits that are part of the plan. Apparently, the Intervenors do not want FCG to provide these benefits and savings to customers and, instead, prefer that customers pay much higher rates than requested by FCG, as well as the additional, unnecessary costs of more frequent base rate proceedings.

The Intervenors assert that, absent an agreement by the parties, the Commission is without jurisdiction and authority to grant FCG's proposed four-year rate plan in a litigated proceeding, including the proposed RSAM that is a critical and essential component of the four-year rate plan. The Intervenors' legal challenges to the Commission's authority to approve the proposed four-year rate plan with RSAM in a litigated proceeding are fundamentally flawed and without any legal merit. As explained in detail below, the Commission clearly has the statutory jurisdiction and authority to approve, and in fact has previously approved, multi-year rate plans with RSAM-type of mechanisms. The fact that a case is settled as opposed to litigated does not and cannot change, limit, or expand the Commission's statutory jurisdiction and authority.

As explained in detail below, the Intervenors' recommendations and adjustments to FCG's rate base, O&M expenses, and net operating income for the 2023 Test Year simply ignore the unrefuted evidence in this proceeding, including the facts that inflation, interest rates, capital costs, and overall market risk are all substantially higher since FCG filed this case, let alone higher than the levels experienced since FCG's last base rate case. Notably, many of OPC's recommendations and proposed adjustments in this proceeding improperly attempt to ignore and re-write the Commission-approved settlement from FCG's last base rate case in Docket No. 20170179-GU ("2018 Settlement"),[1] including the ratemaking treatment for the Liquefied Natural Gas ("LNG") Facility and the continued recovery of the acquisition adjustment addressed and resolved in that

[1] Order No. PSC-2018-0190-FOF-GU, Docket No. 20170179-GU. For clarity, and where appropriate, FCG's last base rate case will hereinafter be referred to as the "2018 rate case."

proceeding.

Importantly, OPC's proposed recommendations and proposed adjustments, if adopted, would not even bring FCG to the bottom of its current authorized ROE range, which is completely illogical given the undisputed fact that each year since the 2018 rate case FCG has continually earned and, absent rate relief, expects to earn below its current authorized ROE range in the future. As explained in detail below, the Intervenors' recommendations and proposed adjustments are unsupported, inappropriate, biased, and would violate the well-established regulatory principle that FCG is entitled to a fair opportunity to earn a reasonable rate of return.

Likewise, the Intervenors' proposed capital structures should be rejected because they fail to account for how FCG is actually financed. Pursuant to Commission-approved financing orders, FCG's regulated operations are 100% financed through debt and equity from its parent, Florida Power & Light Company ("FPL"), which benefits FCG's customers through significantly lower cost debt than FCG could otherwise obtain on its own. The Company's requested equity ratio of 59.60% is within the proxy group range and appropriately accounts for the business risks that are unique to FCG as more fully explained by FCG witness Nelson. FCG's proposal reflects the mix of the actual sources of capital employed by FCG. For these reasons, it is reasonable and appropriate for FCG's capital structure to mirror FPL's capital structure.

Finally, the Intervenors' recommended ROEs should be rejected. OPC recommends a midpoint ROE of 9.25% and FEA recommends a midpoint ROE of 9.40%, which are almost 100 basis points below the midpoint ROE approved in FCG's last base rate case. The Intervenors' recommended ROEs ignore and do not properly reflect the undisputed facts that inflation, interest rates, capital costs, and overall market risk are all substantially higher than the levels experienced since FCG's last base rate case. Further, for the many reasons explained in the rebuttal testimony

of FCG witness Nelson, the Intervenors' ROE analyses are flawed, biased, and should be rejected.

FCG's recommended midpoint ROE of 10.75% is based on the results of multiple widely used market-based financials models, which provides a broader and more robust view of investors' return requirements. Importantly, FCG's recommended mid-point ROE should be viewed as conservative by the Commission given the substantial change in the capital market environment since FCG filed this case in May 2022. For these reasons, as well as those further explained by FCG witness Nelson, FCG's proposed ROE of 10.75% represents a fair and reasonable estimate of FCG's cost of equity and should be approved.

For these reasons, as further explained below, the overwhelming weight of the credible evidence in this proceeding demonstrates that FCG's proposed four-year rate plan provides customers with rate stability and certainty through at least the end of 2026 and will save customers approximately $27 million over the term of the four-year rate plan. Under these unrefuted facts and circumstances, FCG's proposed four-year rate plan and the associated rate increase is fair, just, reasonable, and should be approved.

II. STANDARD OF REVIEW

Section 366.06(1), Florida Statutes ("F.S."), provides in relevant part that 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." If the Commission finds that a utility's rates are insufficient to yield reasonable compensation for the services rendered, the Commission is obligated to determine just and reasonable rates for such service. Section 366.06(2), F.S.

In fixing rates, the Commission "shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the

public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures." Section 366.06(2), F.S. "In fixing the just, reasonable, and compensatory rates, [and] charges…, the [C]ommission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; [and] the ability of the utility to improve such service and facilities." Section 366.041(1), F.S. Provided, however, "that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings." *Id.*

Contested proceedings before the Commission are governed by the Administrative Procedure Act, Chapter 120, F.S., which provides that "[f]indings of fact shall be based upon a preponderance of the evidence...and shall be based exclusively on the evidence of record and on matters officially recognized." Section 120.57(1)(j), F.S. Thus, the Commission's findings and conclusions in this case must be supported by competent, substantial evidence in the record. *Citizens of Fla. v. Brown*, 269 So. 3d 498, 505 (Fla. 2019); *Sierra Club v. Brown*, 243 So. 3d 903, 907-08 (Fla. 2018).

Consistent with this standard of review, FCG herein responds to each of the contested issues below.[2]

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[2] The Commission approved Type 2 Stipulations for Issue Nos. 10, 14, 16, 18, 20, 21, 30, 32, 33, 37, 43, 44, 48, 56, 63, 64, 69, 70, 72, and 73. These Type 2 Stipulations are fully set forth in Comprehensive Exhibit List ("CEL") Ex. No. 184 and, as such, will not be further addressed herein. For any other uncontested issues (*i.e.*, no Intervenors took a position in their respective prehearing statements), FCG has largely restated its position as reflected in Prehearing Order No. PSC-2022-0413-PHO-GU unless necessary or appropriate to further respond to the applicable issue.

Additionally, FCG notes that, as permitted by Prehearing Order No. PSC-2022-0224-PCO-GU, Staff took no position on all issues in this proceeding. Further, other than four pages of testimony on customer service, which are addressed in Issue No. 4 below, Staff introduced no testimony supporting any positions, adjustments, or recommendations in this proceeding. As such, FCG has had no notice or any meaningful opportunity to respond to any positions, proposals, or recommendations, if any, that may be made by Staff. To the extent that Staff recommends any proposals, positions, or adjustments that are beyond those presented by the Parties and introduced into the evidentiary record, FCG submits that such recommendations could raise serious due process questions. *See* Section 120.57(1)(b), F.S. ("All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-

(*Continued on next page…*)

III. STATEMENT OF POSITIONS AND ARGUMENT

TEST PERIOD AND FORECASTING

Issue 1: Is FCG's projected test period of the twelve months ending December 31, 2023, appropriate?

***FCG:** Yes. The Company's petition requests an increase in base rates effective February 1, 2023. Accordingly, 2023 is the most appropriate year to evaluate the Company's projected revenue requirements to afford the appropriate match between revenues and revenue requirements for 2023. (*Campbell, Fuentes*)*

The use of a projected test period of the twelve months ending December 31, 2023 is reasonable and appropriate. In its filing, FCG proposed new base rates to become effective February 1, 2023, at a level sufficient to recover the Company's revenue requirements in 2023 with an opportunity to earn a fair and reasonable return. (Tr. vol. 6, p. 1047.) Therefore, FCG's use of a projected 2023 Test Year in this proceeding best reflects the Company's revenues, costs, and investments during the year in which new rates are proposed to go into effect. *Id.*

OPC's position that FCG's test year should be questioned on account of potential future mergers or acquisitions is unsupported and should be rejected. There is no evidence of any merger or sale activity, costs, or savings included in FCG's 2023 Test Year. (Tr. vol. 5, pp. 943-45; CEL Ex. 108, p. 2.) It would be inappropriate for FCG to incorporate information into its test year forecast that involves hypothetical, speculative merger scenarios. Even if there is a merger or sale of FCG at some unknown point in the future, any impact to FCG's base rates would be addressed by FCG and this Commission in the applicable base rate proceeding. (Tr. vol. 4, p. 822.)

Issue 2: Are FCG's forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, appropriate? If not, what adjustments should be made?

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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 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). Because FCG has no notice or knowledge, FCG is unable and has not responded to or addressed any of Staff's positions, adjustments, or recommendations in this brief.

***FCG:** Yes. FCG relied on statistically sound forecasting methods and reasonable input assumptions to forecast customers and therms by rate class for the 2023 projected Test Year. Consistent with Commission precedent, FCG's forecast assumes normal weather conditions. Additionally, the forecast of customers and therms by rate schedule is consistent with the sales and customer forecast by revenue class and reflects the billing determinants specified in each rate schedule. (*Campbell*)*

FCG's customer and therms forecasts are supported by statistically sound forecasting methods and reasonable input assumptions that produce reliable, unbiased forecasts of customers and therm sales for the FCG system. FCG's forecasts were developed using econometric and regression models that are statistically sound and include logically reasonable drivers obtained from leading industry experts. The forecasts were then evaluated for reasonableness by comparing forecasted trends against historical trends and other growth factors. FCG also evaluated the robustness and accuracy of its forecast models using statistical measures, such as adjusted R-squared and Mean Absolute Percentage Error. The approach applied by FCG is also consistent with criteria used by the Commission in recent years to evaluate utilities' forecasts.[3] (Tr. vol. 6, pp. 1052-53.)

Through cross-examination, Staff appeared to question the reasonableness and accuracy of FCG's forecasts beyond the 2023 Test Year. FCG's forecasts for this case had to be completed in late 2021 in order to complete the MFRs and submit the rate case filing in May of 2023, and those forecasts were based on the best information at the time they were completed. (Tr. vol. 6, pp. 1181, 1264.) It is standard industry practice to rely on forecasts for various planning and regulatory purposes, including rate proceedings such as this. It is also well known that no one can predict with absolute precision the actual number of customers, therms, or revenues in the future. In other words, forecasting by definition always includes an element of uncertainty. This is precisely why

[3] *See,* e.g., Order Nos. PSC-16-0032-FOF-EI; PSC-14-0590-FOF-EI, PSC-13-0505-PAA14 EI, PSC-12-0179-FOF-EI; PSC-12-0187-FOF-EI, PSC-09-0375-PAA-GU, and PSC-04-0128-PAA-GU.

FCG relies on well-established and statistically sound forecasting methods and input assumptions from industry experts as explained by FCG witness Campbell. (Tr. vol. 6, p. 1052.)

<u>Issue 3:</u> Are FCG's estimated revenues from sales of gas by rate class at present rates for the projected test year appropriate? If not, what adjustments should be made?

***FCG:** Yes. FCG's sales forecasts were developed using econometric and regression models as the primary tools. These models are statistically sound and include logically reasonable drivers obtained from leading industry experts. FCG evaluated the forecasts for reasonableness by comparing forecasted trends against historical trends and other growth factors. FCG has correctly estimated the 2023 revenues from sales of gas at present rates. The revenue calculations for 2023 are detailed in Test Year MFR E-1 (with RSAM). (*Campbell*)*

FCG applied the same reasonable forecasting methodologies described under Issue No. 2 in developing its estimated revenues from sales of gas. These models are statistically sound and include logically reasonable drivers obtained from leading industry experts. (Tr. vol. 6, p. 1052.) The record in this case supports a finding that FCG's projected revenues from the sale of gas by rate class, as reflected in the testimony of FCG witness Campbell and MFR Schedules E-1, E-2, and E-4 (CEL Ex. 6), have been calculated based upon reliable, robust, and accepted methods.

QUALITY OF SERVICE

<u>Issue 4:</u> Is the quality of service provided by FCG adequate?

***FCG:** Yes. FCG has delivered superior reliability and a high level of customer service. The Commission held a total of five customer service hearings, with three held virtually and two held in-person at the request of OPC. At these hearings, a total of 18 individuals appeared and none expressed a negative view of the service quality provided by FCG. (*Howard*)*

FCG has demonstrated in this proceeding that it provides safe, reliable, and high-quality service to the customers and communities it serves. There was a total of five customer service hearings held by the Commission, with three held virtually and two held in-person at the request of OPC. Eighteen individuals appeared at these five customer service hearings. None of those eighteen individuals had a negative view of the service quality provided by FCG and, in fact, most

were complementary of FCG or specific FCG employees. (Tr. vol. 3, pp. 626-27.)

The record also demonstrates that FCG has taken affirmative steps in the years since its last rate case to improve the customer experience and FCG's processes for resolving customer issues and complaints, including six new protocols detailed by FCG witness Howard. (Tr. vol. 3, pp. 625-626.) These are meaningful service improvements that will continue to benefit FCG's customers over the term of the four-year rate plan. While the Commission received 584 logged customer contacts concerning FCG since 2017 when the last rate case was filed (Tr. vol. 3, p. 548), the record demonstrates that 85% of these contacts were "warm transfers" that were informational in nature, only 15% of those contacts were logged as a complaint, and only 0.7% of those contacts were found to be a possible rule violation. (Tr. vol. 3, p. 624.)

DEPRECIATION STUDY

Issue 5: Based on FCG's 2022 Depreciation Study, what are the appropriate depreciation parameters (e.g., service lives, remaining life, net salvage percentage, and reserve percentage) and resulting depreciation rates for each distribution and general plant account?

***FCG:** Based on FCG's 2022 Depreciation Study, the most reasonable depreciation parameters and resulting depreciation rates for each distribution and general plant account are reflected on CEL Ex. 40. However, FCG's proposed RSAM-adjusted depreciation rates represent a reasonable alternative to those contained in the 2022 Depreciation Study and are appropriate and necessary to support the tremendous customer value and savings under FCG's proposed four-year rate plan. (*Allis, Campbell, Fuentes*)*

In this proceeding, there are 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. Each of these proposals have slightly different service life estimates for four distinctive accounts that were studied together in this case:

Account	FCG 2014 Depr Study (Approved)	FCG 2018 Depr Study (Approved)	FCG 2022 Depr Study	FCG RSAM	OPC Proposal
376.1/376.2, Mains	42/40	55	65	65/75	70
378/379, M&R	30	30/35	35	40/50	45
380.1/380.2, Services	35/34	45/54	50	52/55	55
383, House Regulators	25	30	40	42	47

(CEL Ex. 22; Tr. vol. 4, p. 738; Tr. vol. 2, pp. 424, 426-27, 430.)

Notably, there is an increasing trend in FCG's depreciation lives and all three of the depreciation proposals in this case recommend depreciation life estimates that are longer than FCG's currently approved depreciation parameters. However, 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. 771-72; Tr. vol. 6, p. 1163-64.)

As explained by FCG's outside independent depreciation expert, FCG witness Allis, service life estimates in any given depreciation study are, by their nature, estimates of what is expected to occur in the future based on information available at the time of the study. These estimates are, therefore, necessarily forecasts of what may occur over many decades. (Tr. vol. 4, pp. 768-69; CEL Ex. 105, p. 12.) As the National Association of Regulatory Utility Commissioners ("NARUC") explains, "[i]t should be noted that only after plant has lived its entire useful life will the true depreciation parameters become known." (CEL Ex. 105, p. 12 (citing NARUC Public Utility Depreciation Practices, p. 189).) Therefore, 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. 768-69; Tr. vol. 4, p. 705.)

In this case, FCG witness Allis concluded that the depreciation parameters in FCG's 2022 Depreciation Study were the most reasonable. (Tr. vol. 4, pp. 759, 772, 792.) However, FCG

witness Allis also opined and agreed that the RSAM-adjusted depreciation parameters proposed by the Company, as well as those proposed by OPC witness Garrett, are also within an overall "range of reasonableness" based on depreciation studies for other gas utilities. (Tr. vol. 4, pp. 768-69.) Given the similarities between the three depreciation proposals in this case and the fact that all three are within the range of reasonableness, the issue to be decided in this case is what are the appropriate depreciation parameters and resulting depreciation rates under the facts and circumstances presented in this case.

It should be noted that RSAM is not available with either FCG's 2022 Depreciation Study or OPC's proposed depreciation parameters. As explained by FCG witness Campbell, FCG would not be able to commit to its four-year rate plan without RSAM. (Tr. vol. 6, p. 1091.) As discussed in Issue No. 67, the 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 and will save customers approximately $27 million over the four-year term. (Tr. vol. 6, p. 1092.) These unrefuted customer benefits and savings should be considered by the Commission in reaching its decision on the appropriate depreciation parameters and resulting depreciation rates to be adopted in this case.

As explained in Issue No. 6 below, FCG submits that the RSAM-adjusted depreciation parameters are reasonable and appropriate alternatives in this case given the significant customer benefits and savings they provide as discussed in Issue No. 67. However, in the event that the Commission declines to adopt FCG's proposed four-year rate plan with RSAM, FCG submits that its 2022 Depreciation Study is the most reasonable for FCG's system in the context of a single-year rate plan as discussed below.

A. *The Depreciation Parameters and Resulting Depreciation Rates in FCG's 2022 Depreciation Study Are the Most Reasonable in the Context of a Single-Year Rate Plan*

FCG's 2022 Depreciation Study was submitted in the context of FCG's alternative single-year rate plan. (Tr. vol. 4, p. 792.) FCG's 2022 Depreciation Study was conducted by an outside independent expert who has participated in over a hundred depreciation studies throughout the country. (Tr. vol. 4, pp. 696-97; Tr. vol. 4, p. 745.) FCG's 2022 Depreciation Study was prepared using appropriate and industry-accepted methodologies. The first phase of the study, which resulted in the estimation of service life and net salvage parameters, consisted of compiling historic data from records related to FCG's plant; analyzing this data to obtain historic trends of survivor and net salvage characteristics; obtaining supplementary information from management and operating personnel concerning accounting and operating practices and plans; and interpreting the above data and the estimates used by other gas utilities to form judgments of average service life and net salvage characteristics. In the second phase, witness Allis calculated the composite remaining lives and annual depreciation accrual rates based on the service life and net salvage estimates determined in the first phase. (Tr. vol. 4, p. 705.)

FCG witness Allis also met with FCG's operating personnel and made field visits to various FCG assets to observe representative portions of plant. These meetings and field reviews were conducted to become familiar with Company-specific operations and obtain an understanding of the function of the plant and information with respect to the reasons for past retirements and the expected future causes of retirements. This knowledge, as well as information from other discussions with FCG management, was incorporated into FCG witness Allis's depreciation analyses. (Tr. vol. 4, p. 706.)

The depreciation parameters and resulting depreciation rates from FCG's 2022 Depreciation Study, submitted in the context of FCG's alternative single-year rate plan, are reasonable. (Tr. vol. 4, pp. 759, 772, 792.) The depreciation parameters and resulting depreciation

rates for each distribution and general plant account from FCG's 2022 Depreciation Study are reflected on CEL Ex. 40. The overall result of the 2022 Depreciation Study is a net increase in FCG's depreciation rates over the currently approved rates, which increases FCG's total depreciation expense as of December 31, 2022 by approximately $0.9 million. (Tr. vol. 4, pp. 699-700.)

B. *<u>The Depreciation Parameters Proposed by OPC Are Less Reasonable in the Context of a Single-Year Rate Plan</u>*

The depreciation parameters proposed by OPC witness Garrett have slightly longer service life estimates than FCG's 2022 Depreciation Study. However, OPC's proposed depreciation parameters rely solely on the Company's historical data. (Tr. vol. 4, p. 733.) For any depreciation study, considerations other than the historical data should inform the service life recommendations, because depreciation involves forecasting the future over many decades. (Tr. vol. 4, p. 733.) For these reasons, as further explained below, the depreciation parameters proposed by OPC witness Garrett are less reasonable than FCG's 2022 Depreciation Study in the context of a single-year rate plan.

While the Company has sufficient data to provide some degree of service life indications, the overall data set is available only for a relatively short period of time and does not provide definitive service life indications for many accounts. 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.) In the case of FCG where the historical data set is more limited, it is even more important to properly consider these other relevant factors. (Tr. vol. 4, p. 733.) OPC witness Garrett does not do so.

While OPC witness Garrett provides discussion of legal standards and provides a few

general criticisms, the only Company-specific information he discusses are the statistical results. (Tr. vol. 4, p. 739.) OPC witness Garrett's general discussions and criticisms are both incorrect and irrelevant to the issue of selecting the most reasonable service lives. A review of his testimony makes it clear that, with the exception of the statistical analysis of sixteen years of data, OPC witness Garrett has given little, if any, consideration to any Company-specific information or other factors that impact the Company's service lives. (Tr. vol. 4, p. 740.)

OPC witness Garrett's testimony gives the impression that mathematical results should generally be accepted and instances in which the proper service life estimate is not a best "mathematical fit" would be a relatively unusual exception (such as if there is insufficient data). (Tr. vol. 4, pp. 741-42.) However, NARUC strongly advises against the approach used by OPC witness Garrett, clearly stating that "relying solely on mathematical solutions" should be avoided. (Tr. vol. 4, pp. 742-43.) NARUC also explains that the process of estimating service lives must go beyond any objective measurement of the past (Tr. vol. 4, pp. 742-43) and must include a subjective component:

> It is the analyst's responsibility to apply any additional known factors that would produce the best estimate of service life. The analyst's judgment, comprised of a combination of experience and knowledge, will determine the most reasonable estimate.
>
> In summary, several factors should be considered in estimating property life. Some of these factors are:
>
> 1) Observable trends reflected in historical data;
> 2) Potential changes in the type of property installed;
> 3) Changes in the physical environment;
> 4) Changes in management requirements;
> 5) Changes in government requirements; and
> 6) Obsolescence due to the introduction of new technologies.

(Tr. vol. 4, p. 744.) OPC witness Garrett does not discuss these factors in his testimony related to his service life estimates, and his proposals suggest that these factors have not been given due

consideration. (Tr. vol. 4, p. 745.) For these reasons, OPC's depreciation parameters are less reasonable than FCG's proposed 2022 Depreciation Study in the context of a single-year rate plan.

Issue 6: If the Commission approves FCG's proposed RSAM (Issue 67), what are the appropriate depreciation parameters (e.g., service lives, remaining lives, net salvage percentages, and reserve percentages) and depreciation rates?

> ***FCG:** The appropriate depreciation parameters and resulting depreciation rates to be used in conjunction with the RSAM are reflected on CEL Ex. 22. The RSAM-adjusted depreciation parameters are a critical and essential component of FCG's proposed four-year rate plan, and are necessary to provide rate stability for FCG's customers and avoid the potential for approximately $27.0 million in additional cumulative net cash paid by customers through at least the end of 2026 if FCG's proposed four-year rate plan with RSAM is denied. (*Fuentes, Campbell*)*

The appropriate depreciation parameters and resulting depreciation rates to be used in conjunction with the RSAM are reflected on CEL Ex. 22. (Tr. vol. 4, pp. 791-93.) The RSAM-adjusted depreciation rates proposed by the Company for the purposes of unlocking the benefits and savings from the RSAM are reasonable and based on parameters recently approved by the Commission for a similar Florida natural gas utility.

