BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of 2025 depreciation study and for approval to amortize reserve imbalance, by Florida City Gas.	DOCKET NO. 20250035-GU ORDER NO. PSC-2025-0360-PCO-GU ISSUED: September 24, 2025

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO SMITH

ORDER DENYING THE OFFICE OF PUBLIC COUNSEL'S MOTION TO DISMISS AND MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Background

On February 24, 2025, Florida City Gas (FCG or Company) filed a Petition for Approval of Depreciation Study and for Approval to Amortize Reserve Imbalance under Rule 25-7.045, Florida Administrative Code (F.A.C.). The petition includes a depreciation study (2025 Depreciation Study) and proposes depreciation parameters that result in a total calculated reserve surplus of $27.3 million. FCG seeks approval of its 2025 Depreciation Study; an effective date for new depreciation rates of January 1, 2025; and approval to amortize the calculated $27.3 million reserve surplus over a two-year period.

We last approved depreciation rates for FCG in 2023, in connection with the Company's 2022 request for base rate increase, by Order No. PSC-2023-0177-FOF-GU (2023 Final Order).[1] That order approved depreciation parameters that resulted in a total reserve surplus of $52,126,500, of which $25 million could be amortized over a four-year period using a Reserve Surplus Amortization Mechanism (RSAM) requested by FCG. The Office of Public Counsel (OPC) appealed the 2023 Final Order, as well as our subsequent Clarifying Order. The matter is currently pending before the Florida Supreme Court, awaiting the Court's decision.

On February 26, 2025, OPC filed a Notice of Intervention[2] pursuant to Section 350.0611, Florida Statutes (F.S.). The following day, OPC filed a Motion to Hold Proceedings in Abeyance (Abeyance Motion), which was denied by the Prehearing Officer by Order No. PSC-2025-0102-

[1] Order No. PSC-2023-0177-FOF-GU, issued June 9, 2023, in Docket No. 20220069-GU, *In re: Petition for rate increase by Florida City Gas.*
[2] Document No. 01130-2025.

PCO-GU, issued on April 1, 2025 (Denial Order). OPC subsequently filed a Motion for Reconsideration of the Denial Order on April 11, 2025, and an accompanying Request for Oral Argument, to which FCG filed a Response in Opposition to Citizens' Motion for Reconsideration and Response to Request for Oral Argument (Reconsideration Response) on April 17, 2025.

Separately, on June 20, 2025, OPC filed a Motion to Dismiss, in which it argued that we lack jurisdiction to consider FCG's Petition, and an accompanying Request for Oral Argument on its Motion to Dismiss. On June 30, 2025, FCG filed a Response in Opposition to OPC's Motion to Dismiss and Response to Request for Oral Argument (Dismissal Response).

This order addresses OPC's Motion to Dismiss and Motion for Reconsideration, as well as its corresponding Requests for Oral Argument (collectively OPC's Motions). We have jurisdiction pursuant to Chapter 366, F.S., including Section 366.04 and 366.05, F.S., as well as Rules 25-22.0022, 25-22.0376, and 28-106.204, F.A.C.

A. Review of OPC's Motions

As a threshold matter, we note that both of OPC's Motions, as well as its prior Abeyance Motion, raise questions related to our jurisdiction to consider FCG's petition in this docket or requests that we should not consider FCG's petition until the Florida Supreme Court renders a decision on OPC's appeal of our Rate Case Order. While we acknowledge that OPC has a right to raise lack of jurisdiction at any time in a case,[3] we note that each of these motions has been filed under different legal standards. For the sake of clarifying the scope of this order and the standard by which we shall consider and rule on each of OPC's Motions, we include a brief review of the prior motions.

OPC's first motion in this docket, the Abeyance Motion, was resolved by the Prehearing Officer's Denial Order, issued on April 1, 2025. That motion was filed pursuant to Rule 28-106.211, F.A.C., which provides that the prehearing officer "may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." As such, the Prehearing Officer's decision to deny the Abeyance Motion was an exercise of discretion that, as stated in the order, "pragmatically balance[d] regulatory efficiency, fairness to all the concerned parties, and the public interest in general."[4]

OPC's second motion, the Motion for Reconsideration of the Prehearing Officer's order denying its Abeyance Motion, was filed pursuant to Rule 25-22.0376, F.A.C., which allows a party to seek reconsideration of non-final orders. The standard by which we consider a motion for reconsideration is whether the motion identifies a point of fact or law that the prehearing officer overlooked or failed to consider in rendering an order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981).

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[3] *See* Rule 28-106.204(2), F.A.C.
[4] Order No. PSC-2025-0102-PCO-GU, at p. 3.

OPC's third motion, the Motion to Dismiss, raised as a legal question whether we have jurisdiction to consider FCG's petition. We are a creature of statute that can properly exercise only such power as is given to us by the Legislature. If at any stage of a proceeding we determine that we lack jurisdiction and thus the power to adjudicate a particular claim or to take a particular action, we must enter an appropriate order. *See, e.g.*, *Polk Cty. v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997). Thus, in considering OPC's Motion to Dismiss, we must determine as a matter of law whether we have jurisdiction.

OPC requested oral argument on both of these Motions. At the September 4, 2025 Agenda Conference we denied OPC oral argument on both Motions, because we found the pleadings sufficient to make a determination.

Section 1 of this order will address OPC's Motion to Dismiss for lack of jurisdiction. Because all three of OPC's motions have raised the issue of our jurisdiction, we find that our decision in Section 1 squarely resolves the question of our jurisdiction to consider FCG's Petition, whether raised explicitly in OPC's Motion to Dismiss or implicitly in OPC's prior motions. To that end, this order will cite to and discuss the jurisdictional arguments raised by OPC in each of its motions and in FCG's responses to those motions. Because a decision on OPC's Motion for Reconsideration depends upon us having jurisdiction over this case, this order will address that motion in Section 2.

Decision and Analysis

1. OPC's Motion to Dismiss

We find that we have jurisdiction to hear and decide FCG's petition for the following reasons:

- "Subject-matter jurisdiction" concerns the power of the trial court to deal with a class of cases to which a particular case belongs.[5] We have subject matter jurisdiction over FCG's rates and service pursuant to Section 366.04(1), F.S. Because FCG's Petition pertains to FCG's depreciation rates, we have subject matter jurisdiction to hear and decide this case.

- "Case jurisdiction" concerns our power over a particular case that is within our subject matter jurisdiction.[6] When a Commission order is appealed, exclusive jurisdiction lies with the appellate court,[7] and we lose case jurisdiction over the particular case and any matter that would affect the issues