To be clear, FCG did not cherry pick service life estimates to achieve a desired theoretical reserve imbalance as suggested by Intervenors.[4] Rather, the RSAM-adjusted depreciation rates are, with the exception of the LNG Facility, 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.) With the exception of the LNG Facility, the natural gas assets and facilities on the FCG and PGS systems are similar. (Tr. vol. 6, p. 1101.) Thus, the

[4] This is further evidenced by the fact that FCG's RSAM-adjusted depreciation parameters resulted in a positive theoretical reserve imbalance of $52 million but FCG is proposing to only use $25 million of surplus over the term of the four-year rate plan as discussed in Issue Nos. 7 and 8 below. Stated differently, if FCG had cherry picked service lives rather than relying on depreciation parameters recently approved by this Commission for a similar natural gas utility, FCG would have selected service life estimates that only generated the $25 million theoretical reserve surplus needed for the four-year rate plan. This is not what was done in this case.

RSAM-adjusted depreciation rates are based on depreciation parameters recently approved by this Commission for a similar Florida natural gas utility with similar assets.

FCG's outside independent depreciation expert opined that the RSAM-adjusted depreciation parameters are well within the overall range of reasonableness. (Tr. vol. 4, pp. 771-72.) In fact, the RSAM-adjusted 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.)

FCG also explained that use of the RSAM-adjusted depreciation parameters does not create intergenerational inequities. As explained in Issue No. 5, service life parameters are estimates of what may occur over many decades and the future may very well be different than the current estimates, which is one reason this Commission requires utilities to file periodic updated depreciation studies. If depreciation parameters reflected in a depreciation study are revised in a subsequent study, or if the future experience does not perfectly match current estimates, impacts to future theoretical reserve deficit or surplus may only be made prospectively as no correction can be made to the accounts of prior customers. Therefore, it is unavoidable that differences in generations will exist; however, this does not suggest unfair or inequitable treatment of prior customers. (Tr. vol. 6, pp. 1098-99; CEL Ex. 105, pp. 12-13.)

For these reasons, the RSAM-adjusted depreciation parameters proposed by the Company in CEL Ex. 22 represent a reasonable alternative to those contained in FCG's 2022 Depreciation Study. As discussed in Issue No. 67, the 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 and will save customers approximately $27 million over the four-year term.

(Tr. vol. 6, p. 1092.) Given that the RSAM-adjusted depreciation parameters are within the range of reasonableness, generally in line with those proposed and approved for other similar natural gas utilities in Florida, and unlock tremendous customer savings and benefits under FCG's proposed four-year rate plan with RSAM, FCG submits that RSAM-adjusted depreciation parameters and resulting depreciation rates are just, fair, and reasonable alternative depreciation parameters under the specific facts and circumstances of this case and should be adopted.

Issue 7: Based on the application of the depreciation parameters that the Commission has deemed appropriate to FCG's data, and a comparison of the theoretical reserves to the book reserves, what, if any, are the resulting imbalances?

***FCG:** If the Commission adopts the RSAM contained in the Company's four-year rate proposal, then the appropriate theoretical reserve imbalance is a surplus of approximately $52.1 million as reflected in CEL Ex. 22, of which FCG has requested $25 million to be available under an RSAM. The $25 million of RSAM is only sufficient to allow FCG to earn at the proposed midpoint ROE over the term of the rate plan. If the Commission does not approve the RSAM, the theoretical reserve imbalances from FCG's 2022 Depreciation Study are reflected on CEL Ex. 40, which totals a net deficit of $3.2 million (total system). (*Allis, Campbell, Fuentes*)*

If the Commission adopts the Company's proposed RSAM, then the appropriate theoretical reserve imbalance is a surplus of approximately $52.1 million as reflected in CEL Ex. 22, of which FCG has requested $25 million to be available under an RSAM. (CEL Ex. 16.) The Company is proposing a Reserve Amount of $25 million to be available for use in the RSAM during the 2023-2026 period, which will enable FCG to avoid another base rate increase until at least the end of 2026 while continuing to provide the opportunity to earn a reasonable rate of return. (Tr. vol. 6, p. 1066.) However, the unrefuted record evidence demonstrates that even with the $25 million of requested RSAM, FCG would still need to identify additional cost savings and productivity improvements just to get to the proposed midpoint ROE during the term of the four-year rate plan. (Tr. vol. 6, pp. 1095-96.)

If the Commission does not approve FCG's proposed RSAM, and therefore rejects the Company's proposed four-year plan, the theoretical reserve imbalances from FCG's 2022 Depreciation Study are reflected on Exhibit NWA-1 (CEL Ex. 40), which totals a net deficit of $3.2 million (total system). (Tr. vol. 4, p. 724.)

Issue 8: What, if any, corrective depreciation reserve measures should be taken with respect to any imbalances identified in Issue 7?

***FCG:** If the Commission adopts the RSAM as part of FCG's four-year rate proposal, then the corrective reserve measures outlined in CEL Ex. 16 should be taken. Any remaining reserve imbalance should be addressed in FCG's next depreciation study. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, then the remaining life technique should be used, and no other corrective reserve measures should be taken. (*Allis, Campbell, Fuentes*)*

If the Commission adopts the RSAM as part of FCG's four-year rate proposal, then the corrective reserve measures outlined in CEL Ex. 16 should be taken. Specifically, FCG would be able to amortize the $25 million Reserve Amount subject to the following:

a. For any ESR submitted by FCG during the Term for which its ROE on an FPSC Adjusted Basis ("Regulatory ROE") would otherwise fall below 9.75 percent, FCG must amortize at least the amount of the Reserve Amount, if available, required to achieve a Regulatory ROE of 9.75 precent.
b. FCG may not amortize any Reserve Amount during any twelve-month period that would cause its Regulatory ROE in an ESR to exceed 11.75 percent.
c. FCG must debit depreciation expense and credit the depreciation reserve in an amount to cause FCG not to exceed a Regulatory ROE of 11.75 percent in any ESR unless such credit to the depreciation reserve would result in FCG exceeding the Reserve Amount of $25 million.
d. FCG may record credits to depreciation expense and debits to depreciation reserve, or debits to depreciation expense and credits to depreciation reserve in any period at its sole discretion subject to the conditions set forth in (a)-(c).
e. The RSAM will remain available for use by the Company until the effective date of new base rates established in a general base rate proceeding.

(CEL Ex. 16.)

If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, then the remaining life technique should be used, and no other corrective reserve measures should be

taken. (Tr. vol. 4, p. 724.)

Issue 9: What should be the implementation date for revised depreciation rates and amortization schedules?

***FCG:** The implementation date for revised depreciation rates should be the effective date of new base rates. (*Fuentes*)*

Consistent with Rule 25-7.045(4)(c), F.A.C., FCG filed its proposed depreciation rates, both the 2022 Depreciation Study and RSAM-adjusted depreciation rates, together with its direct testimony and MFRs.[5] Upon cross-examination by Commission Staff, FCG witness Fuentes explained that the implementation date for new depreciation rates should appropriately coincide with the effective date of new base rates that reflect those depreciation rates.[6] (Tr. vol. 5, pp. 965-66.) This will provide a matching of depreciation rates with base rates that reflect those depreciation rates. Additionally, FCG submits that it would not be appropriate for new depreciation rates to become effective prior to the date of the order approving such depreciation rates, unless specifically approved for retroactive implementation by the Commission.[7]

RATE BASE

Issue 11: Should FCG's proposed Advanced Metering Infrastructure (AMI) Pilot be approved? If so, what adjustments, if any, should be made?

***FCG:** Yes. The AMI Pilot will enable FCG to test and evaluate whether it would be appropriate in the future to deploy AMI technology across its entire system, as well as allow FCG to test and gather data on the corrosion resistance and life of new smart meters. FCG took a measured approach to its AMI Pilot, limiting the implementation of the pilot to only 5,000 meters that currently experience accelerated corrosion and retirement. No adjustments should be made. (*Howard*)*

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[5] Rule 25-7.045(4)(c), F.A.C., proves that a "utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements" (emphasis added).

[6] Pursuant to the statutory eight-month suspension period in Section 366.06(3), F.S., FCG's filing requested a February 1, 2023 effective date for new base rates.

[7] *See* Rule 25-7.045(2)(a), F.A.C. ("No utility shall change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval") (emphasis added).

FCG's proposed AMI Pilot is a four-year pilot to support the evaluation of system-wide deployment of AMI infrastructure in the future. The purpose of the AMI Pilot is to test and gain information and data on the deployment, use, benefits, and cost savings associated with AMI two-way communications on FCG's system. (Tr. vol. 3, p. 591.) AMI technology has been deployed by a limited number of gas utilities in the United States and is widely used by electric utilities throughout the nation. The industry's experience with the capabilities of the technology has provided FCG with background on the potential benefits of AMI deployment, which FCG seeks to study and test on its system in order to determine whether full-scale deployment is appropriate. (Tr. vol. 3, p. 612.)

As part of the AMI Pilot, FCG will test and gather data on the benefits of automated daily or hourly remote meter reads, including: (i) reduced costs associated with driving routes to read meters on monthly basis; (ii) remote disconnection of meters; (iii) remote leak and outage detection capabilities; (iv) more accurate billing; and (v) enhanced customer access to individualized data and usage information. (Tr. vol. 3, pp. 592-93.) Gathering and analyzing data on these benefits, together with the lessons learned on deployment and implementation, will facilitate a more educated determination regarding the potential system-wide deployment of AMI infrastructure in the future. (Tr. vol. 3, p. 614.)

FCG will also test and gather data on the corrosion resistance and life of new smart meters. FCG took a thoughtful and measured approach to its AMI Pilot, limiting the implementation of the pilot to only an initial 5,000 meters in Brevard County that experience accelerated replacement and retirement due to corrosive effects of the high salinity content in the air and groundwater in that area. These meters will be replaced with new state-of-the-art two-way meters that are more resistant to corrosion, which will avoid costs of accelerated retirement and replacement. (Tr. vol.

3, p. 593.) Given that 5,000 meters represents less than 5% of the customer meters on FCG's system, the number of meters will appropriately balance the need to obtain fulsome data without the need for the additional costs that would be incurred in a broader roll-out. (Tr. vol. 3, p. 593.)

FCG forecasts a total capital expenditure of $3.4 million for the AMI Pilot. This represents the cost of an entirely new meter assembly equipped with AMI and the cost of installation. (Tr. vol. 3, p. 594.) The annual O&M expense of $16,896 for the AMI Pilot includes a licensing fee paid to an AMI meter vendor and compensation to FPL for use of its radio frequency or RF mesh network.[8] (Tr. vol. 3, p. 595.)

Intervenors do not oppose the implementation of the AMI Pilot or its purpose. Rather, OPC contends that the costs of the AMI Pilot should be borne by shareholders for two reasons: first, OPC claims the pilot is overly experimental and the technology is new to the gas industry (Tr. vol. 2, p. 298); and second, OPC suggested during cross-examination of FCG's witnesses that the AMI Pilot is intended to benefit shareholders as opposed to customers. (Tr. vol. 3, pp. 657-62.) These arguments are misguided and fail to capture the reality of FCG's proposal.

As to the first argument, AMI is not wildly experimental as OPC witness Schultz claims. Indeed, the smart meters and AMI to be deployed under the AMI Pilot are similar to the AMI technology that is widely used by electric utilities, as well as a small number of other gas utilities across the nation. (Tr. vol. 3, p. 592.) The technology and its capabilities, therefore, are reasonably well understood. Under the AMI Pilot, FCG will test and evaluate these capabilities and benefits on its system in order to determine if it is appropriate to deploy AMI technology across its entire system in the future.

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[8] On August 16, 2022, FCG filed a Notice of Identified Adjustments that reflected, among other things, a decrease of $3,104 in the O&M expense for the proposed AMI pilot, which is a reduction from $20,000 to $16,896. (Tr. vol. 3, p. 614; CEL Ex. 110.) No further adjustments are appropriate or necessary.

With respect to OPC's second argument that the AMI Pilot is an investment intended to benefit only shareholders, OPC ignores the expected benefits associated with the pilot, including: (i) reduced costs associated with driving routes to read meters on a monthly basis; (ii) remote disconnection of meters; (iii) remote leak and outage detection capabilities; (iv) more accurate billing; and (v) enhanced customer access to individualized data and usage information. (Tr. vol. 3, pp. 592-93.) These are customer and system benefits, not shareholder benefits as OPC seems to imply.[9]

Moreover, OPC's arguments overlook that utility pilot projects, if appropriately tailored and sized, provide significant benefits to both the utility and its customers. Pilot projects enable the utility to test and evaluate new initiatives and technologies on a limited basis to determine if it would be appropriate and beneficial to deploy these new features system wide. Such pilot projects provide real-world data and information regarding the implementation, deployment, functionality, operating and maintenance requirements, costs, and benefits of new initiatives and technologies. This information is valuable in determining the benefits and feasibility of system-wide deployment, as well as providing an opportunity to identify best practices and lessons learned before full-scale deployment. This is precisely why FCG is proposing a limited AMI Pilot. OPC's arguments, if accepted, would discourage utilities from proposing limited-scope pilot programs for the Commission's consideration. This would negate opportunities for utilities to investigate and better understand potential service innovations that can enhance service to customers and the benefits for customers of deploying emerging technologies system wide. (Tr. vol. 3, p. 612.)

[9] During cross-examination, OPC also appeared to suggest that the AMI Pilot benefits shareholders because FCG will earn a return on the capital expenditures for the pilot. (Tr. vol. 3, pp. 657-662.) This argument is a red herring and should be rejected because FCG is entitled to both return of and return on all reasonable and prudent capital expenditures. As explained herein, the record demonstrates that the AMI Pilot is a reasonable and prudent limited pilot to test and evaluate data and benefits of AMI on FCG system to determine whether future system-wide deployment is appropriate.

Finally, OPC's arguments that the costs for the AMI Pilot should be borne by shareholders overlook that the Commission has approved the recoverability of numerous utility pilot projects that allow utilities to implement a novel technology or concept at a limited scale to better understand the associated benefits. A prime and recent example is the cost for the FPL Green Hydrogen Pilot project that was included in base rates as part of a settlement joined by OPC and approved by Commission Order No. PSC-2021-0446-S-EI in Docket No. 20210015-EI. (Tr. vol. 3, p. 611.)

For these reasons, OPC's arguments opposing the AMI Pilot should be rejected and the limited AMI Pilot should be approved to enable FCG to test and evaluate whether future system-wide deployment is appropriate.

<u>Issue 12:</u> What is the appropriate amount of plant in service for FCG's delayed LNG facility that was approved in its last rate case?

***FCG:** The need and construction of the LNG Facility were previously approved by the Commission in Docket No. 20170179-GU. FCG currently projects the total cost necessary to complete the LNG Facility is $68 million with an in-service date of March 2023. As reflected on page 27 of MFR G-1, the appropriate amount of plant in service for the LNG Facility when it is placed in service in March 2023 is $68 million. (*Campbell, Howard*)*

The need for and construction of the LNG Facility were approved as part of the 2018 Settlement joined by OPC and approved by Commission Order No. PSC-2018-0190-FOF-GU in Docket No. 20170179-GU. (Tr. vol. 3, p. 582.) At that time, FCG estimated the cost of the facility to be approximately $58 million (Tr. vol. 3, p. 583), which was used to calculate the revenue requirements and base rate increases agreed to in the 2018 Settlement. Under the 2018 Settlement Agreement, FCG's current base rates included approximately $2.5 million in revenue requirements associated with the LNG Facility and allowed FCG to implement a subsequent increase to its existing base rates in order to collect an additional $3.8 million in revenue requirements by the end

of 2019 or upon the in-service date of the LNG Facility, whichever is later. (Tr. vol. 4, pp. 823-24.)

As reflected on page 27 of MFR G-1 (CEL Ex. 7), FCG has updated the estimated costs for the LNG Facility and the appropriate amount of plant in service for the previously approved LNG Facility when it is placed in service in March 2023 is $68 million. (Tr. vol. 3, pp. 586-87.) Because the total cost for the LNG Project has increased by $10 million more than the original project estimate of $58 million, which was the basis for the additional $3.8 million in revenue requirements approved as part of the 2018 Settlement, FCG's proposed incremental base rate increase of $18.8 million only includes the revenue requirements for the incremental $10 million of capital expenditures necessary to complete the LNG Facility. (Tr. vol. 3, p. 588.)

It should be noted that no parties dispute that the LNG Facility is needed to serve customers, which need was agreed to by OPC and approved in the 2018 Settlement. As explained in the 2018 rate case, FCG currently does not hold sufficient capacity to serve the needs of all of its customers (CEL Ex. 190, pp. 12-15), and the previously approved LNG Facility will provide extra capacity to serve customers at the most southern portion of the Company's system during times of high demand. (Tr. vol. 3, pp. 583, 604-05.) To date, FCG has been unable to acquire any additional interstate capacity at terms and pricing that are acceptable and reasonable, including additional capacity to serve customers in the Miami-Dade County area. As such, the LNG Facility continues to be necessary to provide extra capacity to serve customers at the most southern portion of the Company's system during times of high demand as originally approved in the 2018 Settlement. Additionally, FCG has seen significant gas demand growth on the southern portion of its system since the 2018 Settlement. (Tr. vol. 3, p. 585.) Thus, the record demonstrates that the LNG Facility is needed even more today than when approved as part of the 2018 Settlement.

Nonetheless, OPC argues that the delay in completing the LNG Facility was imprudent and recommends that the additional $10 million necessary to complete the LNG Facility be disallowed. (Tr. vol. 2, pp. 295-96.) OPC also recommends that the $2.5 million of annual revenue requirements included in FCG's current rates for the LNG Facility be returned to customers despite agreeing to this ratemaking treatment and cost recovery in the 2018 Settlement. (Tr. vol. 2, pp. 293-94.) OPC's arguments and recommendations are contrary to the record evidence, without merit, improperly attempt to re-write the terms of the 2018 Settlement, and should be rejected.

A. *OPC Contentions that Costs Associated with the LNG Facility Should be Disallowed Are Flawed and Reflect a Misunderstanding of the 2018 Settlement and the Efforts that Were Necessary to Complete Construction of the Facility*

OPC's argument that the additional $10 million in costs needed to complete the LNG Facility should be disallowed overlooks that, as explained in the 2018 rate case, the original project cost estimate of $58 million was only an early stage estimate and it was reasonably anticipated that as the project got closer to completion the preliminary cost estimate would be refined. (Tr. vol. 3, p. 609.) Therefore, the Commission and parties to the 2018 rate case, including OPC, were fully aware that the total cost for the LNG Facility could, and likely would, change. In fact, the updated cost for the LNG Facility in this proceeding is no different than any other estimated capital investment included in a utility's forecasted test year where the utility's rates are appropriately adjusted in its next base rate case to reflect the actual, prudently incurred total cost of the project.[10] OPC's seeming desire to impose a cost cap on the LNG Facility equal to the original estimated cost is an improper attempt to walk away from and re-write the terms of the 2018 Agreement, is contrary to traditional ratemaking, and should not be condoned by this Commission.

[10] FCG submits that if the costs for the actual costs for the LNG Facility turned out to be lower than the original estimated costs of $58 million, OPC surely would not be claiming that FCG was somehow entitled to recover more than its actual, prudently incurred costs.

FCG's current cost estimate for the project is now more developed with detailed engineering and actual construction activities, making it more refined than the original estimate provided in the 2018 rate case. (Tr. vol. 3, p. 609.) Notably, OPC does not assert that the updated total cost for the LNG Facility is unreasonable. Rather, OPC contends that the additional cost of $10 million to complete the LNG Facility should be disallowed because (i) the in-service date is uncertain and (ii) it was imprudent for FCG to acquire the original site "on the hope and whim that a zoning change will be allowed." (Tr. vol. 2, pp. 295-96.) OPC's arguments are without merit and should be rejected.

Through cross-examination, OPC attempted to assert that the parties to FCG's 2018 Settlement relied on FCG's direct testimony in that case that the LNG Facility would be completed in January 2019. (Tr. vol. 5, pp. 898-900; CEL Ex. 190.) The fundamental flaw with OPC's argument is that the parties to the 2018 Settlement, including OPC, expressly agreed "that the Company shall be allowed to increase its base rates and charges in an amount sufficient to recover the additional revenue requirement of $3.8 million of the completed liquified natural gas ("LNG") facility described in Section IV of this 2018 Agreement by the end of 2019 or upon the in-service date of the LNG Facility, whichever is later."[11] Clearly, the 2018 Settlement contemplated that the LNG Facility could be completed after 2019. OPC's argument is, yet again, another improper attempt to re-write the terms of the 2018 Settlement and should be rejected.

Despite OPC's claim that the March 2023 projected in-service date for the LNG Facility is uncertain, the record in this case clearly demonstrates that the LNG Facility is fully permitted and on track to meet the projected March 2023 in-service date. (Tr. vol. 3, pp. 606, 611; CEL Ex. 99, pp. 3-8.) In fact, construction of the LNG Facility is essentially complete with LNG deliveries

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[11] *See* Commission Order No. PSC-2018-0190-FOF-GU, page 16 (emphasis added).

scheduled to commence in January 2023. (Tr. vol. 3, p. 655.) Thus, OPC's concerns regarding potential delay in the projected in-service date for the LNG Facility are unsupported and contrary to the record evidence.

Similarly, OPC's claim that it was imprudent for FCG to buy the original site for the LNG Facility "on a hope and whim that a zoning change will be allowed" (Tr. vol. 2, p. 296) ignores the evidence of record and misapplies the prudence standard.[12] The unrefuted record demonstrates that, after the 2018 Settlement was approved, FCG began an intensive effort to secure an appropriate site for the LNG Facility in Miami-Dade County. Consistent with the 2018 Settlement, the original site for the LNG Facility was selected due to its proximity to the existing Jet Fuel Line, which would provide reinforcement to FCG's system south of the Miami International Airport. (Tr. vol. 3, p. 584.) Identifying an available site for any industrial plant in the southern portion of Miami-Date County poses a significant permitting challenge. (Tr. vol. 3, pp. 646, 648.)

The original site identified for the LNG Facility was located outside the County's urban development boundary and, as such, was only allowed with a special or unusual use approval under the County planning code. (Tr. vol. 3, p. 606.) Once the original site had been identified, FCG requested a formal opinion from the County Planning Director as to whether the development of an LNG Facility would be suitable at the initial proposed site. On August 17, 2018, FCG received a formal consistency determination from the County Planning Director. (Tr. vol. 3, p. 606; CEL Ex. 185.) Thereafter, FCG acquired an option to buy the original site for the LNG Facility (Tr.

[12] It is from Section 366.06, F.S., that the Commission derives its prudence standard, which it applies to ensure that the recovered costs result from prudent investments. Within a rate case, the Commission applies this prudence standard to the individual investment projects for which a utility is seeking cost recovery. *Sierra Club v. Brown*, 243 So. 3d 903, 908 (Fla. 2018). The "standard for determining prudence is . . . 'what a reasonable utility manager would have done, <u>in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made</u>.'" *Duke Energy Fla., LLC v. Clark*, 344 So. 3d 394, 395 (Fla. 2022) (emphasis added) (quoting *Southern Alliance v. Graham*, 113 So. 3d 742, 750 (Fla. 2013)).

vol. 6, pp. 1235-36) and began pursuing the permits and approvals needed for the site, including the special or unusual use approval from the County. (Tr. vol. 3, p. 606.)

As part of its process to obtain the special or unusual use approval needed for the original site, FCG engaged in extensive community outreach to educate the community on the benefits and necessity of natural gas and to inform them of the benefits of the LNG Facility. (Tr. vol. 3, p. 606.) Although the Company received support and recommendations of approval from County staff, the Community Council ultimately declined to grant the request for a special or unusual use approval on June 5, 2019. (Tr. vol. 3, p. 606.) Thereafter, FCG determined that the most appropriate strategy was to sell the original site (*i.e.*, sell its option to buy to the site) and promptly begin a search for an alternative parcel that was consistent with the design, location, and need for the LNG Facility as approved in the 2018 Settlement. (Tr. vol. 3, p. 607.)

After extensive research, FCG located a suitable site within the City of Homestead that similarly required zoning approval. (CEL Ex. 99, pp. 1-2.) In April 2020, a zoning verification letter was submitted to the City of Homestead's Planning Director to determine if the development of an LNG storage facility would be suitable at the new location. After receiving favorable feedback from the City's Planning Director, FCG submitted a zoning application in October 2020. The Homestead City Council approved the zoning application in July 2021. The new site is fully permitted, and the LNG Facility is currently under construction and well on track to meet the planned completion date of March 2023. (Tr. vol. 3, p. 608.)

OPC seems to suggest that FCG could have magically just selected an industrial property in Miami-Dade County that would (i) accommodate the LNG Facility and (ii) not require any permits or approvals, or alternatively obtained the needed permits and approvals prior to acquiring the original site. Such suggestions are both unrealistic and uninformed, and clearly demonstrate

OPC witness Schultz's complete lack of knowledge and experience regarding both the siting requirements for an LNG Facility and the extreme difficulty in finding a suitable industrial property that is actually available for purchase in Miami-Dade County. (*See* CEL Ex. 182, OPC Response to FCG Int. Nos. 35-36; Tr. vol. 3, pp. 646, 648.) Regardless of the property, the siting and construction of an LNG Facility requires many permits and approvals.[13] (*See, e.g.*, Tr. vol. 3, p. 610.) Further, there are limited properties available in Miami-Dade County that can accommodate an LNG Facility of this size at a reasonable and fair price. (*See, e.g.*, CEL Ex. 99, pp. 1-2; Tr. vol. 3, pp. 646, 648.)

Under these facts and circumstances, OPC's attempt to "*Monday morning quarterback*" FCG's decision regarding the LNG Facility property should be rejected. It cannot be credibly argued that FCG's actions regarding both the original site and final site for the LNG Facility were not what a reasonable manager would have done in light of the conditions and circumstances that were known at the time.

B. *OPC Contentions that Costs Associated with the LNG Facility Should Not Be in FCG's Current Rates Reflect a Misunderstanding of the Terms of the 2018 Settlement*

FCG is properly including certain costs associated with the LNG Facility in current rates as specified in the 2018 Settlement. The 2018 Settlement, to which OPC is a signatory, contemplates the recovery of a portion of the costs and expenses associated with the LNG Facility prior to its in-service date. Specifically, the 2018 Settlement states:

> The Parties further agree that the Company shall be allowed to increase its base rates and charges in an amount sufficient to recover the additional revenue requirement of $3.8 million of the completed liquified natural gas ("LNG") facility described in Section IV of this 2018 Agreement by the end of 2019 or upon the in-service date of the LNG Facility, whichever is later.

[13] In fact, the final site for the LNG Facility also required zoning approval. (Tr. vol. 3, pp. 607-08.)

(Tr. vol 4, p. 823.) This provision in the 2018 Settlement recognizes a portion of costs and expenses associated with the LNG Facility is currently included in FCG's base rates and FCG is allowed to implement a subsequent increase to its existing base rates in order to collect an additional $3.8 million in revenue requirements once the LNG Facility goes into service. (Tr. vol 4, pp. 823-24.)

Further, the revenue requirement calculation for the LNG Facility that was provided to support the additional subsequent increase of $3.8 million upon the in-service date clearly identified that current rates approved by the 2018 Settlement included approximately $2.5 million in revenue requirements associated with the LNG Facility.[14] (CEL Ex. 108.) This revenue requirement calculation for the LNG Facility was provided to the parties in the 2018 rate case, and was provided again in discovery in this proceeding. (Tr. vol. 5, pp. 979-80.) Thus, the parties to the 2018 Settlement, including OPC, were fully aware that the $11.5 million increase in annual revenues being recovered in current base rates under the 2018 Settlement included $2.5 million of revenue requirements associated with the future LNG Facility. Indeed, no parties to this proceeding dispute that FCG's current base rates approved by the 2018 Settlement include $2.5 million of revenue requirements associated with the LNG Facility as described above.

OPC nonetheless recommends that the amounts collected from customers associated with the LNG Facility prior to when it goes into service should be "set aside in a regulatory liability and amortized back to ratepayers over the next five years." (Tr. vol. 2, pp. 293-94.) In essence,

[14] More specifically, the revenue requirement calculation for the LNG Facility indicated: (1) the total estimated revenue requirement associated with the LNG Facility was $6.4 million (CEL Ex. 108, page 7, line 26); (2) the current base rates approved in the 2018 Settlement Agreement included revenue requirements of $2.5 million associated with the LNG Facility (CEL Ex. 108, page 8, line 26); and (3) the incremental additional revenue requirement to become effective on the in-service date of the LNG Facility is $3.8 million (CEL Ex. 108, page 7, line 26). The revenue requirement included in current base rate represents a return on $29.0 million of related rate base of $2.4 million (CEL Ex. 108, page 8, line 22) plus $0.2 million of operating expenses (CEL Ex. 108, page 8, sum of lines 23-25).

OPC contends that FCG should not have been recovering the $2.5 million annual revenue requirement associated with the LNG Facility in current rates because it has not been placed in-service. OPC's argument is flawed and should be rejected for multiple reasons.

First, as explained above, it cannot be credibly disputed that FCG's current base rates include costs and expenses associated with the LNG Facility pursuant to the 2018 Settlement, which rates became effective on June 1, 2018. Second, OPC's argument completely ignores that the 2018 Settlement clearly contemplated that the LNG Facility could be completed "by the end of 2019 or upon the in-service date of the LNG Facility, whichever is later."[15] Stated differently, the parties to the 2018 Settlement explicitly agreed to the recovery of costs and expenses associated with the LNG Facility prior to the in-service date of the LNG Facility, whether that in-service date was the end of 2019 or later. Third, even assuming, *arguendo*, that OPC is correct and FCG should not have been recovering the $2.5 million associated with the LNG Facility in current rates, this does not change the fact that the parties to the 2018 Settlement expressly agreed to an $11.5 million increase in annual revenues. Meaning, even if OPC witness Schultz is correct, which he is not, it would have no impact on the revenue requirements included in current base rates under the 2018 Settlement. (Tr. vol. 5, pp. 981-82.) Finally, it should be noted that FCG has continually earned below the bottom end of its current authorized ROE range since its last rate case even with the $2.5 million of annual revenue requirements associated with the LNG Facility in current base rates. (Tr. vol. 5, pp. 890-91.)

In summary, OPC's recommendation improperly seeks to re-litigate and re-write the terms agreed to in the 2018 Settlement. However, the 2018 Settlement expressly provides that the "Parties further agree that they believe the 2018 Agreement is in the public interest, that they will

[15] *See* Order No. PSC-2018-0190-FOF-GU, page 16 (emphasis added).

support this 2018 Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this 2018 Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this 2018 Agreement or the subject matter hereof."[16] OPC's recommendation is in direct violation of the above 2018 Settlement provision.

FCG submits that permitting parties to re-litigate and breach terms they expressly agreed to in a prior-Commission-approved settlement, as requested by OPC, would have a significant and detrimental chilling effect on parties' willingness to enter settlement agreements, which would be inconsistent with the Commission's long-standing policy of encouraging settlements. The Commission should not incentivize such behavior and, instead, should honor and enforce the Commission-approved 2018 Settlement regarding the amounts collected from customers in current rates associated with the LNG Facility.

Finally, during cross-examination of FCG witness Fuentes, OPC attempted to imply that FCG would double-recover the costs for the LNG Facility. (Tr. vol. 5, p. 889.) This is incorrect. FCG's proposed incremental base rate increase of $18.8 million is net of current revenues (which includes the $2.5 million in current rates associated with the LNG Facility as explained above), net of the previously approved increase of $3.8 million for the LNG Facility (Tr. vol. 4, pp. 785, 787; CEL Ex. 111, p. 1), and only includes the revenue requirements for the incremental $10 million of capital expenditures necessary to complete the LNG Facility. (Tr. vol. 3, p. 588.) Thus, there is no double recovery associated with the LNG Facility, as OPC suggested.

Issue 13: What is the appropriate level of plant in service for the projected test year? (Fallout Issue)

[16] Order No. PSC-2018-0190-FOF-GU, pages 23-24 (emphasis added).

> ***FCG:** As reflected in page 1 of MFR A-3 (with RSAM), the appropriate amount of plant in-service, including the gross amount of the acquisition adjustment, is $664,736,539 (adjusted) for the 2023 projected Test Year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of plant in service for the 2023 projected test year is also $664,736,539 (adjusted). (*Campbell, Fuentes, Howard*)*

The appropriate amount of plant in-service, including the gross amount of the acquisition adjustment, is $664,736,539 (adjusted) for the 2023 projected Test Year as shown on page 1 of MFR A-3 with RSAM (CEL Ex. 2). For the period 2019 through 2023, FCG projects to invest more than $290 million in infrastructure and other capital to support customer growth, enhance customer service, and enhance the safety and reliability of its system. (Tr. vol. 3, pp. 577-78; Tr. vol. 6, pp. 1059-60.) As explained by FCG witnesses Howard and Campbell, these ongoing investments typically fall in four general categories: customer growth, reliability, safety, and customer service. (Tr. vol. 3, pp. 573-74; Tr. vol. 6, pp. 1059-60.) In addition to FCG's regular ongoing capital investments, these projected capital expenditures include the previously approved LNG Facility and FCG's proposed AMI Pilot. MFR G1-26 (CEL Ex. 7) provides further details regarding FCG's capital expenditures projected for the 2023 Test Year. (Tr. vol. 3, p. 578.)

FCG applies the same rigorous and long-standing processes used by FPL in the development and approval of its capital expenditures budgets, financial forecasts, and MFRs. (Tr. vol. 6, pp. 1047-48.) FCG's planning, budgeting, and approval process was provided in CEL Ex. 12 and explained in detail by FCG witness Campbell. (Tr. vol. 6, pp. 1048-49.) Notably, the Intervenors did not directly challenge or oppose these forecasting methodologies.

FCG follows several practices to ensure that its capital expenditures are at the lowest reasonable cost. These include competitive bidding, contractor quality assurance, and cost tracking. Projects and other smaller services are all obtained using established NextEra Energy, Inc. ("NEE") supply chain policies to mitigate risk and deliver value. Contractor bids are evaluated

weighing a combination of criteria including cost, contractor quality, supplier diversity, past performance, experience, availability, schedule, and safety. This approach is readily validated and ensures that customers are delivered market-driven value through a selection process that involves multiple criteria. (Tr. vol. 3, p. 576.) Despite these efforts, FCG's costs of construction have been increasing largely due to the following: increases in inflation and material costs; industry market demand for external contractors; supply chain issues; governmental, regulatory, and compliance requirements, including permitting and maintenance of traffic requirements; retirement, removal and restoration costs; construction safety protocols; and enhanced construction management, inspection, and quality control. (Tr. vol. 3, pp. 575-76.) In spite of these challenges, FCG must continue to deliver on its commitment to provide safe and reliable service to both existing and future customers.

OPC recommends a general reduction of FCG's projected 2023 Test Year plant in-service to remove approximately $9.6 million of plant-in-service and $460,884 of associated accumulated depreciation based on OPC witness Schultz's analyses of the three-year historical average capital expenditures, plant additions, and plant in-service. (Tr. vol. 2, pp. 299-302.) Although historical averages and balances may be helpful in evaluating the reasonableness of a forecast, they should not and do not displace the use of a prudent forecasted test year for a growing business. (Tr. vol. 6, p. 1089.) Again, no parties directly opposed or challenged FCG's forecasting methodologies or budgeting processes.

Even assuming, *arguendo*, that it is appropriate to use a three-year historical average as the forecasted amount for the 2023 Test Year plant in-service, OPC witness Schultz's three-year historical average analyses are fundamentally flawed and unreliable. Indeed, OPC witness Schultz's analyses incorrectly compared historical amounts that include only base with forecasted

amounts that include <u>both</u> base and clause. (Tr. vol. 6, p. 1106.) This approach is a classic "*apples to oranges*" comparison and, as such, any analysis provided by OPC witness Schultz's utilizing these amounts and any corresponding calculations where it is relied upon are incorrect and should be rejected. Further, even using OPC witness Schultz's erroneous recommendation to limit the amount of projected test year plant in-service to historical average balances, when the corrected information is used (*i.e.*, an "*apples-to-apples*" comparison) it results in amounts that are in line with FCG's forecasted plant in-service for the 2023 projected Test Year.[17] (Tr. vol. 6, pp. 1106-10.) Although historical averages should not displace a prudent forecast, the correction to OPC witness Schultz's erroneous analyses confirms the reasonableness of FCG's forecast for a growing business, which is a significant driver of the Company's plant additions of the 2023 Test Year. (Tr. vol. 3, p. 615; Tr. vol. 6, pp. 1109-10.)

<u>Issue 15:</u> Should any adjustments be made to the amounts included in the projected test year for acquisition adjustment and accumulated amortization of acquisition adjustment?

***FCG:** No. FCG has not requested approval or recovery of an acquisition adjustment related to the acquisition from Southern Company Gas in July 2018. Rather, FCG carried over FCG's existing positive acquisition adjustment related to AGLR's acquisition of FCG in 2004, which was approved by Commission Order No. PSC-07-0913-PAA-GU ("AGLR Order"). This acquisition adjustment survived a subsequent acquisition by Southern Company Gas and was addressed and resolved in FCG's most recent base rate case. As a result, there is no need to make an adjustment to remove the approved AGLR acquisition adjustment from FCG's 2023 Test Year. (*Fuentes*)*

FCG has not requested Commission approval of an acquisition adjustment related to the acquisition of FCG from Southern Company Gas ("Southern") in July 2018, nor has it included any associated acquisition adjustment in its 2023 Test Year. Rather, FCG simply carried over the

[17] OPC's use of historical averages fails to recognize that 2021 should be regarded as an outlier year due to the ongoing impacts of the COVID-19 pandemic on the growth of new business for FCG in 2021. (Tr. vol. 3, p. 615.)

actual amounts reflected on its balance sheet at the time of the acquisition from Southern in July 2018 and did not recognize or record an acquisition adjustment resulting from this transaction. As a result, FCG's rate base remained unchanged when it was acquired from Southern in 2018 and there was no need to request permission to establish an acquisition adjustment as a result of this transaction. (Tr. vol. 4, p. 817.)

The actual amounts carried over on FCG's balance sheets when it was acquired from Southern reflected an existing positive acquisition adjustment and associated accumulated amortization related to FCG's acquisition by AGL Resources, Inc. ("AGLR") in 2004, which acquisition adjustment was approved by Commission Order No. PSC-07-0913-PAA-GU in Docket No. 20060657-GU ("*AGLR Order*"). (Tr. vol. 4, p. 817.) Pursuant to the *AGLR Order*, FCG was authorized to record a positive acquisition adjustment of $21,656,835 to be amortized over a 30-year period beginning November 2004.[18] The *AGLR Order* further provided that the permanence of the cost savings would be subject to further review and the continuation of the acquisition adjustment was to be addressed in FCG's next base rate case.[19]

In 2016, AGLR was acquired by Southern and, as a result, FCG became a subsidiary of Southern. Consistent with the *AGLR Order*, FCG continued the amortization of the existing AGLR acquisition adjustment <u>after</u> the acquisition by Southern. As required by the *AGLR Order*, the permanence and continuation of the acquisition adjustment and related amortization was addressed in FCG's 2018 base rate case, which resulted in the 2018 Settlement. (Tr. vol. 4, pp. 817-18.)

Because the permanence and continuation of the AGLR acquisition adjustment and related amortization was addressed and resolved in the 2018 rate case, FCG included the $21.7 million

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[18] *See AGLR Order*, p. 13.
[19] *See AGLR Order*, p. 14.

AGLR acquisition adjustment and related accumulated amortization of $13.5 million in rate base, and $0.7 million of amortization expense in net operating income in the 2023 Test Year. This treatment is consistent with the AGLR Order and the 2018 Settlement Agreement. (Tr. vol. 4, p. 820.)

Notwithstanding the foregoing, OPC claims that the previously approved AGLR acquisition adjustment and related accumulated amortization should be disallowed because, according to OPC, acquisition adjustments do not survive subsequent purchases. (Tr. vol. 2, pp. 288-92.) In support of its recommendation, OPC points to the fact that the 2018 rate case resulted in a settlement, as well as to orders that disallowed the continuation of acquisition adjustments for two water and wastewater utilities following a subsequent purchase. OPC's reliance on the fact that FCG's last rate case was settled (as opposed to fully litigated) and its reliance on two clearly distinguishable water and wastewater cases are misplaced and ignore the unrefuted evidence of what actually occurred.

Notably, OPC does not dispute that, pursuant to the *AGLR Order*, the permanence and continuation of the AGLR acquisition adjustment was to be addressed in FCG's next base rate case. Consistent therewith, in the 2018 rate case, FCG submitted the testimony specifically supporting the continuation of the AGLR acquisition adjustment as required by the *AGLR Order*, and FCG reflected a net acquisition adjustment of $11.8 million and amortization expense of $0.7 million in the 2018 test year MFRs. (Tr. vol. 4, p. 818.) While OPC proposed various adjustments in the 2018 rate case, it is clear that OPC did <u>not</u> propose any rate base or net operating income adjustments to remove the AGLR acquisition adjustment or its related accumulated amortization in the 2018 rate case. (Tr. vol. 4, p. 818; CEL Ex. 109, pp. 1-2, 3-5.) Although the 2018 base rate case resulted in the 2018 Settlement, to which OPC is a signatory, it does not negate the fact that

the continuation of the AGLR acquisition adjustment was addressed in the 2018 base rate case as required by the *AGLR Order*.

In fact, in a data request regarding the 2018 Settlement, Staff expressly asked, "does FCG believe that this Stipulation and Settlement Agreement fulfills its obligation to demonstrate to the Commission the prudence of the Acquisition Adjustment?" FCG responded as follows:

> While the Stipulation and Settlement does not specifically address the Acquisition Adjustment, the Company provided the testimonies of Witnesses Kim and Bermudez in support of the continued prudence of the Acquisition Adjustment. To the extent that no intervenor party provided testimony recommending an adjustment to the unamortized amount associated with the Acquisition Adjustment, and the Settlement and Stipulation does not contain a specific adjustment to the remaining unamortized amount associated with the Acquisition Adjustment, FCG believes that a sufficient demonstration has been made as to the continued prudence of the Acquisition Adjustment.

(Tr. vol. 4, pp. 819-20; CEL Ex. 108, pp. 4-5.) Clearly, the Commission, Staff, FCG, and OPC were aware and understood the intent of the 2018 Settlement was for the acquisition adjustment to continue into the future.

OPC refers to excerpts from two water and wastewater utility orders to suggest that the Commission has a policy or practice of ensuring acquisition adjustments do not survive subsequent purchases of a utility's assets.[20] (Tr. vol. 2, pp. 290-91.) OPC's reliance on these orders is misplaced and wrong. The Commission's decisions in the referenced water and wastewater orders were based on the unique facts and circumstances specific to those dockets and nothing in either order suggests that the Commission's decisions would be considered "policy" or "practice" for all utilities, including gas utilities. In addition, water and wastewater utilities must comply with the requirements under Rule 25-30.0371, F.A.C., which is a rule specific to acquisition adjustments

[20] *See* Order No. PSC-00-1165-PAA-WS in Docket No. 990243-WS (FPSC June 27, 2000) and Order No. PSC-05-1242-PAA-WS in Docket No. 040951-WS (FPSC Dec. 20, 2005). (CEL Ex. 193.)

for water and wastewater utilities. There is no comparable acquisition adjustment rule for gas utilities, nor is FCG aware of any Commission decisions that disallow continued recovery of acquisition adjustments after a subsequent acquisition for gas utilities.

In fact, as explained above, FCG's AGLR acquisition adjustment already survived a subsequent acquisition by Southern in 2016. Despite the subsequent acquisition by Southern, the AGLR acquisition adjustment was continued and, pursuant to the *AGLR Order*, the permanence of the acquisition adjustment was addressed and resolved in FCG's 2018 rate case as explained above. (Tr. vol. 4, pp. 820-21.) Further, on cross-examination, FCG witness Fuentes identified another example of a positive acquisition adjustment for PGS that survived multiple subsequent acquisitions.[21] (Tr. vol. 5, pp. 936-37.) Contrary to OPC's claim, there is no Commission policy of discontinuing acquisition adjustments for natural gas utilities where a subsequent acquisition occurs.

In this case, the *AGLR Order* clearly provided that the continuation of the AGLR acquisition adjustment was to be addressed in FCG's next base rate case, which occurred in FCG's 2018 rate case, was not opposed, and was not disallowed in the 2018 Settlement. OPC's reliance on two water and wastewater orders that are limited to the specific facts and parties of those cases, cannot and does not change what was approved in the *AGLR Order*.[22] As explained above, FCG has fully complied with the *AGLR Order* and, therefore, OPC's recommended disallowance of the

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[21] The Commission approved a positive acquisition adjustment related to PGS's acquisition of Southern Gas Company in 1990. *See* Order No. 23858, Docket No. 891353, at 6 (Dec. 11, 1990). Subsequently, Commission approved the continuance of the acquisition adjustment <u>after</u> TECO Energy's acquisition of Southern Company Gas in 1997. *See* Order No. PSC-03-0038-FOF-GU, Docket No. 020384, at 21 (Jan. 6, 2003). That same acquisition adjustment was *still* on PGS' books when it filed for new rates in 2020 (*see* Docket No. 20200051-GU, MFR B-6, filed on June 8, 2020), which was <u>after another subsequent acquisition</u> of PGS by Emera, Inc. in 2016.

[22] Notably, the *AGLR Order* was issued after the two water and wastewater orders relied upon by OPC. The fact that the Commission did not include a similar limitation in the *AGLR Order* further demonstrates that there is no Commission policy of discontinuing acquisition adjustments for natural gas utilities where a subsequent acquisition occurs. OPC's attempt to ignore the holding of the *AGLR Order* and replace it with the holding of these two water and wastewater orders is inappropriate and should be rejected.

previously approved AGLR acquisition adjustment should be rejected.

Issue 17: What is the appropriate level of Gas Plant Accumulated Depreciation and Amortization for the projected test year?

***FCG:** As reflected on page 1 of MFR A-3 (with RSAM), the appropriate amount of Accumulated Depreciation with RSAM, including accumulated amortization associated with the acquisition adjustment, is $221,380,711 (adjusted) for the 2023 Test Year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Accumulated Depreciation without RSAM, including accumulated amortization associated with the acquisition adjustment, is $222,960,003 (adjusted) for the 2023 Test Year as reflected on page 1 of MFR A-3. (*Campbell, Fuentes*)*

As reflected on page 1 of MFR A-3 with RSAM (CEL Ex. 2), the appropriate amount of Accumulated Depreciation with RSAM, including accumulated amortization associated with the acquisition adjustment, is $221,380,711 (adjusted) for the 2023 Test Year. OPC recommends the appropriate Accumulated Depreciation should be "at least $208,172,408" for the 2023 Test Year, or a reduction of approximately $13.2 million. OPC's recommended Accumulated Depreciation for the 2023 Test Year is a fallout of OPC witness Garett's recommended depreciation parameters and OPC witness Schultz's recommended rate base adjustments, including adjustments to plant in-service, the LNG Facility, the AMI Pilot, and the AGLR acquisition adjustment. As explained in the applicable Issues, OPC recommended depreciation parameters and rate base adjustments are unsupported, inappropriate, and should be rejected. For these same reasons, OPC's recommended Accumulated Depreciation for the 2023 Test Year should be rejected.

Issue 19: Should the unamortized balance of Rate Case Expense be included in Working Capital and, if so, what is the appropriate amount to include?

***FCG:** Yes. The inclusion of the unamortized balance of rate case expenses of $1,645,732 (as reflected on Exhibit LF-7) for the 2023 projected test year in Working Capital is appropriate in order to avoid an implicit disallowance of reasonable and necessary costs. Full recovery of necessary rate case expenses is appropriate but will not occur unless FCG is afforded the opportunity to earn a return on the unamortized balance of those expenses. (*Fuentes*)*

In rebuttal, FCG updated its estimated rate case expense to reflect a reduction in the estimated work based primarily on the discovery and issues raised in the proceeding at that time. FCG's revised total amount of estimated, incremental rate case expenses is $1.9 million, which is $0.1 million lower than the original estimate. As a result, the unamortized 13-month average balance to be included in rate base as working capital is $1.6 million, which is $96,000 lower than FCG's original estimate. (Tr. vol. 4, p. 816; CEL Ex. 107.)

No parties introduced any testimony or evidence raising any concerns with FCG's proposal to include the unamortized rate case expense in rate base. (Tr. vol. 4, p. 815.) OPC nonetheless asserts in its Prehearing Statement that unamortized rate case expenses should not be included in working capital pursuant to Commission policy. Notably, OPC's own witness disagrees. Although OPC witness Schultz proposes a reduction to the working capital for the deferred rate case based on his recommendation to reduce the total rate case expense, which is addressed in Issue No. 47 below, OPC witness Schultz in fact agrees with and included the recovery of the unamortized rate case expense in rate base. (Tr. vol. 2, p. 319; CEL Ex. 46, Sch. C-8.) This is appropriate because the full recovery of necessary rate case expenses will not occur unless FCG is afforded the opportunity to earn a return on the unamortized balance of those expenses. Further, the fact that FCG is requesting a four-year rate plan in this proceeding reduces the amount of rate case expenses FCG would otherwise incur for multiple, back-to-back rate cases. (Tr. vol. 4, pp. 794-95.) It should also be remembered that FCG is a regulated entity that must seek rate relief through this required rate case process, which is laborious and expensive. The rate case process doesn't just address return for shareholders; it addresses all components of ratemaking, which includes the recovery of prudent investments and expenses incurred for the benefit and on behalf of FCG's customers. For these reasons, FCG submits that it is appropriate to include the

unamortized rate case expense in working capital.

<u>Issue 22:</u> What is the appropriate level of working capital for the projected test year?

> ***FCG:*** As reflected in Exhibit LF-11, the appropriate amount of working capital with RSAM for the 2023 projected test year is $17,357,425 (adjusted). If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of working capital without RSAM for the 2023 projected test year is $17,357,354 (adjusted) as reflected in FCG Exhibit LF-12. (*Campbell, Fuentes*)*

The appropriate amount of working capital with RSAM for the 2023 projected test year is $17,357,425 (adjusted). (CEL Ex. 111.) FCG evaluated major components of working capital on an account-by-account basis, applying well-established forecasting methodologies as explained in Issue No. 2 above. Notably, the Intervenors did not directly challenge or oppose these forecasting methodologies. (Tr. vol. 6, p. 1103.)

OPC witness Schultz ignores the forecasted Cash Working Capital ("CWC") and, instead, limited his evaluation to the historical CWC balances. Again, as explained above, this case is based on a projected test year, not a historical period test year and, as such, utilizing simple historical averages is not representative of a prudent forecast for a growing business. (Tr. vol. 6, pp. 1102-03.) Accordingly, OPC witness Schultz's testimony derives faulty conclusions concerning CWC for the following accounts: cash, accounts receivable, stored fuel, and miscellaneous deferred debits. (Tr. vol. 2, pp. 302-03.) Moreover, FCG clearly explained the primary drivers for these CWC increases:

> <u>Cash</u> – The Company targets a cash balance of $5 million in projected periods. The primary purpose of this target is to provide the Company with enough cash on hand to conduct day to day operations. However, at the time FCG became a wholly owned subsidiary of FPL, it was determined that establishing and maintaining a dedicated commercial paper program for FCG would be cost prohibitive. Therefore, FCG requests funds as needed for working capital from FPL on an ongoing basis, which establishes the minimum cash balance target. (Tr. vol. 6, p. 1104.)

<u>Accounts Receivable</u> – FCG projects accounts receivable using the 2021 historical average days sales outstanding and applies this ratio to projected revenues. The projected revenues include the proposed incremental revenue request in this filing of approximately $18.9 million, as adjusted in CEL Ex. 111, and projected growth in revenues from overall demand. Revenues are increasing, hence the reason for the increase in the projected accounts receivable balance. (Tr. vol. 6, p. 1104.)

<u>Stored Fuel</u> – The Company projects its test year stored fuel balance using a monthly targeted stored fuel requirement. The main drivers of the increase in the stored fuel balance from 2021 are related to projected higher natural gas prices. The gas curve used for the 2023 Test Year is significantly lower than the current projected gas price curve due to the various recent economic conditions significantly driving up prices. If the updated gas price curve were applied to the projected 2023 Test Year, it would result in an even higher stored fuel balance projection – one of the many risks FCG will need to manage through over the four-year rate plan period. Additionally, the LNG Facility is expected to be placed in service in March 2023. As such, the Company included the expected initial fill value for the LNG Facility in the 2023 stored fuel balance. (Tr. vol. 6, p. 1105.)

<u>Miscellaneous Deferred Debits</u> – The most significant portion of this balance is associated with FCG's pension asset. FCG is allocated its portion of the NEE Employee Pension Plan ("Plan") based on pensionable earnings of FCG as a percentage of total pensionable earnings in the Plan. The Plan's pension asset has grown as a result of prudent investments, thereby generating income, which lowers current period operating expense and has the effect of resulting in a higher pension asset. Further details surrounding the Plan and related pension asset are provided in FEA's Second Set of Interrogatories Nos. 11 and 12 (CEL Ex. 173). Clearly, the increase in the miscellaneous deferred debit balance is based on prudent investments that result in lower operating costs and should be included in FCG's rate base. (Tr. vol. 6, pp. 1105-06.)

In sum, this case is based on a projected test year, not a historical period test year and, therefore, utilizing simple historical averages is not representative of a prudent CWC forecast for a growing business. (Tr. vol. 6, p. 1106.)

<u>Issue 23:</u> What is the appropriate level of rate base for the projected test year? (Fallout Issue)

***FCG:** As reflected in Exhibit LF-11 (CEL Ex. 111), the appropriate amount of rate base with RSAM for the 2023 projected test year is $488,905,694 (adjusted). If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of rate base without RSAM for the 2023 projected test year is $487,326,330 (adjusted) as reflected in Exhibit LF-12 (CEL Ex. 112). (*Campbell, Fuentes*)*

The Company has fully supported the amount to be included in rate base through the testimony of its witnesses, as well as the information in its MFRs and supporting discovery

responses. As explained in the applicable Issues above, OPC's recommended rate base adjustments for the 2023 Test Year were fully refuted by FCG's rebuttal testimony, are unsupported and inappropriate, and should be rejected.

COST OF CAPITAL

<u>Issue 24:</u> What is the appropriate amount of accumulated deferred taxes to include in the projected test year capital structure?

***FCG:** As reflected in Exhibit LF-11, the appropriate amount of accumulated deferred taxes with RSAM included in capital structure for the 2023 projected test year is $53,898,912 (adjusted). If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of accumulated deferred taxes without RSAM included in capital structure for the 2023 projected test year is $53,743,662 (adjusted) as reflected in Exhibit LF-12. (*Fuentes, Campbell*)*

As reflected on MFR G-3, page 2 (CEL Ex. 7), FCG has incorporated an adjustment to decrease the amount of Accumulated Deferred Income Tax ("ADIT") included in the calculation of FCG's weighted average cost of capital as required under Treasury Regulations §1.167(1)-1(h)(6). The calculation of the Proration Requirement for ADIT for the 2023 Test Year is provided in CEL Ex. 23, which results in a decrease to ADIT of $46 thousand for the 2023 Test Year. With this adjustment, the appropriate amount of ADIT with RSAM included in capital structure for the 2023 Test Year is $53,898,912. (Tr. vol. 4, pp. 796-97; CEL Ex. 111, p. 3.)

OPC recommends a $3.6 million decrease to ADIT for the 2023 Test Year based on OPC witness Schultz's recommended rate base adjustments. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained in Issue Nos. 10-23, OPC's recommended rate base adjustments should be rejected and, therefore, their corresponding adjustment to ADIT for the 2023 Test Year should be rejected.

<u>Issue 25:</u> What is the appropriate amount and cost rate for short-term debt to include in the projected test year capital structure?

***FCG:** As reflected in Exhibit LF-11, the appropriate amount and cost rate for short-term debt with RSAM for the 2023 projected test year is $20,203,793 (adjusted) and 1.78%, respectively. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount and cost rate for short-term debt without RSAM for the 2023 projected test year is $20,137,159 (adjusted) and 1.78%, respectively, as reflected in Exhibit LF-12. (*Fuentes, Campbell*)*

The appropriate amount and cost rate for short-term debt with RSAM for the 2023 projected test year is $20,203,793 (adjusted) and 1.78%, respectively. (CEL Ex. 111, p. 3.) FCG utilized FPL's short-term debt cost because, pursuant to Commission-approved financing orders, FCG obtains 100% of its debt and equity financing from FPL and the interest rate on any short-term borrowings by FCG from FPL is a pass-through of FPL's weighted cost for borrowing these funds.[23] FPL relies on the forward Intercontinental London Interbank Exchange Offered Rate or LIBOR curve for its short-term debt cost projections. (Tr. vol. 6, pp. 1069-70.)

OPC recommends an increase of $20,269 in short-term debt to reflect OPC's proposed capital structure. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained below in Issue No. 28, OPC's proposed capital structure should be rejected and, therefore, OPC's corresponding adjustment to short-term debt should also be rejected. OPC also recommends a decrease of $1.3 million in short-term debt based on OPC witness Schultz's recommended rate base adjustments. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained in Issue Nos. 10-23, OPC's recommended rate base adjustments should be rejected and, therefore, their corresponding adjustment to short-term debt for the 2023 Test Year should also be rejected.

<u>Issue 26:</u> What is the appropriate amount and cost rate for long-term debt to include in the projected test year capital structure?

***FCG:** As reflected in Exhibit LF-11, the appropriate amount and cost rate for long-term debt with RSAM for the 2023 projected test year is $154,025,674

[23] *See, e.g.*, Order No. PSC-2022-0354-FOF-EI, Docket No. 20220133-EI (FPSC Oct. 19, 2022) (approving FCG's financing for calendar years 2023 and 2024).

(adjusted) and 4.28%, respectively. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount and cost rate for long-term debt without RSAM for the 2023 projected test year is $153,521,933 (adjusted) and 4.28%, respectively, as reflected in Exhibit LF-12. (*Fuentes, Campbell*)*

The appropriate amount and cost rate for long-term debt with RSAM for the 2023 projected test year is $154,025,674 (adjusted) and 4.28%, respectively. (CEL Ex. 111, p. 3.) FCG utilized FPL's long-term debt cost because, pursuant to Commission-approved financing orders, FCG obtains 100% of its debt and equity financing from FPL and the interest rate on any long-term borrowings by FCG from FPL is a pass-through of FPL's weighted cost for borrowing these funds. FPL relies on the Blue Chip Financial Forecast which represents the consensus estimates of more than 40 economists/contributors. (Tr. vol. 6, p. 1069.)

OPC recommends an increase of $54.6 million in long-term debt to reflect OPC proposed capital structure. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained below in Issue No. 28, OPC's proposed capital structure should be rejected and, therefore, their corresponding adjustment to long-term debt should also be rejected. OPC also recommends a decrease of $13.8 million in long-term debt based on OPC witness Schultz's recommended rate base adjustments. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained in Issue Nos. 10-23, OPC's recommended rate base adjustments should be rejected and, therefore, their corresponding adjustment to long-term debt for the 2023 Test Year should also be rejected.

Issue 27: What is the appropriate amount and cost rate for customer deposits to include in the capital structure?

***FCG:** As reflected in Exhibit LF-11, the appropriate amount and cost rate for customer deposits with RSAM for the 2023 test year is $3,799,283 (adjusted) and 2.64%, respectively. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount and cost rate for customer deposits without RSAM for the 2023 test year is $3,786,845 (adjusted) and 2.64%, respectively, as reflected in Exhibit LF-12. (*Fuentes, Campbell*)*

The appropriate amount and cost rate for customer deposits with RSAM for the 2023 Test Year is $3,799,283 (adjusted) and 2.64%, respectively. (CEL Ex. 111, p. 3.) OPC recommends a decrease of $251,671 in customer deposits based on OPC witness Schultz's recommended rate base adjustments. (CEL Ex. 46, Schedule D, p. 1.) For the reasons explained in Issue Nos. 10-23, OPC's recommended rate base adjustments should be rejected and, therefore, their corresponding adjustment to the amount of customer deposits for the 2023 Test Year should also be rejected.

Issue 28: What is the appropriate equity ratio to use in the capital structure for ratemaking purposes?

***FCG:** FCG's equity ratio should be 59.6% based on investor sources. This is appropriate due to the fact that FCG does not issue its own debt or equity and obtains all short- and long-term financing through its parent, FPL pursuant to Commission-approved Financing Applications. (*Campbell, Nelson*)*

FCG is requesting a 2023 Test Year financial capital structure consisting of 59.6% common equity and 40.4% debt, which is equal to the capital structure of FCG's direct parent, FPL. (Tr. vol. 6, p. 1069.) FCG does not issue its own debt or equity and, pursuant to Commission-approved financing orders, FCG obtains 100% of its debt and equity financing from FPL and the interest rate on any short- or long-term borrowings by FCG from FPL is a pass-through of FPL's weighted cost for borrowing these funds.[24] (Tr. vol. 6, pp. 1068-69.) This is a significant benefit to FCG's customers because FPL's weighted average borrowing costs are significantly lower than FCG could otherwise obtain on its own. (Tr. vol. 6, p. 1114.) Given that FCG does not issue equity or debt and receives 100% of its debt and equity financing directly from FPL, mirroring FPL's approved equity ratio is appropriate.

FCG notes that its proposal to use the capital structure of its parent is fully consistent with

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[24] *See* Order No. PSC-2018-0550-FOF-GU in Docket No. 20180166-GU (FPSC Nov. 19, 2018); Order No. PSC-2019-0472-FOF-EI in Docket No. 20190157-EI (FPSC Nov. 6, 2019); Order No. PSC-2020-0401-FOF-EI in Docket No. 20200188-EI (FPSC Oct. 26, 2020); Order PSC-2021-0409-FOF-EI in Docket No. 20210127-EI (FPSC Nov. 1, 2021); and Order No. PSC-2022-0354-FOF-EI in Docket No. 20220133-EI (FPSC Oct. 19, 2022).

FCG's proposal in the 2018 rate case.[25] (Tr. vol. 6, pp. 1068, 1114.) Additionally, the Commission has previously approved the use of a parent company's capital structure where the regulated utility operates as division and/or does not issue debt.[26] (Tr. vol. 1, p. 114.)

FCG's outside independent expert, FCG witness Nelson, provided an expert assessment of the reasonableness of FCG's proposed equity ratio of 59.6% and found the proposed ratio to be within the proxy group range and consistent with industry practice. Specifically, FCG witness Nelson's calculation of the average capital structure (including short-term debt) for each of the proxy group operating companies from 2018 to 2020 demonstrated a range of 43.54% to 61.78%, and a mean and median three-year average equity ratio of 54.78% and 55.85%, respectively. (CEL Ex. 39.) Thus, FCG witness Nelson's testimony and analysis reflects that the Company's requested equity ratio of 59.60% is within the proxy group range and is, therefore, consistent with industry practice. (Tr. vol. 1, p. 115.) Although FCG's proposed equity ratio is slightly higher than the mean and median three-year average equity ratio of the proxy group, it is still within the proxy group range and appropriately accounts for the business risks that are unique to FCG. (Tr. vol. 1, pp. 154, 158.)

The proper point of comparison is the mix of investor-supplied capital in place at the regulated utility operating companies, not at the publicly traded holding companies. The nature of utility operations, and the corresponding nature of the assets providing utility service, create common financing objectives and constraints addressed by financing practices at the operating company level. The Intervenor witnesses, however, recommend increasing the Company's

[25] *See In re: Petition for rate increase by Florida City Gas*, Docket No. 20170179-GU, FCG Direct Testimony of Michael J. Morley at 17-18 (FPSC Oct. 23, 2017).

[26] *See, e.g.,* Order No. PSC-10-0029-PAA-GU, Docket No. 090125-GU (FPSC Jan. 14, 2010); Order No. PSC-00-2263-FOF-GU, Docket No. 000108-GU (FPSC Nov. 28, 2000); Order No. PSC-93-1450-FOF-WS Docket No. 921261-WS, (FPSC Oct. 5, 1993); Order No. PSC-93-1713-FOF-SU, Docket No. 921293-SU (FPSC Nov. 30, 1993).

financial leverage by reference to the publicly traded holding companies and other industry capital structures, which would increase the regulated utilities' financial risk and, in turn, its cost of capital to the detriment of customers. (Tr. vol. 1, p. 148.)

OPC recommends a financial capital structure consisting of 51.30% debt and 48.70% equity because, according to OPC witness Garrett, utility capital structures should be more heavily weighted toward debt. (Tr. vol. 2, pp. 403, 412.) OPC's recommendation and analysis are flawed and should be rejected for several reasons. First, although OPC witness Garrett relies on the debt ratio of at least 56% used by other industries (Tr. vol. 2, pp. 405-06), the natural gas utility sector is not even on the list of industries he analyzed. Second, the debt ratio data used in OPC's analysis is at the publicly traded holding company level, which is an improper benchmark to evaluate the reasonableness of FCG's requested capital structure, as it itself is not publicly traded. (Tr. vol. 1, p. 155.) Third, OPC's own data does not support OPC witness Garrett's conclusion that low-risk industries with stable earnings should have higher debt ratios. (Tr. vol. 2, p. 403.) For example, based on the Beta coefficients, the Air Transport and Hotel/Gaming industries included in OPC witness Garret's analysis are significantly more risky than public utilities and certainly are not considered to have "stable" earnings, which have the effect of skewing his recommendation. (Tr. vol. 1, p. 156.)

Nonetheless, FCG witness Nelson tested OPC witness Garrett's theory that low-risk industries should have higher debt ratios and determined that industries of higher risk correspond to higher debt ratios, not lower as OPC witness Garrett suggested. (Tr. vol. 1, pp. 156-57; CEL Ex. 125.) In other words, OPC witness Garrett's premise is not supported by his own data and there is no relationship between debt ratios and Beta coefficients. Consequently, his theory – and the conclusion he draws from it – is not sound and should be rejected. (Tr. vol. 1, pp. 156-57.)

FEA witness Walters reviewed recent authorized equity ratios and the capital structures at the publicly traded holding company level and recommends a capital structure that contains "no higher than 50.0%" common equity based on the presumption that FCG should be financed with the same proportions of equity and debt as the "average" natural gas utility in 2021. (Tr. vol. 2, p. 436.) However, setting the authorized capital structure based on annual averages implies all utilities should be financed as an average utility and assumes that all utilities have the same risks and underlying assets and should be financed with the same proportions of equity and debt, which is clearly not the case. (Tr. vol. 1, pp. 154-55.) Also, as explained above, the Company's requested equity ratio is within the range of authorized equity ratios between 2019 and 2022, which ranges from 46.26% to 60.18%. (Tr. vol. 1, p. 154.)

There simply is no basis to conclude that the Company's requested equity ratio of 59.60% on an investor-supplied basis deviates substantially from sound utility practice. In sum, FCG's expert witness opined that:

- FCG's requested capital structure reflects its specific financing requirements and risk profile, and enables it to maintain its financial strength, which translates into favorable access to capital for the benefit of customers;
- The Company's requested capital structure is reasonable compared to the range of equity ratios for the regulated natural gas operating companies held by the proxy group as well as to authorized equity ratios for natural gas utilities in other jurisdictions; and
- The Company's requested capital structure is based on its actual financing from its parent and is consistent with regulatory precedent and guidance regarding capital structure determinations for companies that do not issue their own debt or have their own credit ratings.

(Tr. vol. 1, pp. 158-59.) For these reasons, the Intervenors' recommendations should be rejected, and FCG's requested capital structure should be approved.

<u>Issue 29:</u> What is the appropriate authorized return on equity (ROE) to use in establishing FCG's projected test year revenue requirement?

> ***FCG:** The Commission should authorize 10.75% as the return on common equity. Granting FCG's requested return on equity will appropriately take into account FCG's unique risk profile and the Company's commitment to a strong financial position. The requested rate also addresses the risk of the Company's proposed multi-year stay-out. Granting FCG's requested return on common equity is critical to maintaining FCG's financial strength and flexibility and will help FCG attract capital necessary to serve its customers on reasonable terms. (*Nelson, Campbell*)*

It is well established that "a regulated public utility is entitled to 'an opportunity to earn a fair or reasonable rate of return on its invested capital.'" *Gulf Power Co. v. Wilson*, 597 So. 2d 270, 273 (Fla. 1992) (quoting *United Tel. Co. v. Mann*, 403 So. 2d 962, 966 (Fla. 1981)). The U.S. Supreme Court has recognized that the fair rate of return should be: (1) comparable to returns investors expect to earn on other investments of similar risk (the "comparable risk" standard); (2) sufficient to assure confidence in the company's financial integrity (the "financial integrity" standard); and (3) adequate to maintain and support the company's credit and to attract capital (the "capital attraction" standard).[27] A fair and reasonable return must meet all three of these standards. (Tr. vol. 1, pp. 51-52.) Both the U.S. Supreme Court and the Florida Supreme Court have held that setting the ROE is a utility-specific, factual determination. *Bluefield*, at 692; *United Tel. Co. v. Mayo*, 345 So. 2d 648 (Fla. 1977).

FCG's outside independent expert, FCG witness Nelson, assessed FCG's cost of equity using three widely used, market based financial models: the constant growth and quarterly growth forms of the Discounted Cash Flow ("DCF") model; the traditional and empirical forms of the Capital Asset Pricing Model ("CAPM"); and the Bond Yield Plus Risk Premium approach. Each of these models focus on different aspects of return requirements and provide different insights to investors' views of risk and return. Use of multiple financial methods provides a broader, comprehensive, and more reliable perspective on investors' return requirements. (Tr. vol. 1, pp.

[27] *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*., 262 U.S. 679, 692 (1923) ("*Bluefield*") and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) ("*Hope*").

60-62.)

FCG witness Nelson considered the quantitative results produced by each model and their comparability to returns available to other similarly situated natural gas utilities, as well as each model's consistency with, and reflection of, the current volatile capital market environment. Additionally, FCG witness Nelson considered the Company's risk profile relative to a proxy group of companies that are comparable, but not necessarily identical in risk to FCG.[28] (Tr. vol. 1, p. 47.) In reaching her ROE recommendation, FCG witness Nelson considered: (1) the results from three commonly used analytical approaches; (2) the Company's higher risk profile associated with its significantly smaller size; (3) the regulatory environment in which it operates, including the incremental risk associated with its proposed multi-year rate plan; (4) the costs associated with issuing stock; and (5) the current volatile and uncertain economic and capital market environment. Based on these factors, FCG witness Nelson concluded that a midpoint ROE of 10.75% is just and reasonable for FCG. (Tr. vol. 1, pp. 116-17.) Importantly, FCG's recommended midpoint ROE of 10.75% should be viewed as conservative by the Commission given the substantial change in the capital market environment since FCG filed this case in May 2022. (Tr. vol. 1, pp. 127, 140-42; Tr. vol. 6, pp. 1181, 1260, 1272.)

OPC recommends a midpoint ROE of 9.25% and FEA recommends a midpoint ROE of 9.40%, which are almost 100 basis points below the midpoint ROE approved in FCG's last base rate case. The intervenors' recommended ROEs ignore and do not properly reflect the undisputed facts that inflation, interest rates, capital costs, and overall market risk are all substantially higher than the levels experienced since FCG's last base rate case. (Tr. vol. 1, p. 124.) For these reasons alone, Intervenors' recommended midpoint ROEs are not fair and reasonable, and should be

[28] The proxy group selection was explained in detail by FCG witness Nelson. (Tr. vol. 1, pp. 54-60.) No parties opposed the proxy group selection, and both OPC and FEA used the same proxy group. (Tr. vol 2, pp. 351, 458.)

rejected.

Further, FCG witness Nelson explains in detail the <u>many</u> reasons OPC's and FEA's ROE analyses are flawed, biased, and should be rejected. (*See* Tr. vol. 1, pp. 159-220.) In summary, due to their reliance on inputs that are flawed and contradictory to sound financial theory, the Intervenors' recommended ROEs are biased downward. Moreover, their 9.25% to 9.40% ROE recommendations are particularly unreasonable when viewed in the context of: (1) the many market-based indicators of increasing capital costs; (2) FCG's significantly smaller size relative to the proxy group and the effect of flotation costs; and (3) returns currently available to other natural gas utilities. Quite simply, the Intervenors' ROE recommendations are below any reasonable measure of FCG's cost of equity and do not satisfy the *Hope* and *Bluefield* comparable risk, financial integrity, and capital attraction standards. (Tr. vol. 1, p. 124.)

OPC witness Garrett's 9.25% ROE recommendation, in particular, is fundamentally disconnected from his <u>own</u> analyses and conclusions, and cannot be reconciled with his opinion that the "actual" cost of equity is 8.00%. Aside from his position that regulatory commissions have systematically awarded incorrect ROEs for decades (Tr. vol. 2, p. 392), OPC witness Garrett provides no empirical support or analysis for his specific 9.25% ROE recommendation. (Tr. vol. 1, pp. 159-61.) Accordingly, OPC witness Garrett's recommendation is unsupported and should be given no weight.

Further, as explained in detail by FCG witness Nelson, there are significant inconsistencies in OPC witness Garrett's testimony and analytical models. For example, OPC witness Garrett's DCF model is based on inappropriate growth rates that are not reflective of the proxy group or his dividend yields, and his CAPM relies on an excessively low Market Risk Premium that is at odds with actual observed market risk premia. Those flawed assumptions drive his analyses to produce

unreasonably low ROE estimates. (Tr. vol. 1, pp. 159-194.)

Similarly, with respect to FEA witness Walters' ROE analyses, FCG witness Nelson explains that (a) certain inputs and assumptions applied in his DCF analyses, (b) the assumptions and methods underlying his Risk Premium analyses, and (c) his application of the CAPM are all unsupported by the evidence and academic studies, and should be given no weight. (Tr. vol. 1, pp. 194-219.) In fact, when FCG witness Nelson corrected these deficiencies and errors, it reveals that FEA witness Walters' ROE analyses produce an average mean and median ROE estimate ranging from 9.23% to 10.63%, which is as much as 120 basis points above his 9.40% recommendation. (Tr. vol. 1, pp. 219-20.)

Overall, the Intervenors' ROE recommendations, if adopted, would be viewed as a departure from the Commission's practices, increasing the Company's regulatory and financial risk, and thus diminishing FCG's ability to compete for capital. Accepting their recommendations would likely have the counterproductive effect of increasing the Company's overall cost of capital, ultimately to the detriment of customers. (Tr. vol. 1, p. 126.)

Finally, to test the reliability of FCG's ROE analysis, as compared to that of the Intervenors, FCG witness Nelson conducted the Constant Growth DCF, Quarterly Growth DCF, CAPM, ECAPM, Bond Yield Risk Premium, and capital structure analyses using data through August 31, 2022, and then applied the results to the same proxy group of companies accepted by all parties in this proceeding. (Tr. vol. 1, pp. 220-21.) Based on this updated analysis, FCG witness Nelson's recommended midpoint ROE of 10.75% remains a reasonable and appropriate estimate of the Company's cost of equity and should be approved.

<u>Issue 31:</u> What is the appropriate weighted average cost of capital to use in establishing FCG's projected test year revenue requirement?

***FCG:** The associated components, amounts, and cost rates with RSAM are reflected on Exhibit LF-11 for the 2023 projected test year. Based on those amounts, the appropriate after-tax weighted average cost of capital ("WACC") for the 2023 projected test year is 7.09%. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate after-tax WACC without RSAM for the 2023 projected test year is also 7.09% as reflected on Exhibit LF-12. (*Fuentes*)*

The appropriate after-tax WACC with RSAM for the 2023 Test Year is 7.09%. (CEL Ex. 111.) The Intervenors' recommended WACCs are based on their proposed capital structure and midpoint ROE, which should be rejected for the reasons explained in Issue Nos. 28 and 29 above. For these same reasons, the Intervenors' proposed WACCs should be rejected.

NET OPERATING INCOME

Issue 34: Should FCG's proposal to transfer outside service costs incurred for clause dockets from base rates to each of the respective cost recovery clause dockets be approved and, if so, has FCG made the appropriate adjustments to remove all such outside service costs incurred for clause dockets from the projected test year operating revenues and operating expenses?

***FCG:** Yes. FCG's proposal to transfer outside service costs incurred for clause dockets from base rates to each of the respective cost recovery clause dockets is consistent with the principle of cost-causation and will better ensure that FCG's customers only pay the actual costs incurred, subject to true-up, for the outside services necessary to support the clauses. FCG has made the appropriate adjustments to remove all such outside service costs incurred for clause dockets from the projected test year operating revenues and operating expenses. (*Fuentes*)*

Issue 35: What is the appropriate amount of miscellaneous revenues?

***FCG:** As reflected on page 8 of MFR G-2 (with RSAM) (4 of 4) and adjusted by ($16,071) per Exhibit LF-11, the appropriate amount of miscellaneous revenues is $1,896,516. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of miscellaneous revenues is $1,896,516 as reflected on page 8 of MFR G-2 (4 of 4) and adjusted per Exhibit LF-12. (*Campbell, Fuentes, DuBose*)*

Issue 36: Is FCG's projected Total Operating Revenues for the projected test year appropriate? (Fallout Issue)

***FCG:** Yes. As reflected on Exhibit LF-11, the appropriate amount of Total Operating Revenues is $64,724,868 (adjusted) for the 2023 projected test year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Total Operating Revenues without RSAM for the 2023

projected test year is also $64,724,868 (adjusted) as reflected on Exhibit LF-12. (*Fuentes*)*

Issue 38: What is the appropriate amount of salaries and benefits to include in the projected test year?

***FCG:** As adjusted on Exhibit LF-11 (with RSAM) and LF-12 (without RSAM), the appropriate amount of salaries and benefits, including incentive compensation amounts allocated from FPL, to include in the Test Year is $14,803,183. One hundred percent of the 2023 Test Year level of Salaries and Employee Benefits expense is appropriate, and reflects that portions of executive and non-executive incentive compensation allocated from FPL have been excluded consistent with Order No. PSC-2010-0153-FOF-EI. The reasonableness of salary and benefit expense is demonstrated by comparison of FCG's salaries, annual pay increase program, and non-executive variable incentive pay to the relevant comparative market. (*Howard, Slattery*)*

The appropriate amount of salaries and benefits for the 2023 Test Year is $14,803,183 as adjusted by CEL Ex. 111. This figure is based on a projected employee complement of 187 employees and reflects that portions of executive and non-executive incentive compensation allocated from FPL have been excluded consistent with Order No. PSC-2010-0153-FOF-EI. Importantly, FCG's expense request for 2023 does not include any type of compensation or benefits expense that the Commission has not previously approved for recovery. (Tr. vol. 5, p. 990.)

A. *<u>FCG's Projected Test Year Employee Complement is Reasonable and Reflects FCG's Optimal Staffing Needs for the 2023 Test Year</u>*

OPC recommends an adjustment to FCG's payroll expense, benefits expense, and payroll tax expense for the 2023 Test Year based on OPC witness Schultz's recommendation to set FCG projected headcount for the 2023 Test Year at 173 employees (reduction of 14 employees) to reflect the actual number of employees as of June 30, 2022. In reaching his recommended reduction in headcount, OPC witness Schultz relies on the fact that year-end and average employee complement for 2021 were less than budgeted. (Tr. vol. 2, pp. 304, 306.) The flaw with OPC's arbitrarily selected headcount level of 173 as of a random date is that it fails to account for FCG's

staffing forecast or requirements in the 2023 Test Year.

The staffing level forecasts are FCG management's reasonable estimates of what is needed to do the required work based on optimal staffing levels. (Tr. vol. 5, p. 991.) FCG budgets employee projections at the staffing level necessary to most efficiently get the work done to ensure the Company delivers on its customer service and reliability commitments. (Tr. vol. 5, p. 993.) FCG provided specific justifications for each added position since 2018 and explained why each of the added positions was required, as well as provided details on its planned hires for the remainder of 2022. (Tr. vol. 3, pp. 617-18; CEL Ex. 102.) These new positions are necessary due to both the physical expansion of FCG's system and the increase in number of customers. (Tr. vol. 3, p. 618.)

Further, OPC witness Schultz's reliance on actual vs. budgeted headcount in 2021 is misplaced. In 2021, every effort was made to fill the forecasted positions, but a number of factors made it difficult for the Company to do so, including, but not limited to the fact that there was a skilled labor shortage in 2021 due to changes in hiring trends associated with the COVID pandemic and the "Great Resignation" and the rise of the remote work environment. As a result of these unanticipated factors, the hiring process lagged behind expectations in 2021. (Tr. vol. 5, pp. 991-92.) Thus, the employee complement in 2021 should be viewed as an outlier and not relied upon as predictor of appropriate staffing levels projected for the 2023 Test Year.

Despite these hiring difficulties, there have been significant efforts in 2022 to fill these positions. Indeed, as of September 22, 2022, FCG's headcount was 180, and FCG anticipates filling the last four new positions and replacing the three open positions by the end of 2022 consistent with the employee complement of 187 forecasted for the 2023 Test Year. (Tr. vol. 5, p. 992.) For these reasons, OPC witness Schultz's proposed reduction to FCG's 2023 Test Year

headcount should be rejected. For these same reasons, his corresponding flowthrough reductions to FCG's payroll expense, benefits expense, and payroll tax expense for the 2023 Test Year should also be rejected.

B. *OPC's Proposed Adjustments to Incentive Compensation are Inappropriate, Flawed, and Should be Rejected*

OPC recommends that FCG exclude incentive compensation in the calculation of FCG's base rates consistent with Order No. PSC-2010-0153-FOF-EI, which was issued in FPL's 2010 rate case ("*FPL 2010 Order*"). (Tr. vol. 2, pp. 306-07, 312.) As explained below, OPC witness Schultz misapplies the *FPL 2010 Order* in arriving at his recommended reduction to FCG's incentive compensation expense for the 2023 Test Year.

In the *FPL 2010 Order*, all executive incentive compensation was excluded from base rates. For non-executive stock-based incentive compensation, 50% of restricted stock and target performance share awards were excluded, as well as 100% of any expense above target for performance shares. (Tr. vol. 2, p. 307; Tr. vol. 5, p. 994.) FPL consistently has reported the exclusion of these portions of executive and non-executive incentive compensation from net operating income on its earnings surveillance reports to the Commission since 2010. (Tr. vol. 5, p. 994.)

In its original filing, FCG did not remove any incentive compensation costs from the 2023 Test Year because, unlike FPL, there is no specific order requiring FCG to make such an adjustment to its incentive compensation expense. (Tr. vol. 5, p. 994.) Nonetheless, in an effort to reduce the litigated issues in this case and align FCG with its parent, FCG elected to make an adjustment to its 2023 Test Year incentive compensation expense consistent with the *FPL 2010 Order* and included those adjustments as part of the recalculated revenue requirements provided in rebuttal. However, FCG continues to believe these expenses are necessary and reasonable, a

critical component of cost of service, a significant driver behind FCG's performance, and properly recoverable in rates. They are effective tools in attracting, retaining, and engaging the required workforce, and play a significant role in delivering value to customers. (Tr. vol. 5, pp. 994-95.)

Consistent with the *FPL 2010 Order*, $505,222 in affiliate charges from FPL (includes both direct charges and corporate services charges) related to executive cash and stock-based incentive compensation has been removed from the 2023 Test Year revenue requirements. (Tr. vol. 5, pp. 994-95; CEL Ex. 111, p. 2.) Because FCG does not utilize stock-based compensation for FCG employees, only non-executive cash incentive compensation expense remains in the 2023 Test Year. (Tr. vol. 5, p. 995.)

OPC witness Schultz recommends a disallowance of 100% of the $163,461 in long-term non-executive cash incentive compensation expense, which he claims is consistent with the *FPL 2010 Order*. (Tr. vol. 2, p. 312.) However, as OPC witness Schultz concedes, the *FPL 2010* Order did not require 100% of long-term non-executive cash incentive expense to be excluded. (Tr. vol. 2, p. 307.) Rather, the *FPL 2010 Order* required the exclusion of 50% of non-executive restricted stock and target performance share awards, and 100% of any performance share expense above target. (Tr. vol. 5, p. 994.) OPC has failed to offer any explanation or justification why 100% of FCG's long-term non-executive cash incentive compensation expense should be excluded or how such exclusion is consistent with the *FPL 2010 Order*, which it is not.

OPC witness Schultz also recommends a disallowance of $922,865 of the 2023 Test Year short-term non-executive cash incentive compensation expense, which he calculated by assuming that the 2021 expense equals the Test Year "target" and allowing 50% of such 2021 expense. (Tr. vol. 2, p. 312.) In an effort to justify his disallowance of the short-term non-executive cash incentive compensation expense, OPC witness Schultz claims that FCG's actual performance

goals for 2019-2021 were below the goal for a majority of the indicators, and that 50% of the goals are financial goals that benefit shareholders. (Tr. vol. 2, p. 310-11.) OPC's reliance on FCG's performance goals to justify his recommended reduction in short-term non-executive cash incentive compensation expense is misplaced because it confuses FCG's corporate goals (CEL Ex. 48, pp. 4-6) with FCG's performance-based incentive compensation program, which is a robust, iterative process to establish challenging but achievable annual performance goals at the individual employee level. (Tr. vol. 5, pp. 1001-02.) Further, the Commission has allowed 100% recovery of employee cash incentive compensation that contributes to the financial health and success of the company.[29]

In a further effort to justify his recommended disallowance of the short-term non-executive cash incentive compensation expense, OPC witness Schultz notes that the forecast for the 2023 Test Year is an increase of 52.8% as compared to 2021. (Tr. vol. 2, pp. 307-08.) As discussed above, the Company's 2023 planned staffing level is 187, and actual headcount as of September 22, 2022, was 180. The growth in performance-based cash incentive compensation cost correlates to the growth in headcount and to the growth in salaries over time. The 2023 forecast properly assumes that the aggregate employee payout level for plan year 2023 will be similar to the payout level for plan year 2019. (Tr. vol. 5, p. 1003.)

Even if OPC's recommended 50% disallowance of short-term non-executive incentive compensation expense was appropriate, which it is not for the reasons explained above, OPC witness Schultz's calculated disallowance, once again, disregards that this case is based on a projected test year. Indeed, he applies his 50% disallowance to the actual short-term non-executive

[29] Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, p. 97 ("We recognize that the financial incentives that Gulf employs as part of its incentive compensation plans may benefit ratepayers if they result in Gulf having a healthy financial position that allows the Company to raise funds at a lower cost than it otherwise could.")

incentive compensation expense for 2021 and not the expense projected for the 2023 Test Year. (Tr. vol. 2, p. 312; CEL Ex. 46, Sch. C-2, p. 1.) OPC witness Schultz attempts to justify using 2021 on the basis that the total amount to be incurred for 2023 is not known. (Tr. vol. 2, p. 308.) This argument is nonsensical and, if accepted, would suggest that base rate cases should no longer be set using projected test years and, instead, limited only to historical amounts. Further, by applying his 50% disallowance to the amount for 2021 rather than the amount for 2023, OPC witness Schultz's adjustment actually results in a <u>70%</u> disallowance ($922,865) of the short-term cash incentive expense of $1,321,611 forecasted for the 2023 Test Year. (Tr. vol. 5, p. 996.)

FCG's 2023 Test Year payroll expenses are reasonable based on the annual benchmarking of the total compensation package (including base salaries, annual pay increase programs, and variable pay awards) compared to relevant market data, using a variety of nationally recognized third-party compensation survey sources. (Tr. vol. 5, p. 998-99.) Based on the current <u>at or below market</u> positioning of FCG's cash incentive and base salary programs, FCG must continue to offer a market-competitive cash incentive compensation program as part of its total compensation package in order to compete with other employers for attracting and retaining necessary talent. (Tr. vol. 5, p. 999; CEL Exs. 131 and 132.) For these reasons, FCG has demonstrated that the level of cash incentive compensation and the overall compensation paid to FCG employees is necessary and reasonable.

<u>Issue 39:</u> What is the appropriate amount of the affiliate expense to be included in the projected test year?

***FCG:** As adjusted in Exhibit LF-11, the appropriate amount of affiliate expense to be included in the 2023 Test Year is $2.5 million. This amount is included in the total amount of operation and maintenance expenses in the calculation of revenue requirements and does not reflect any affiliate costs related to rate case expenses or costs that were transferred from base to clause. (*Fuentes*)*

Consistent with historic practice, FCG has included the affiliate services that are necessary

to run and manage its business in the 2023 Test Year. All costs associated with affiliate services provided by FPL are charged to FCG pursuant to FPL's Cost Allocation Manual ("CAM"), as required under Rule 25-6.1351, F.A.C. Consistent with FPL's CAM, costs associated with affiliate services provided by FPL to FCG are billed as either direct charges or allocated as part of FPL's Corporate Services Charges ("CSC"). (Tr. vol. 4, pp. 798-99.) The appropriate amount of affiliate expense to be included in the 2023 Test Year is $2.5 million (adjusted).

OPC recommends that $405,400 of costs allocated as part of FPL's CSC should be excluded consistent with the *FPL 2010 Order*. (Tr. vol. 2, pp. 320-21.) However, these allocated costs relate to executive incentive compensation, which have already been removed by FCG in its rebuttal adjustments as explained in Issue No. 38. OPC also recommends that SERP costs should be removed as excessive compensation, which is addressed in Issue No. 40 below. Finally, OPC recommends that the affiliate O&M expense associated with FCG's AMI Pilot should be excluded because OPC recommends that the AMI Pilot be rejected. For the reasons stated in Issue No. 11, FCG's limited AMI Pilot is reasonable, appropriate, and necessary to test and evaluate whether this technology should be deployed system-wide in the future. Accordingly, OPC's proposed adjustments to the 2023 Test Year affiliate expense are inappropriate and should be rejected.

Issue 40: What is the appropriate amount of pensions and post-retirement benefits expense to include in the projected test year?

***FCG:** The appropriate amount of Other Post Employment Benefit expense for the 2023 Test Year is $29,845 (adjusted). The appropriate amount of Pension income for the 2023 Test Year is $1,357,212 (adjusted). (*Fuentes, Slattery, Campbell*)*

OPC asserts that affiliate SERP costs should be disallowed because, according to OPC witness Schultz, these costs are considered excessive compensation. (Schultz at 49.) Consistent with the adjustments made by FPL pursuant to the *FPL 2010 Order*, FCG made no adjustments to

remove SERP benefit expenses from the corporate service charges. (Tr. vol. 5, p. 995.)

<u>Issue 41:</u> Is the injuries and damages expense in the test year reasonable?

***FCG:** Yes. As reflected on page 4 of MFR E-6, the reasonable Test Year expense for Account 925 (Injuries & Damages) is $515,304. The record evidence demonstrates FCG's commitment to safety and minimizing its OSHA-recordable incidents. The record evidence also demonstrates that the increase in the expense for Account 925 (Injuries and Damages) is largely attributable to an increase in the cost of insurance premiums across the business. (*Howard*)*

FCG's core values support and emphasize its commitment to safety for customers, as well as its employees and vendors. Safety is paramount to all facets of FCG's business – from the investments it undertakes, to the actions it performs, and to the business decisions it makes. (Tr. vol. 3, p. 563.) The appropriate injuries and damages expense (Account 925) for the 2023 Test Year is $515,304 as reflected on page 4 of MFR E-6 (CEL Ex. 6.)

OPC witness Schultz suggests that FCG's safety performance needs improvement and recommends a reduction of $212,790 to FCG's injuries and damages expense. In support, OPC witness claims there is downward trend in safety based on FCG's Occupational Safety and Health Administration ("OSHA") recordable events, and notes that injuries and damages expense has increased from $243,888 in 2020 to a projected $515,304 in the projected 2023 Test Year. (Tr. vol. 2, pp. 314-15.) OPC's arguments are without merit and should be rejected.

OPC's reliance on OSHA-recordable events is misplaced. First, while useful as a metric, the OSHA-recordable events do not necessarily demonstrate overall workplace safety or the gradations of the types of injuries sustained. FCG encourages its employees and contractors to report all injuries, regardless of severity, to better understand where operational improvements can be made. However, since at least its last rate case, FCG has not recorded any incidents that OSHA flags as Serious Injuries or Fatalities (SIFs), with most of FCG's OSHA recordable incidents being of the strains and sprains variety. Further, since 2019, the Company has never had more than three

OSHA recordable incidents over the course of a year, and FCG successfully achieved zero recordable incidents in 2019. In addition, FCG had zero OSHA recordable incidents in the first half of 2022 and is striving to complete the year in similar fashion. (Tr. vol. 3, p. 619.) These statistics do not represent a downward trend in safety, as suggested by OPC witness Schultz.

OPC's reliance on the increase in injuries and damages expense between 2020 and 2023 is also misplaced and ignores the evidence of record. FCG explained and demonstrated that this increase was the result of (i) an increase in the cost of insurance premiums across the business and (ii) a reclassification of expenses from Account 924 (Property Insurance) to Account 925 (Injuries and Damages) for the year 2020.[30] (Tr. vol. 3, p. 620.) Therefore, FCG's test year projection for Accounts 924 and 925 are reasonable and should be approved.

Issue 42: Is the insurance expense in the test year reasonable and/or appropriate?

***FCG:** Yes. See FCG's response to Issue No. 41 above. Also, as reflected on page 4 of MFR E-6, the reasonable Test Year expense for Account 924 (Property Insurance) is $503,407. (*Howard*)*

The appropriate injuries and damages expense (Account 925) and property insurance expense (Account 924) for the 2023 Test Year is $515,304 and $503,407, respectively, as reflected on page 4 of MFR E-6 (CEL Ex. 6). These insurance costs are incurred by FCG to provide service to its customers, and benefit customers by not leaving them with a potential exposure to costs associated with injuries and damages, property damage, and vehicle accidents. It would not be prudent to forego this level of insurance and leave customers needlessly exposed. Therefore,

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[30] In 2020, FCG incorrectly recorded certain liability expenses in FERC Account 924, Property insurance expense, instead of FERC Account 925. This issue was corrected in 2021. Therefore, the amounts recorded for these FERC Accounts on FCG's books and records prior to 2021 were not reported properly. Due to this issue, it is more appropriate to analyze FERC Accounts 924 and 925 together, which FCG has provided for 2019 through 2021 in its response to OPC's First Set of Interrogatories, Question No. 65. (CEL Ex. 160.) Based on the amounts provided in the referenced response, the increases in the total amount of FERC Accounts 924 and 925 from 2019 through 2021 relate to the overall increases in insurance and liability premiums.

FCG's 2023 Test Year projection for Accounts 924 and 925 are reasonable and should be approved by this Commission. (Tr. vol. 3, pp. 620-21.)

OPC argues that FCG's insurance expense should be reduced by $9,431 to remove Directors & Officers Liability Insurance ("DOL") because, according to OPC witness Schultz, this expense provides no benefits to customers. (Tr. vol. 2, p. 315.) Contrary to OPC witness Schultz's claim, DOL insurance directly benefits customers and is a necessary and reasonable expense for FCG to provide service to its customers.

DOL insurance is an essential and prudent cost to attract and retain skilled leadership. Simply put, it would be impossible to attract and retain experienced directors and officers without the protections offered by the DOL program. Having skilled and talented leadership is critical to FCG's ability to deliver an outstanding value proposition for its customers. (Tr. vol. 6, pp. 1110-11.) Therefore, FCG's DOL insurance expense is appropriately included in the 2023 Test Year revenue requirements.

<u>Issue 45:</u> Should FCG's proposal to continue the Storm Damage Reserve provision included in the 2018 Settlement Agreement be approved and, if so, what is the appropriate annual storm damage accrual and target reserve amount?

***FCG:** Yes. The Commission should allow FCG to continue the Storm Damage Reserve provision included in the 2018 Settlement Agreement. A storm reserve is a prudent approach to addressing potential storm costs and is a mechanism commonly employed by Florida utilities. The appropriate annual storm damage accrual and target reserve amount are $57,500 and $800,000, respectively, which is supported by FCG's Storm Damage Self-Insurance Reserve Study filed with the Commission on January 15, 2022, as required by Rule 25-7.0143, F.A.C. (*Campbell, Howard*)*

In the 2018 Settlement, which OPC agreed to, FCG was authorized to implement a storm reserve with an annual accrual of $57,500 and a target reserve of $800,000. As part of the 2018 Settlement, the parties agreed to revisit the reserve amount in the future <u>if</u> the reserve amount exceeds $800,000 to determine if FCG should discontinue accruing the annual expense until

additional storm-related costs are incurred and result in the reserve balance to decrease below $800,000. (Tr. vol. 6, p. 1071.) As OPC witness Schultz concedes, FCG's reserve balance will be $205,415 as of December 31, 2022 (Schultz at 42)[31] and, thus, it is premature and unnecessary under the 2018 Settlement to revisit the reserve amount.

After the 2018 Settlement, the Commission adopted Rule 25-7.0143, F.A.C. ("Gas Storm Rule"), which became effective on June 28, 2021. The Gas Storm Rule requires, among other things, gas utilities to "file a Storm Damage Self-Insurance Reserve Study (Study) with the Commission Clerk by January 15, 2022 and at least once every 5 years thereafter," which Study "must include data for determining a target balance for, and the annual accrual amount." Rule 25-7.0143 (1)(l), F.A.C. Consistent with this new requirement, FCG retained an independent, third-party expert to prepare its Storm Damage Self-Insurance Reserve Study, which was filed with the Commission Clerk on January 13, 2022. FCG's Storm Damage Self-Insurance Reserve Study concluded that the continuation of the storm reserve mechanism targeting $800,000 was reasonable and appropriate based on the potential impacts of storms to FCG's system.[32] (Tr. vol. 3, pp. 621-22.)

Relying solely on the costs from two storms that FCG has recorded against the storm reserve since the 2018 Settlement, OPC witness Schultz proposes that the target reserve for FCG's existing Storm Damage Reserve agreed to in the 2018 Settlement be reduced by almost 75% and capped at the $205,415 reserve balance as of December 31, 2022 (*i.e.*, discontinue the accrual authorized by the 2018 Settlement). (Tr. vol. 2, pp. 313-14.) OPC witness Schultz, however, completely ignores the results of FCG's Commission-required Storm Damage Self-Insurance

[31] *See also* CEL Ex. 160 (FCG Response to OPC Int. Set 1, No. 63).

[32] FCG's Storm Damage Self-Insurance Reserve Study was produced in response to OPC Eight Set of Interrogatories No. 199 (CEL Ex. 166).

Reserve Study. In fact, the Study recommended a range where it may be prudent to increase the current storm reserve accrual. (Tr. vol. 3, pp. 621-22.)

Moreover, the fact that FCG's system has not been impacted by a significant number of major storms since 2018, should not serve as a predictor of the future storm events and storm damage on FCG's system. Of course, major storm events are beyond the utility's control, and no one can predict with 100% accuracy the number of annual extreme weather events, the path of each storm, the intensity or category of each storm, the speed or duration of each storm, the availability of resources to respond to and provide storm restoration services for each storm, or the extent to which the infrastructure will be impacted by a storm. However, Florida remains the most hurricane-prone state in the nation and FCG's service area has a high probability of being impacted by multiple extreme weather events in any given year. Florida utilities, including FCG, must appropriately plan and prepare for the very real possibility that their service areas and facilities could be impacted by storms. FCG's proposal to continue the Storm Damage Reserve previously approved in the 2018 Settlement will help ensure that FCG can quickly and promptly restore services to customers following extreme weather events. Restoration of gas service is particularly important during hurricane events that result in power outages because many customers, including critical or essential services, rely on natural gas as back-up power during such outages. (Tr. vol. 3, pp. 621-23.)

Issue 46: Is a Parent Debt Adjustment pursuant to Rule 25-14.004, Florida Administrative Code, appropriate, and if so, what is the appropriate amount?

***FCG:** No. Upon FCG's 2018 acquisition by FPL, there was no significant change in FCG's total per book capital structure value and the initial investment and resulting goodwill to acquire FCG is maintained at FPL as non-utility investment. Further, FCG receives all of its debt and equity from FPL pursuant to Commission-approved Financing Applications. FCG has proposed a 2023 Test Year financing capital structure equal to FPL's, which consists of 59.6% common equity and 40.4% debt over investor sources. As such, no additional interest expense tax

benefit exists at the parent level and no parent debt adjustment is appropriate. (*Campbell*)*

Rule 25-14.004, Effect of Parent Debt on Federal Corporate Income Tax, F.A.C. (hereinafter the "PDA Rule"), provides that in Commission proceedings to establish revenue requirements "the income tax expense of a regulated company shall be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return." This parent debt adjustment imputes the tax benefit of debt issued by a utility's parent company to the utility subsidiary based on the assumption that the parent company invested the proceeds of its debt issuances in the regulated subsidiary's equity in direct proportion to the debt in the parent company's capital structure. (Tr. vol. 6, p. 1111.) Stated differently, if the parent invests debt in the utility's equity, the parent would receive a tax benefit as a result of the interest expense on the invested debt, which tax benefit should be imputed to the utility (*i.e.*, reduce the utility's tax expense) under the PDA Rule if the utility and parent file a consolidated tax return.

The PDA Rule provides that the capital structure of the parent shall be used to make the parent debt adjustment. However, "it shall be a rebuttable presumption that a parent's investment in any subsidiary … shall be considered to have been made in the same ratios as exist in the parent's overall capital structure." Rule 25-14.004(3), F.A.C. Thus, it is presumed that FPL's investment in FCG is made using its approved capital structure of 59.6% equity and 40.4% debt unless rebutted by competent, credible evidence.

In an apparent effort to rebut this presumption, OPC spent significant time cross-examining FCG's witnesses on FPL's investments as reported in FCG's statements of retained earnings in its

historical Annual Reports for years 2016-2021.[33] (Tr. vol. 4, pp.837-53; Tr. vol. 6, pp. 1211-20; CEL Exs. 186 and 187.) OPC also crossed FCG's witnesses on the fact that NEE acquired FCG from Southern in 2018 through use of debt as reported in NEE's May 23, 2018 Form 8-K and 2018 Third Quarter Form 10-Q. (Tr. vol. 5, pp. 906-08, 914-16; CEL Exs. 191 and 192.) OPC's reliance on these historical Annual Reports and NEE's 8-K and 10-Q are misplaced, and frankly not relevant to setting rates in the 2023 Test Year.

Upon the July 29, 2018 acquisition by FPL, there was no significant change in FCG's total per book capital structure value as inherited from Southern and the initial investment and resulting goodwill to acquire FCG is maintained at its parent company, FPL, as a non-utility investment. Additionally, FPL continued to maintain FCG's historical capital structure inherited from Southern. (Tr. vol. 6, pp. 1112-13.)

OPC also overlooks that, since 2019, FCG has received 100% of its debt and equity financing from FPL pursuant to Commission-approved financing orders and the interest rate on any short- or long-term borrowings by FCG from FPL is a pass-through of FPL's weighted cost for borrowing these funds as explained in Issue No. 28. This pool of funds is available based on FPL's capital structure, which as currently approved by the Commission, represents a much higher equity ratio than FCG. (Tr. vol. 6, p. 1113.) Meaning, historically FPL did <u>not</u> receive a tax benefit as a result of the interest expense on any debt invested in FCG – just the opposite has occurred historically due to the much higher equity ratio at FPL than at FCG.

[33] During cross examination of FCG witness, OPC also attempted to suggest that the note on the bottom of MFR C-26 (CEL Ex. 4) – that FCG did not include an income tax adjustment for FPL interest expense because FCG's dividends to FPL exceeded FPL's equity contributions – was incorrect. (Tr. vol. 4, pp.839-53; Tr. vol. 6, pp. 1209-10, 1220.) However, on redirect, FCG witness Fuentes explained that the note on MFR C-26 was, in fact, correct based on the 2021 Annual Report (CEL Ex. 186, p. 20) introduced by OPC on cross examination. (Tr. vol 5, pp. 977-78.) Moreover, as explained herein, 2021 is not relevant to the analysis because the Commission is setting rates for the 2023 Test Year, not for 2021.

More importantly, regardless of whether there was or was not a tax benefit due to FPL's interest expense on debt invested in FCG in the past, which there was not for the reasons explained, it is entirely irrelevant to whether there should be a tax benefit imputed to FCG in the 2023 Test Year. Although OPC spent a significant amount of time cross-examining FCG witnesses on the historical investments in FCG, the question to be addressed in this proceeding is not whether a tax benefit may have been realized and should have been imputed in the past; rather, the pertinent question is whether there will be a tax benefit realized by FPL that should be imputed to FCG for the 2023 Test Year. Stated differently, the Commission is not setting rates in this proceeding for any year other than the 2023 Test Year. And, for purposes of the 2023 Test Year, FCG is proposing a capital structure that mirrors FPL's Commission-approved capital structure to reflect how FCG is actually financed as explained under Issue No. 28. Simply put, there is no need to make any parent-debt adjustment because FCG's proposed capital structure in the 2023 Test Year would be identical to its parent and, therefore, there would be no tax benefit to be imputed.[34] (Tr. vol. 6, pp. 1213-14, 1219-20.)

<u>Issue 47:</u> What is the appropriate annual amount and amortization period for Rate Case Expense?

***FCG:** As shown in Exhibit LF-7, the appropriate annual amount of FCG's rate case expense is $470,209. The appropriate amortization period is four years. (*Fuentes*)*

In rebuttal, FCG updated its estimated rate case expense to reflect a reduction in the estimated work based primarily on the discovery and issues raised in the proceeding at that time. FCG's revised total amount of estimated, incremental rate case expenses is $1.9 million, which is $0.1 million lower than the original estimate. (Tr. vol. 4, p. 816; CEL Ex. 102.) Consistent with

[34] Likewise, if the Commission declined to adopt FCG's proposed capital structure and, instead, adopted a capital structure with a lower equity ratio as suggested by Intervenors, there still would be no tax benefit at FPL to be imputed to FCG for the same reasons there is no tax benefit today as explained above.

FCG's 2018 Settlement, FCG is requesting a four-year amortization period for estimated, incremental rate case expenses (Tr. vol. 4, p. 794), which results in an annual amortized amount of $470,209 (adjusted). (*See* CEL Ex. 7, MFR G-2 with RSAM, p. 2, and CEL Ex. 111, p. 2.) No parties opposed the four-year amortization period for the incremental rate case expense.

The primary driver of a rate case expense is the amount of work involved to litigate the case. FCG undertook a bottom-up approach to estimate the work involved to prepare, file, and litigate this base rate case, which estimate was benchmarked against work and time involved in FPL's recent base rate proceeding in Docket No. 20210015-EI and compared the estimated rate case expenses to those proposed in FCG's most recent base rate case in Docket No. 20170179-GU and PGS's most recent rate case in Docket No. 20200051-GU. However, it is important to remember the actual amount of work involved and the associated rate case expense is, in large part, a product of factors that are largely beyond the Company's control.[35] (Tr. vol. 4, pp. 809-10.)

OPC recommends the total rate case expense be reduced by $50,000 to reduce the depreciation study costs because, according OPC witness Schultz, the depreciation study costs associated with RSAM should be disallowed. (Tr. vol. 2, pp. 317-19.) However, this recommendation is premised on the position that the RSAM should be rejected, which it should not for the many reasons explained in Issue Nos. 6 and 67. FCG's original estimate for the depreciation reflected on MFR C-13 (CEL Ex. 4) of $158 thousand is based on agreed upon contracted rates and the level of services needed to support <u>all</u> depreciation issues in this docket.

[35] The following factors, which are all largely beyond FCG's control, contribute to the actual rate case expense incurred: the number of intervenors, the number of issues raised by intervenors and Staff, whether any issues are stipulated or settled, the amount and types of discovery propounded by intervenors and Staff, extent of hearing preparation required, the amount of cross-examination and time required for hearings, and the number of issues to be briefed. In short, with the exception of the preparation of the initial filing, rate case expenses are largely beyond FCG's control. (Tr. vol. 4, p. 810.)

The services contracted with FCG witness Allis include preparation of the study, preparation of direct and rebuttal testimony and exhibits, responding to and reviewing discovery, and hearing preparation and attendance. Further, FCG witness Allis is not testifying to the Company's four-year rate plan proposal with RSAM. FCG witness Allis' support related to RSAM has been limited to the calculation of the Company's proposed RSAM-adjusted depreciation rates based on the Company's request to use alternative depreciation parameters as reflected on CEL Ex. 22. (Tr. vol. 4, pp. 813-14.) Based on the above, the depreciation study costs are not excessive.

OPC also recommends the total rate case expense be reduced by $521,139 to reduce the FPL affiliate costs because, according to OPC witness Schultz, FCG replaced external legal and temporary services in the prior rate case totaling $876,018 with services provided by FPL in this docket of $1,564,981, which he claims are excessive replacement costs. (Tr. vol. 2, pp. 318-19.) This assumption provided by OPC witness Schultz is incorrect for several reasons. First, based on FCG's rate case expense included the MFRs for its 2018 rate case, it is uncertain whether FCG forecasted any affiliate support in its rate case expenses. Second, FCG's rate case affiliate support in this proceeding was not simply a replacement of the external legal and temporary services forecasted in the prior rate case; rather, the affiliate support for this proceeding was based on a bottom-up review at the individual employee level as explained above. Third, the level of affiliate support provided by FPL to FCG in this docket includes witnesses and their support teams, regulatory docket management, legal, and other support required for docket activities, such as the preparation of testimony and MFRs, responding to discovery, and hearing preparation and attendance.[36] Finally, OPC witness Schultz's proposal to limit the amount of affiliate support from

[36] The use of affiliate support allows FCG to temporarily secure external staff for a periodic and intensive rate case effort and leverage the expertise of affiliate resources. (CEL Ex. 108, p. 1.) By doing so, FCG avoids the need for permanent staff to meet periodic peak workload requirements associated base rate cases that would otherwise be included in FCG's base rate revenue requirements. (Tr. vol. 4, p. 812.)

FPL recoverable in FCG's base rates, if accepted, would result in an implicit disallowance of prudently incurred costs, which FPL is required to charge FCG pursuant to Rule No. 25-6.1351, F.A.C. (Tr. vol. 4, p. 811-13.)

FEA witness Collins' recommendation to limit FCG's rate case expense based on the expenses taken from FCG's 2018 rate case and adjusted for inflation is unsupported and without merit. (Tr. vol. 3, p. 538.) Similarly, OPC witness Schultz's claim that FCG's rate case expenses are excessive based on the actual costs incurred through June of 2022 is misplaced. (Tr. vol. 2, p. 319.) The amount of rate case expenses in a particular docket is based on the evidence and support needed for the Company's request in that case. As described above, FCG undertook a bottom-up approach to estimate the services required to support a fully litigated rate case and the specific issues raised by Staff and Intervenors to be addressed in this docket. Again, once the initial filing has been made, the actual rate case expense experienced each month is largely beyond FCG's control and, instead, is a product of the issues raised, discovery issued, and activities by Intervenors and Staff.

Issue 49: What is the appropriate amount of projected test year O&M expenses? (Fallout Issue)

***FCG:** As reflected in Exhibit LF-11, the appropriate amount of O&M Expense is $25,445,071 (adjusted) for the 2023 projected test year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of O&M Expense for the 2023 projected test year is also $25,445,071 (adjusted) as reflected on Exhibit LF-12. (*Howard, Campbell*)*

The appropriate amount of O&M Expense is $25,445,071 (adjusted) for the Test Year. (CEL Ex. 111, p. 2.) FCG's O&M expenses have increased since the last rate case resulting in the need for an additional $5.8 million in the 2023 Test Year revenue requirement associated with O&M. Approximately $2.4 million of the increase in operating costs is attributable to inflation, which forecast is conservative based on the forecast vintage and significant changes in the

economic environment as previously explained. (Tr. vol. 3, p. 579; Tr. vol. 6, p. 1061.) The remainder is due to customer growth, system expansion, increased damage prevention efforts, and implementation of certain technologies and initiatives that are necessary to continue to provide safe and reliable natural gas service. (Tr. vol. 3, pp. 580-82; Tr. vol. 6, p. 1061.)

OPC recommends a reduction of $2.8 million in FCG's O&M expense for the 2023 Test Year, which reflects OPC witness Schultz's recommended reductions to the following O&M expenses: payroll and benefits, incentive compensation, Storm Damage Reserve accrual, injuries and damages, DOL insurance, AMI Pilot, rate case expense, and affiliate expense. (CEL Ex. 46, Sch. C, p. 1.) OPC's recommended reductions to each of these O&M expenses are separately addressed in the applicable Issues and, for the reasons stated therein, OPC's recommended reduction to FCG's O&M expense for the 2023 Test Year should be rejected.

Issue 50: Should any adjustments be made to the amounts included in the projected test year for amortization expense associated with the acquisition adjustment?

***FCG:** No. The permanence of the AGLR acquisition adjustment has already been resolved in Docket No. 20170179-GU. Inclusion of the AGLR acquisition adjustment in base rates is consistent with the treatment of other assets that FCG had on its books when it became a subsidiary of FPL. Therefore, there is no need to adjust the AGLR acquisition adjustment and amortization. FCG included the $21.7 million AGLR acquisition adjustment and related accumulated amortization of $13.5 million in rate base, and $0.7 million of amortization expense in FCG's test year net operating income. This treatment is consistent with the 2018 Settlement Agreement. (*Fuentes*)*

OPC recommends that the amortization expense associated with the previously approved AGLR acquisition adjustment should be disallowed on the bases that the AGLR acquisition adjustment did not survive FCG's acquisition by FPL. (Tr. vol. 2, p. 288.) For reasons explained in Issue No. 15, OPC's recommended adjustment should be rejected.

Issue 51: What is the appropriate amount of Depreciation and Amortization Expense for the projected test year?

***FCG:** As reflected on MFR A-4 (with RSAM), the appropriate amount of Depreciation and Amortization expense with RSAM is $17,316,572 (adjusted) for the 2023 Test Year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Depreciation and Amortization expense without RSAM is $20,501,181 (adjusted) for the 2023 Test tear as reflected on MFR A-4. (*Fuentes*)*

OPC recommends that the total amount of Depreciation and Amortization expense for the 2023 Test Year be reduced by $2.3 million to reflect the longer depreciation lives and associated depreciation expense recommended by OPC witness Garrett. (Tr. vol. 2, p. 322; CEL Ex. 46, Sch. C, p. 1.) For the reasons explained in Issue Nos. 5, 6, and 67, OPC's depreciation parameters should be rejected and, therefore, OPC's associated Depreciation and Amortization expense should also be rejected.

<u>Issue 52:</u> What is the appropriate amount of projected test year Taxes Other than Income?

***FCG:** As reflected on MFR A-4 (with RSAM), the appropriate amount of Taxes Other Than Income Taxes is $6,386,610 (adjusted) for the 2023 projected test year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Taxes Other Than Income Taxes is also $6,386,610 (adjusted) as reflected on Exhibit LF-12. (*Campbell, Fuentes*)*

OPC recommends that the amount of Taxes Other Than Income Taxes for the 2023 Test Year be reduced by $122,767 to reflect OPC witness Schultz's adjustment to payroll tax that flows through from his recommended reduction to FCG's headcount for the 2023 Test Year. (Tr. vol. 2, p. 321; CEL Ex. 46, Schs. C and C-10.) For the reasons explained in Issue No. 38, OPC's recommended adjustment to head count for the 2023 Test Year should be rejected and, therefore, OPC's flowthrough adjustment (payroll tax) to Taxes Other Than Income Taxes should also be rejected.

<u>Issue 53:</u> What is the appropriate amount of projected test year Income Tax Expense? (Fallout Issue)

***FCG:** As reflected on Exhibit LF-11, the appropriate amount of Income Taxes Expense with RSAM is $1,804,203 (adjusted) for the 2023 Test Year. If the

Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Income Taxes Expense without RSAM is $964,255 (adjusted) for the 2023 Test Year as reflected on Exhibit LF-12. (*Fuentes*)*

OPC recommends an increase in the 2023 Test Year income tax expense of $1.4 million associated with the increase of $5.4 million in net operating income recommended by OPC witness Schultz. (Tr. vol. 2, p. 322.) OPC's recommended increase in operating revenue, and associated increase in income tax expense, is based on its proposed adjustments to the individual components of net operating income, which should be rejected for the reasons stated in Issue Nos. 32-52.[37]

Issue 54: What is the appropriate amount of Total Operating Expenses for the projected test year? (Fallout Issue)

***FCG:** As reflected on Exhibit LF-11, the appropriate amount of Total Operating Expenses with RSAM is $50,952,456 (adjusted) for the 2023 projected test year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Total Operating Expenses without RSAM is $53,297,118 (adjusted) for the 2023 Test Year as reflected on Exhibit LF-12. (*Campbell, Fuentes*)*

OPC recommends that the Total Operating Expenses for the 2023 Test Year be reduced by $4.3 million. (CEL Ex. 46, Sch. C, p. 1.) OPC's recommended reduction to the Total Operating Expense is based on OPC witness Schultz's proposed adjustments to the individual components of net operating income, which should be rejected for the reasons stated in Issue Nos. 32-53.

Issue 55: What is the appropriate amount of Net Operating Income for the projected test year? (Fallout Issue)

***FCG:** As reflected on Exhibit LF-11, the appropriate amount of Net Operating Income with RSAM is $13,772,412 (adjusted) for the 2023 Test Year. If the Commission does not adopt the RSAM as part of FCG's four-year rate proposal, the appropriate amount of Net Operating Income without RSAM is $11,427,750 (adjusted) for the 2023 Test Year. (*Campbell, Fuentes*)*

[37] It also appears that OPC's calculated increase of $5.4 million in net operating income may be overstated. Although OPC witness Schultz used an operating income of $5,397,081 on Schedule C-12 (CEL Ex. 46) to calculate his recommended adjustment income tax expense, it appears that his increase in net operating income is $4,418,171 as shown on his Schedule C (CEL Ex. 46). Thus, even if an adjustment to the 2023 Test Year income tax expense is appropriate, which it is not, OPC witness Schultz's adjustment appears to be overstated.

OPC recommends that the Net Operating Income for the 2023 Test Year be increased by $4.5 million. (CEL Ex. 46, Sch. C, p. 1.) OPC's recommended increase to Net Operating Income is based on OPC witness Schultz's proposed adjustments to the individual components of net operating income, which should be rejected for the reasons stated in Issue Nos. 32-54.

REVENUE REQUIREMENTS

Issue 57: What is the appropriate annual operating revenue increase for the projected test year? (Fallout Issue)

> ***FCG:** As reflected in Exhibit LF-11, the appropriate test year annual operating revenue increase with RSAM is $28.3 million, which includes an incremental increase of $18.8 million, the previously approved increase of $3.8 million for the LNG Facility, and $5.7 million to transfer the SAFE investments from clause to base. As reflected in LF-12, if the Commission does not adopt the RSAM, the appropriate test year annual operating revenue increase without RSAM is $31.3 million, which includes an incremental increase of $21.5 million, the increase of $3.8 million for the LNG Facility, and $6.0 million to transfer the SAFE investments. (*Fuentes*)*

FCG is proposing a four-year rate plan that includes the adoption of the RSAM. Under the four-year proposal with the RSAM, FCG is requesting base rates and charges sufficient to generate a total base revenue increase of $28.3 million based on a projected 2023 Test Year, which includes: (i) an incremental base rate revenue requirement of $18.8 million, (ii) the previously approved increase of $3.8 million for the LNG Facility, and (iii) the $5.7 million to transfer the SAFE investments from clause to base. (Tr. vol. 4, p. 828; CEL Ex. 111.) FCG's testimonies, exhibits, and MFRs reflect the impact of the RSAM-adjusted depreciation rates, which lower the annual revenue requirement by $2.7 million, and support adjusted rate base of $489 million, adjusted net operating income of $13.3 million, and the calculation of the revenue expansion factor of 1.3527 used to derive the requested base revenue increase. Additionally, the requested base revenue increase reflects the adjusted capital structure, the overall rate of return of 7.09%, and FCG's requested midpoint ROE of 10.75% as recommended by FCG's outside independent expert, FCG

witness Nelson.

If, however, the Commission declines to adopt FCG's four-year rate plan, the total base revenue increase for 2023 is $31.3 million and the incremental revenue increase is $21.5 million, which reflects the impact of the depreciation rates in FCG's 2022 Depreciation Study. (Tr. vol. 4, p. 828; CEL Ex. 112.) Thus, FCG's annual revenue requirement would increase by $2.7 million if the Commission declines to adopt FCG's proposed four-year rate plan with RSAM. (Tr. vol. 4, pp. 788, 829; *see also* CEL Exs. 111 and 112.) However, FCG submits that the Commission should approve FCG's proposed four-year rate plan with RSAM and the associated incremental increase of $18.8 million in order to provide rate stability and certainty to customers and unlock tremendous customer savings and benefits over the term of the four-year plan as explained in Issue No. 67.

It is undisputed that FCG has earned below the bottom of the current authorized ROE range since its last rate case, and that the Company projects it will continue to earn below the current authorized ROE range without base rate relief. (Tr. vol. 4, pp. 787-88; Tr. vol. 6, p. 1088.) Meaning FCG has not and is not fully recovering its reasonable and prudent costs incurred to provide service to its customers. It also cannot be reasonably disputed that inflation, interest rates, capital costs, and overall market risk are substantially higher than the levels experienced since the Company's last base rate case. In fact, interest rates and the rate of inflation have increased significantly since FCG filed this case on May 31, 2022. (Tr. vol. 1, pp. 124, 127, 140-42; Tr. vol. 6, pp. 1093, 1169, 1181, 1260-61, 1266-67, 1272.)

Despite these unrefuted facts, OPC proposes a total base revenue increase of no more than $4,805,981 based on its witnesses various recommended adjustments (Tr. vol. 2, p. 277), which adjustments should all be rejected for the reasons explained Issue Nos. 1-56. Further, it is

important to put OPC's proposal into perspective. OPC's proposed base revenue increase, if adopted, would not even bring FCG to the bottom end of its current authorized ROE range in the current year, let alone the bottom of the proposed 2023 ROE range.[38] (Tr. vol. 6, p. 1088.) This is a nonsensical result given that FCG has continually earned and expects to earn below its current authorized ROE range each year since its last general rate case. Simply stated, the base rate increase recommended by OPC would deny FCG the opportunity to earn a reasonable rate of return and, for this reason alone, OPC's recommendations and adjustments should be rejected.

COST OF SERVICE AND RATE DESIGN

Issue 58: Is FCG's proposed cost of service study appropriate and, if so, should it be approved for all regulatory purposes until base rates are reset in FCG's next general base rate proceeding?

***FCG:** Yes, FCG's cost of service study is appropriate and consistent with the methodologies utilized by the Company in prior rate cases. The Company's study also follows the presentation format contained in the H Schedules of the prescribed MFR forms. (*DuBose*)*

A cost of service study ("COSS") allocates costs among the different rate schedules based on cost causation principles. The results of the COSS are used as a guide to allocate the Company's proposed revenue increase by rate class. (Tr. vol. 1, pp. 236-37.) The cost classification methodology used in FCG's COSS is the same as used in the Company's 2000, 2003, and 2018 rate cases, and applies the Peak and Average ("P&A") cost allocation methodology consistent with and as required by the Commission's MFR Schedule H. (Tr. vol. 1, pp. 238, 261.)

The results of FCG's COSS indicates that, at present rates, certain rate classes, such as RS-100, RS-600, GS-6K and GS-25K are above parity, while other rate classes, such as RS-1, GS-1,

[38] Meaning, if OPC's proposed base rate increase is adopted FCG would likely need to immediately file another costly base rate case seeking additional and appropriate rate relief. Clearly, such a result is not in the best interests of FCG's customers.

GS-120K andGS-1250K, are below parity.[39] (Tr. vol. 1, p. 242; CEL Ex. 8, MFR H-1; CEL Ex. 26, Table 1.) FCG used these results as a guide to allocate the proposed revenue increase by rate class, which is addressed in Issue No. 59 below.

FEA and FIPUG, which represent a handful of commercial and industrial ("C&I") customers on FCG's system, oppose FCG's COSS and recommend that the Commission allocate revenues based on the COSS proposed by FEA witness Collins. Not surprisingly, FEA witness Collins' proposed allocation based on his COSS, if adopted, would significantly shift costs from the C&I customer classes to the residential customers classes, with most residential customers experiencing a revenue increase in excess of 66%. (Tr. vol. 1, p. 257.) As further explained below and in Issue No. 59, such an allocation is inconsistent with Commission practice and is not reflective of how FCG operates and provides service to its customers.

The primary difference between FCG's COSS and FEA's COSS is that FCG used the P&A methodology, whereas FEA witness Collins proposes allocating FCG's distribution mains based on design day demand and number of customers, which is essentially a minimum distribution system allocation. (Tr. vol. 1, p. 258.) In support of his COSS, FEA witness Collins claims that FCG designs its system to meet the design day demands (*i.e.*, firm coincident demands) of its customer classes and, therefore, must allocate some of its distribution costs based on design day demand. (Tr. vol. 3, p. 526.) While design day demand may be a factor in system design, the guidance provided by the NARUC Manual acknowledges that there are other factors to consider when allocating distribution costs that are unique to each gas utility. (Tr. vol. 1, p. 259 (citing NARUC Manual, p. 25).)

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[39] The parity index is computed by dividing the class rate of return ("ROR") by the total retail rate of return. A rate class with a parity index of 100% would earn the same ROR as the retail average and deemed to be precisely at parity. A rate class with a parity index of less than 100%, or below parity, would earn a ROR that is less than the retail average ROR, while the opposite would be true for a rate class with an index above 100%. (Tr. vol. 1, p. 242.)

FEA witness Collins' proposal related to design day may be appropriate for a utility located in a colder climate that builds and operates its system to serve high and extended winter peaks that occur due to increased residential gas heating load. Such a system would necessarily be sized to meet a high but intermittent demand. However, to apply this same method to FCG fails to consider that approximately 49% of FCG's customers are located in Miami, Florida, a geographical area with temperatures that, with the average daily low temperature in January of 61.5 degrees, are consistently warmer than most other parts of the United States during peak winter months. Thus, FCG's system experiences much less heating load and is not as peak sensitive as a gas utility in a colder climate. (Tr. vol. 1, p. 260.)

Additionally, FEA witness Collins' allocation method does not account for the actual utilization of the mains by the different classes of customers. Although residential customers make up 93% of the customers on FCG's system, the residential customers flow only 14% of the gas on FCG's system on an annual basis, while C&I customers flow 86% of the gas on FCG's system on an annual basis.[40] (CEL Ex. 115.) Despite the fact that the C&I customers' use of the FCG system is over six times that of the residential customers, FEA witness Collins' cost of service would allocate 70% of the total revenue requirements to the residential customers while only 29% would be assigned to the C&I classes. (CEL Ex. 116.) Clearly, FEA witness Collins' method would inappropriately shift costs away from those customers who use FCG's system the most during the year to the residential customers who use it the least. FCG's COSS, on the other hand, assigns 37% of costs to residential customers and 62% to the commercial and industrial classes. (CEL Ex. 116.) When considering the actual usage of the system by the residential classes is only 14% and the actual usage of the system by the CI customer classes is 86%, FCG' cost allocation

[40] Excluding significant throughput by the C&I KDS rate class customers that are on special contracts and not impacted by the proposed base rate increase.

methodology better reflects how customers use FCG's system than a design day approach and is more consistent with cost causation theory. (Tr. vol. 1, pp. 260-61.)

Finally, FEA witness Collins also overlooks that the P&A cost allocation methodology used by FCG has been widely used by investor-owned natural gas utilities in Florida, including FCG, Peoples Gas System, and Florida Public Utilities, and is required by the Commission's MFR Schedule H. (Tr. vol. 1, pp. 238, 261.) In summary, the P&A method used in FCG's COSS appropriately reflects the unique attributes and operations of Florida gas utilities, where the residential load or throughput is significantly lower than the C&I load and the customers all take service in a much warmer climate with less heating load as compared to northern gas utilities.

Issue 59: If the Commission grants a revenue increase to FCG, how should the increase be allocated to the rate classes?

***FCG:** The increase should be allocated as shown in Exhibit TBD-3. FCG has set the proposed revenues by rate class to improve parity among the rate classes to the greatest extent possible, while following the Commission practice of gradualism and considering the competitive nature of the natural gas industry. (*DuBose*)*

Revenues are allocated in order to achieve FCG's requested revenue requirement. The COSS provides a guide for evaluating any proposed changes to the level of revenues by rate class. More specifically, the allocation of any revenue requirement increase should be assessed in terms of its impact on the ROR and parity index for the respective rate class. An important goal in setting rates is to move all rate classes as close to the total retail ROR (*i.e.*, parity) as is reasonable to minimize cross-class subsidies. FCG has allocated the proposed revenues by rate class to improve parity among the rate classes to the greatest extent possible, while following the Commission practice of gradualism and considering the competitive nature of the natural gas industry as further discussed below. (Tr. vol. 1, p. 245.)

The concept of gradualism, as applied in Florida, limits the revenue increase for each rate

class to 1.5 times the system average increase in total operating revenues, including adjustment clauses, and provides that no rate class be decreased. Applying the Commission's guideline of gradualism would limit any increase to a rate class to 1.5 times 44%, or 66%. Under FCG's proposed rates, no class is receiving more than a 56% increase including the transfer of SAFE revenue requirements from clause to base and the addition of previously approved LNG revenues. (Tr. vol. 1, pp. 246-47; CEL Ex. 26.)

In designing natural gas rates, it is appropriate to consider the competitive nature of the natural gas industry to mitigate the potential for fuel switching and bypass, particularly for the large C&I customers who have a significant impact on FCG's revenues and costs. FCG's COSS indicates that parity indices vary by rate class, with some class indices well above parity while others fall well below parity. Moving all rate classes to parity, even when applying the Commission's gradualism guidelines, could result in disproportionate increases to certain large C&I customer classes that could, without adjustment, make switching or bypass more economical than continuing to receive natural gas service from FCG. To address the potential for fuel switching and bypass, FCG slightly reduced the proposed increases to rate classes GS-120k and GS-1250K. (Tr. vol. 1, pp. 247-48; CEL Exs. 26 and 27.)

Based on the foregoing, FCG's requested revenue requirement should be allocated as follows:

	Net Incremental Increase % Change in Revenues	Total % Change in Revenues
RS-1	27.1%	55.7%
RS-100	14.1%	34.0%
RS-600	47.6%	54.0%
GS-1	42.7%	53.8%
GS-6k	39.4%	50.6%
GS-25k	33.2%	44.4%
GS-120k	39.8%	47.1%
GS-1250k	37.1%	44.1%
GS-11M		
GS-25M		
GAS LIGHTING	0.0%	0.2%
NGV		
Third Party Suppliers	1.9%	1.9%
	29.7%	**44.4%**

(CEL Exs. 26 and 28.)

Under FCG's proposed revenue allocation, the compound annual growth rate ("CAGR") of the typical residential bill from 2019 to 2026, is projected to be approximately 4.9%. The C&I rate classes will experience varying increases under FCG's four-year rate plan depending upon their respective parity index, with the CAGR for an average customer in each of the four major C&I rate classes ranging from 5.0% to 5.9%. (Tr. vol. 1, p. 231; CEL Ex. 29.)

Although FEA also applied gradualism to their proposed revenue allocation, the flaw with FEA's approach is that it relies on FEA witness Collins proposed COSS methodology, which used a methodology that included design day demand and number of customers, to allocate capacity costs. (Tr. vol. 3, p. 536.) As explained above in Issue No. 58, FEA's proposed COSS methodology and associated parity calculations are inconsistent with the Commission practice and not reflective of how FCG operates and provides service to its customers. Stated differently, because FEA's starting point for revenue allocation (*i.e.*, its COSS) is flawed, FEA's proposed revenue allocation should be rejected for these same reasons.

FCG's residential customers make up 93% of FCG's total customer count, but flow only

14% of the gas on FCG's system on an annual basis, while C&I customers flow 86% of the gas on FCG's system on an annual basis. Under FEA witness Collins' final proposed allocations, most residential customer classes would receive an increase of 66.64%, while the C&I classes containing FEA's customers would receive only 24.81% increases. By taking a more balanced approach, FCG's final rate allocations propose increases that range from 34% to 55.7% for the residential class and from 44.1% to 53.8% for the C&I classes. (Tr. vol. 1, pp. 263-64; CEL EX. 115-117.)

Issue 60: Are FCG's proposed Customer Charges appropriate?

***FCG:** Yes. The appropriate customer charges are those shown in 2023 Test Year MFRs E-2 and H-1 (1 of 2). (*DuBose*)*

Issue 61: Are FCG's proposed per therm Distribution Charges appropriate?

***FCG:** Yes. The appropriate per therm Distribution Charges are those shown in 2023 Test Year MFRs E-2 and H-1 (1 of 2). (*DuBose*)*

Issue 62: Are FCG's proposed Demand Charges appropriate?

***FCG:** Yes. The appropriate Demand Charges are those shown in 2023 Test Year MFRs E-2 and H-1 (1 of 2). (*DuBose*)*

Issue 65: What is the appropriate effective date for FCG's revised rates and charges?

***FCG:** Pursuant to the statutory eight-month suspension period in Section 366.06(3), F.S., FCG's filing requested a February 1, 2023 effective date for new base rates. (*DuBose*)*

Issue 66: Should the Commission give staff administrative authority to approve tariffs reflecting Commission approved rates and charges?

***FCG:** Yes. The Commission should approve tariffs reflecting the Commission's approved rates and charges. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision. (*DuBose*)*

OTHER ISSUES

Issue 67: Should the Commission approve FCG's requested Reserve Surplus Amortization Mechanism (RSAM)?

***FCG:** Yes. The RSAM is essential to FCG's proposed four-year rate plan and should be approved as set forth in Exhibit MC-6. FCG's proposed RSAM utilizes a framework previously approved by the Commission and would allow FCG to

> maintain an ROE within its authorized range. FCG projects it will need to use the entire $25 million Reserve Amount to earn at its midpoint ROE for 2024-2026. If FCG's four-year rate plan and RSAM are not approved, FCG would need to file another base rate case in 2024, which would cost customers approximately $27.0 million more than FCG's proposed rate plan. (*Campbell, Fuentes*)*

A critical and essential component of FCG's four-year rate plan is the adoption of the RSAM. 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. As explained below, the four-year rate plan with the proposed RSAM will provide significant customer benefits and savings over the term of the four-year plan, including: lower annual revenue requirements by $2.7 million due to the implementation of RSAM-adjusted depreciation rates, which reduces customer bills; saving customers approximately $27 million over the four-year term; providing customers with rate stability and certainty; avoiding repetitive and costly rate proceedings; and enabling the Company to continue to focus on providing safe, reliable, and affordable service to our customers. Without RSAM, FCG would not be able to commit to its four-year rate plan, and FCG projects that it would fall at or below the bottom of its authorized ROE range and would need to file an additional rate case in 2024 to support a base rate increase in 2025. (Tr. vol. 6, pp. 1064-65, 1091.)

Despite these unrefuted significant customer benefits and savings, the Intervenors oppose the RSAM and essentially ask this Commission to increase customer bills far beyond what has been requested by FCG. Indeed, despite the fact that each Intervenor has previously signed a settlement requesting Commission approval of an RSAM type of mechanism, the Intervenors remarkably now argue that the Commission is without jurisdiction and authority to approve RSAM in a litigated proceeding. As explained below, Intervenors' arguments are without legal merit, unsupported, ignore the unrefuted record evidence, clearly not in the best interest of FCG's

customers, and should be rejected.

A. *FCG's Proposed Four-Year Rate Plan with RSAM will Provide Significant Customer Benefits and Savings to Customers over the Term of the Four-Year Rate Plan*

FCG's proposed RSAM follows the same RSAM framework approved by the Commission in prior proceedings and is modeled after the RSAM recently agreed to by OPC, FEA, and FIPUG and approved by this Commission for FPL in Docket No. 20210015-EI. (Tr. vol. 6, pp. 1065, 1108.) The RSAM is a non-cash accounting mechanism that will be used by the Company to respond to changes in its underlying revenues and expenses during the four-year rate plan in order to maintain a Commission adjusted ROE within the ROE range authorized by the Commission. (Tr. vol. 6, p. 1065.)

The RSAM cannot be used to cause the Company's earned ROE on a Commission adjusted basis to exceed the top of the authorized ROE range. Similarly, the RSAM must be used, to the extent any amount is available, to keep the Company's ROE at least at the minimum authorized ROE before the Company can seek an increase in base rates during the four-year rate plan. Additionally, the Company will be able to record debits (increases to expense) or credits (decreases to expense) in any accounting period, at its sole discretion, to achieve the pre-established ROE for that period. However, the Company will not be allowed to credit (*i.e.*, decrease) depreciation expense (and correspondingly debit/decrease the depreciation reserves) at any time during the four-year rate plan that would cause the Reserve Amount to be reduced below $0. Similarly, FCG will not be able to debit (*i.e.*, increase) depreciation expense (and correspondingly credit/increase the depreciation reserve) at any time during the four-year rate plan that would cause the Reserve Amount to exceed the maximum amount of RSAM available for use. (Tr. vol. 6, pp. 1065-66; CEL Ex. 16.)

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, thereby providing significant rate stability and certainty to customers over the term of the four-year rate plan. (Tr. vol. 6, pp. 1064-65.) Further, use of the RSAM results in a customer savings of nearly $10.8 million over the term of the four-year rate plan due to the implementation of RSAM-adjusted depreciation rates and avoiding repetitive and costly rate proceedings saving customers an additional approximately $2.0 million in rate case expense in 2024. (Tr. vol. 4, pp. 792-93; Tr. vol. 6, p. 1090; CEL Ex. 22.)

If the Commission declines to approve the RSAM, FCG would not be able to commit to its four-year rate plan. (Tr. vol. 6, p. 1091.) Thus, if the Commission declines to approve the RSAM, FCG has requested, in the alternative, that the Commission approve rates and charges sufficient to provide an incremental base rate increase of $21.5 million (total increase of $31.3 million including the revenues associated with SAFE and LNG) effective February 1, 2023, which is $2.7 million higher than the annual revenue requirements under FCG's four-year rate plan. (Tr. vol. 6, p. 1091.) Further, the unrefuted evidence in this case demonstrates that, based on the revenue requirements of the Company's four-year rate plan, if the Commission declines to approve FCG's proposed four-year rate plan with RSAM the impacts to customers would be significant over the period 2023-2026:

- Base rates would be approximately $2.7 million higher each of the four years due to the implementation of non-RSAM depreciation rates *(i.e.*, the 2022 Depreciation Study), or cumulatively about $10.8 million;
- A base rate increase of approximately $7.7 million is estimated to be required in 2025, or cumulatively approximately $15.4 million additional cash revenues for 2025 and 2026; and
- Base rates would include a four-year amortization of approximately $2.0 million of additional rate case expenses incurred in 2024, or cumulatively approximately $1 million of additional base revenues in 2025 and 2026.

Thus, Intervenors' recommendation to reject RSAM results in an overall net cumulative increase

in cash to be paid by customers over the period 2023-2026 of approximately $27 million more than under FCG's proposed four-year rate plan. (Tr. vol. 6, p. 1092; CEL Ex. 103.)

Notably, these significant customer benefits and savings from the RSAM are undisputed in this case. Indeed, the Intervenors completely ignore these customer benefits and savings and incorrectly argue that the Commission lacks jurisdiction and authority to approve an RSAM-type of mechanism and claim that the RSAM will be used by FCG to guarantee it will earn at the top of its authorized ROE range. Each of these arguments are unsupported and lack merit as explained below. Therefore, the Commission has the opportunity to provide FCG's customers with real and meaningful benefits and savings through the adoption of FCG's proposed four-year rate plan with RSAM, which customer benefits are even more important today given the substantial change in the capital market environment since FCG filed this case on May 31, 2022.

B. The Intervenors' Legal Challenge to the RSAM is without Merit

The Intervenors argue that RSAM can only be approved in the context of a settlement and that the Commission is without jurisdiction and authority to approve RSAM in a litigated proceeding. The Intervenors' argument is nonsensical, entirely without legal merit, and should be rejected.

As a creature of the legislature, the "[C]ommission derives its power solely from the legislature." *Citizens of State v. Graham*, 191 So. 3d 897, 900 (Fla. 2016).[41] As such, the Commission's powers, duties, and authority are those and only those that are conferred expressly or impliedly by statute of the State.[42] "The legislature granted the [Commission] exclusive

[41] Citing *United Tel. Co. of Fla. v. FPSC*, 496 So. 2d 116, 118 (Fla. 1986); and *Sprint-Florida, Inc. v. Jaber*, 885 So. 2d 286, 290 (Fla. 2004).

[42] *Cape Coral v. GAC Utils., Inc.*, 281 So. 2d 493, 496 (Fla. 1973); *City of West Palm Beach v. FPSC*, 224 So.2d 322 (Fla.1969); *Southern Gulf Utilities, Inc. v. Mason*, 166 So.2d 138 (Fla.1964); *Fogarty Bros. Transfer, Inc. v. Boyd*, 109 So.2d 883 (Fla.1959); *Florida Tel. Corp. v. Carter*, 70 So.2d 508 (Fla.1954); *Florida Motor Lines Corporation*

(*Continued on next page…*)

jurisdiction over matters respecting the rates and service of public utilities." *Citizens v. FPSC*, 146 So. 3d 1143, 1150 (Fla. 2014) (quoting *FPSC v. Bryson*, 569 So. 2d 1253, 1254 (Fla. 1990)). Section 366.04, F.S., provides the Commission with jurisdiction to regulate and supervise each public utility with respect to its rates and service, and prescribe a rate structure for all public utilities.[43] Thus, the plain language of the statutes clearly provides that the Commission independently determines rates of public utilities subject to the conditions set forth in Chapter 366, F.S.; the Commission's jurisdiction and authority to fix fair, just, and reasonable rates <u>is not conditioned</u> upon whether the case is litigated as opposed to being settled. Indeed, there is nothing in Chapter 366, F.S., that suggests the Commission somehow has the jurisdiction and authority to approve something in a settlement that it cannot legally approve in a litigated proceeding.

The Commission's statutory jurisdiction and authority does not and cannot change if the case is litigated as opposed to being settled. Indeed, the only difference between a litigated base rate case and a settled base rate case is the Commission's standard of review. However, the standard of review does not change the Commission's statutory authority and jurisdiction; rather, it governs the evidentiary standard by which the Commission will review those proposals that are properly within its jurisdiction and authority to hear and decide.

Simply put, a settlement cannot legally grant or change the Commission's jurisdiction and authority; only the legislature can do that. To hold that the Commission can only approve RSAM in a settlement but not in a litigated proceeding, as suggested by Intervenors, would mean that the

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v. Douglass, 150 Fla. 1, 7 So.2d 843 (1941); *Florida Motor Lines, Inc. v. Railroad Commission etc.*, 101 Fla. 1018, 132 So. 851 (1931); *State ex rel. Wells v. Western Union Telegraph Co.*, 96 Fla. 392, 118 So. 478 (1928); *State ex rel. Burr v. Jacksonville Terminal Co*., 90 Fla. 721, 106 So. 576 (1925); *State ex rel. Burr v. Jacksonville Terminal Co.*, 71 Fla. 295, 71 So. 474 (1916); *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co.*, 60 Fla. 465, 54 So. 394 (1911).

[43] *See also* § 366.05(1), F.S. ("In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges . . . .").

parties to a settlement can somehow expand the Commission's legal jurisdiction and authority beyond what is granted by Chapter 366, F.S. This position is simply nonsensical and violates the well-established legal principle that parties cannot contract around the requirements of the law.[44]

With respect to the Commission's authority under Chapter 366, F.S., to approve an RSAM-type of mechanism, the Commission has very recently explained in a brief filed with the Florida Supreme Court that:

> A statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete." *Deltona Corp. v. Florida Public Service Commission*, 220 So. 2d 905, 907 (Fla. 1969). While the regulatory rate recovery mechanisms contained in the 2021 Settlement are not specifically mentioned in chapter 366, Florida Statutes, an accounting mechanism, which the RSAM is, … [is] quintessentially the type[] of thing[] the Commission routinely considers and decides in the ratemaking process and [is], thus, within the Commission's power to consider and approve. *See id.*

(CEL Ex. 104, pp. 2-3 (emphasis added).) Thus, the Commission has represented to the Florida Supreme Court that it does, in fact, have the power to consider and approve an RSAM-type of mechanism.

Indeed, the Intervenors in this case have agreed to and the Commission has approved similar RSAM-type mechanisms within numerous base rate proceedings, including: Docket No. 20210015-EI (OPC, FIPUG, and FEA agreed to an identical FPL RSAM mechanism); Docket No. 20200051-GU (OPC and FIPUG agreed to a similar PGS RSAM-type mechanism); Docket No. 20160021-EI (OPC agreed with and FEA did not oppose a similar FPL RSAM mechanism); and Docket No. 20120015-EI (FEA and FIPUG agreed to a similar FPL RSAM mechanism). By

[44] *See, e.g.*, *Wechsler v. Novak*, 157 Fla. 703, 708, 26 So. 2d 884, 887 (1946) ("The general right to contract is subject to the limitation that the agreement must not violate the Federal or State constitutions or state statutes or ordinances of a city of town or some rule of the common law. Individuals have never been allowed to stipulate for iniquity. The doctrine relating to illegal agreements is founded on a regard for the public welfare and therefore each contract must have a lawful purpose."); *One Harbor Fin. Ltd. Co. v. Hynes Props., LLC*, 884 So. 2d 1039, 1045 (Fla. Dist. Ct. App. 2004) ("The right to contract is subject to the limitation that the agreement must be legal"); *Thomas v. Ratiner*, 462 So. 2d 1157, 1159 (Fla. Dist. Ct. App. 1984) (same).

signing prior settlement agreements asking for Commission approval of similar types of RSAM mechanisms, each of the Intervenors in this case has acquiesced that the Commission does in fact have jurisdiction and authority to approve an RSAM.[45]

Accordingly, the issue to be decided in this case is whether the preponderance of the evidence supports a finding that FCG's proposed RSAM is just, fair, and reasonable under the facts and circumstances presented in this case. As explained above, FCG's proposed four-year rate plan with RSAM will provide tremendous benefits and savings to customers, which benefits are undisputed. Under these facts and circumstances, FCG's proposed RSAM is just, fair, reasonable, and should be approved.

C. *Intervenors' Substantive Opposition to the RSAM is Irrelevant and Unsupported*

The Intervenors ignore the undisputed facts that the RSAM is a non-cash mechanism that will provide rate stability for FCG's customers and saves customers approximately $27 million in cash over the period 2023-2026. Rather than address these significant customer benefits and savings, Intervenors make unsubstantiated claims that the RSAM is only a mechanism that guarantees FCG will earn at the top of its ROE range. (Tr. vol. 2, pp. 284-85; Tr. vol. 3, pp. 539-41.) The Intervenors' arguments in opposition to FCG's proposed RSAM are irrelevant, unsupported, and should be rejected.

In support of their argument, the Intervenors rely almost exclusively on the fact that FPL

[45] OPC cross examined FCG witness Campbell on the origin of FPL's RSAM and the fact that the first initial surplus amount from FPL's 2010 (Docket No. 080677-EI) and 2012 (Docket No. 120015-EI) rate case proceedings was the result of theoretical reserve imbalance produced from the Commission's modification to the depreciation parameters in the 2010 rate case and the fossil dismantlement reserve in the 2012 rate case. (Tr. vol. 6, pp. 1134-1228; CEL Exs. 195-197.) This is completely irrelevant to FCG's proposal in this proceeding. Further, although FPL's original RSAM was not the result of RSAM-adjusted depreciation rates, it cannot be disputed that the reserve amounts for FPL's 2016 and 2021 RSAM mechanisms were the result of alternative RSAM-adjusted depreciation parameters. *See* Order Nos. PSC-16-0560-AS-EI and PSC-2021-0446-S-EI. Thus, OPC's reliance on the origin of the initial FPL RSAM to somehow suggest that the Commission cannot approve an RSAM-type mechanism that is created through alternative depreciation parameters is misplaced and incorrect – in particular when OPC agreed to and requested Commission approval of the exact same approach in FPL's 2021 rate case.

has had an RSAM and historically earned near the top of its authorized ROE Range. Intervenors' reliance on FPL's historical earnings is misplaced. First, as FCG witness Campbell explained on cross-examination, FPL's ability to successfully identify and implement significant long-term cost savings and productivity improvements (approximately $390 million of annual savings for customers) is the primary driver for the results of FPL's historical earnings, not the RSAM. (Tr. vol. 6, pp. 1123-24, 1170, 1200.) Second, FPL's earnings are irrelevant to both how FCG will use the RSAM and do not provide an evidentiary basis to support a finding that FCG will use the RSAM to earn at the top end of its authorized ROE range as claimed by Intervenors. Third, and importantly, the undisputed evidence of record in this proceeding is that, even with RSAM, FCG will still need to identify and generate cost savings and productivity improvements just to get to the midpoint ROE. (Tr. vol. 6, p. 1095; CEL Ex. 103.) Finally, FCG will still need to appropriately manage through the risks and costs associated with higher inflation and interest rates over the term of the four-year rate plan. (Tr. vol. 6, p. 1095.)

OPC witness Schultz claims, without support, that non-cash earnings through an RSAM would somehow increase current period dividend payments to shareholders. This claim is nonsensical as dividends are a function of cash earnings, and clearly a shareholder would not accept RSAM as a dividend payment because it is a non-cash mechanism. (Tr. vol. 6, pp. 1099-1100.) Also, OPC witness Schultz speculates that excessive depreciation reserve surplus creation may well be a predicate to establishing larger reserve amounts over the years. This is purely speculative and irrelevant to the instant case and will be decided in future rate proceedings based on the actual facts and circumstances at that point in time. (Tr. vol. 6, p. 1100.)

FEA witness Collins claims adjusting depreciation expense can increase rate base by distorting the accurate measurement of net plant value resulting in customers likely paying more

return over a longer period of time. FEA's argument is based on an incorrect assumption that the RSAM-adjusted depreciation rates are somehow inaccurate. As explained above in Issue No. 6, the RSAM-adjusted depreciation rates are based on the depreciation parameters recently agreed to and approved in the PGS base rate case in Docket No. 20200051-GU and, therefore, represent a reasonable alternative to those contained in FCG's 2022 Depreciation Study. (Tr. vol. 6, pp. 1100-01.) Additionally, the RSAM-adjusted depreciation parameters are within the range of reasonableness and generally in line with those proposed and approved for other similar natural gas utilities in Florida as explained above. The approval of the alternative RSAM-adjusted depreciation parameters, which mirror those essentially approved for PGS, is well within the Commission's authority, and allows the Commission to bring real and meaningful benefits, including savings of approximately $27 million, for FCG customers over the term of the four-year rate plan.

The Intervenors' opposition to FCG's proposed RSAM is primarily based on unsupported and speculative assumptions and accusations as to how the RSAM will be utilized. This zero-sum thinking completely ignores that RSAM will enable a multi-year rate agreement that will keep customer rates low and stable, avoid multiple rate increases, and allow FCG to focus on cost savings initiatives and investments, while assuming and managing potential risks and uncertainties over the four-year rate plan as described above. These efforts will undoubtedly enable FCG to focus on continuing and improving its ability to provide safe and reliable service, while identifying operational efficiencies and savings. (Tr. vol. 6, pp. 1101-02.)

Issue 68: Should the Commission approve FCG's proposal for addressing a change in tax law, if any, that occurs during or after the pendency of this proceeding?

***FCG:** Yes. FCG's proposed mechanism will allow FCG to adjust base rates in the event tax laws change during or after the conclusion of this proceeding. Following enactment of a change in tax law, FCG would calculate the impact of

> the change by comparing revenue requirements with and without the change, and submit the calculation of the rate adjustment needed to ensure FCG is not subject to tax expenses that are not reflected in the MFRs submitted with its base rate request. (*Campbell*)*

FCG's 2023 Test Year forecast was based on the 2017 Tax Cuts and Jobs Act, which was in effect at the time FCG filed this case in May 2022. In light of the continuing debate surrounding tax law in the United States, there exists the possibility for a change in tax law either during or after the conclusion of the rate case that could have a material impact on the four-year proposal being presented by FCG. FCG will not be able to quantify the impacts until such time as a final bill is passed and signed into law. (Tr. vol. 6, p. 1073.)

FCG's proposed tax adjustment mechanism will allow FCG to adjust base rates in the event tax laws change during or after the conclusion of this proceeding. Following enactment of a change in tax law, FCG would calculate the impact of the change by comparing revenue requirements with and without the change, and submit the calculation of the rate adjustment needed to ensure FCG is not subject to tax expenses that are not reflected in the MFRs submitted with its base rate request. (Tr. vol. 6, pp. 1074-76.) The proposed tax adjustment mechanism will ensure that the impact of future tax laws is promptly and appropriately reflected in base rates, whether that is an increase or decrease to tax expense. However, and importantly, the amount to be recovered from or credited to customers will be subject to Commission review and approval in a subsequent expedited filing.[46]

OPC argues that the Commission does not have jurisdiction and authority to approve the

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[46] During cross-examination of FCG witness Campbell, OPC cited to a prehearing order from a Gulf Power Company 2016 base rate case in Docket No. 20160186-EI where the prehearing officer found that it was premature to include an issue in that case that addressed potential future federal tax changes. (CEL Ex. 205.) OPC's reliance on this prehearing order is misplaced as it is not precedential and limited to the facts of that case. Moreover, OPC overlooks that FCG's proposed tax adjustment mechanism only sets up the framework for the parties and Commission to expeditiously review the impacts of potential tax legislation. Any necessary changes to base rates will still be subject to review and approval once the impacts are known and measurable. Finally, OPC overlooks that the Commission has approved similar tax reform adjustment mechanisms for multiple utilities. (Tr. vol. 6, p. 1075.)

proposed tax adjustment mechanisms outside of a settlement. However, the Commission has previously approved nearly identical tax adjustment mechanisms in Dockets Nos. 20200051-GU, 20210016-EI, and 20210015-EI. (Tr. vol. 6, p. 1075.) Therefore, OPC's legal challenge to the proposed tax adjustment mechanism must fail for the same reasons explained in Issue No. 67 that its legal challenge to the RSAM fails.

Issue 71: Should the Commission approve FCG's requested four-year rate plan?

> ***FCG:** Yes. Utilities in the state have operated under multi-year rate plans over the past two decades. Multi-year plans offer rate stability for customers and, importantly, allow the Company to continue improving the value delivered to customers. FCG's proposed four-year rate plan provides tremendous value and savings to customers while avoiding the need for any additional base rate increase through at least the end of 2026. If FCG's four-year rate plan and RSAM are not approved, FCG would need to file another base rate case in 2024, which would cost customers approximately $27.0 million more than FCG's proposed rate plan. (*Howard, Campbell*)*

In an effort to avoid multiple back-to-back rate increases and the associated rate case expenses, FCG elected to propose a four-year rate plan to provide its customers with rate stability and rate certainty, and to unlock tremendous customer benefits and savings that would not be available under a single-year rate plan as explained in detail under Issue No. 67. The Company's proposed four-year rate plan includes the following 8 core elements:

- First, the Company is requesting a single incremental base revenue increase of $18.8 million based on a projected 2023 Test Year as explained FCG witness Fuentes.
- Second, the Company is requesting a 10.75% mid-point ROE and an equity ratio of 59.6% as described by FCG witnesses Campbell and Nelson.
- Third, the Company proposes to allocate the revenues based on a class cost of service study and applying the Commission's guideline on gradualism and accounting for the competitive nature of the natural gas industry as described by FCG witness DuBose.
- Fourth, a critical and essential component of FCG's proposed four-year rate plan is the adoption of a reserve surplus amortization mechanism or RSAM as explained by FCG witness Campbell.

- Fifth, the Company proposes to continue and expand its existing SAFE program, which will allow FCG to further improve safe and reliable service as described by FCG witness Howard.
- Sixth, the Company proposes to implement a new limited AMI Pilot that will enable FCG to test and evaluate whether it would be appropriate in the future to deploy AMI technology across its entire system as described by FCG witness Howard.
- Seventh, the Company proposes a mechanism to account for future potential tax reform legislation as explained by FCG witness Campbell.
- Finally, the Company proposes to continue its existing Storm Damage Reserve provision approved in its last rate case as explained by FCG witnesses Campbell and Howard.

The Intervenor testimonies attack all the essential components of the Company's proposed four-year rate plan and call for the rejection of the RSAM. The Intervenors' criticisms of the four-year rate plan are short sited and seek to remove a host of significant customer benefits that are part of the plan:

- Approval of the four-year rate plan would ensure no additional general base rate increases through at least the end of 2026.
- This means lower bills, higher rate stability and rate certainty while avoiding repetitive and costly rate proceedings saving customers an additional approximately $2.0 million in rate case expense in 2024.
- The four-year rate plan also results in lower depreciation expense and associated revenue requirements, saving customers nearly $10.8 million over the term of the four-year rate plan.
- The four-year rate plan avoids an additional $15.4 million of cumulative cash revenue collected from customers in 2025 and 2026.

As explained in Issue No. 67, the unrefuted evidence demonstrates that if the Commission declines to approve FCG's proposed four-year rate plan with RSAM, the overall net cumulative increase in cash paid by customers over the period 2023-2026 would be approximately $27 million <u>more</u> than under FCG's proposed four-year rate plan. In essence, Intervenors' opposition to FCG's four-year rate plan with RSAM is a call to increase customer bills <u>far</u> beyond what has been requested by FCG. For these reasons, as well as those more fully explained throughout this brief, the Intervenors' opposition to FCG's proposed four-year rate plan should be rejected.

Finally, during cross-examination of FCG's witnesses, OPC and FIPUG appeared to suggest that FCG cannot commit to a four-year rate plan in a litigated proceeding because there is no enforceable contract like there is in a settlement. (Tr. vol. 3, pp. 670-673; Tr. vol. 6, pp. 1185-1202, 1242-44.) To be clear, FCG disagrees and submits that the Commission's final order in this proceeding will be both binding and enforceable against all parties to this docket. As such, if the Commission approves FCG's four-year rate plan in a final order, FCG will undoubtedly be committed and obligated to comply with the requirements and limitations of the four-year plan as described in FCG's testimony.

IV. CONCLUSION

For all the reasons stated herein, the overwhelming weight of the credible evidence in this proceeding demonstrates that FCG's proposed four-year rate plan provides customers with rate stability and certainty through at least the end of 2026 and will save customers approximately $27 million over the term of the four-year rate plan. Under these unrefuted facts and circumstances, FCG's proposed four-year rate plan, and the associated incremental rate increase of $18.8 million and RSAM-adjusted depreciation parameters, is fair, just, reasonable, and FCG respectfully requests that it be approved.

Respectfully submitted this 9th day of January 2023,

By: *\/s/ Christopher T. Wright*

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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 9th day of January 2023:

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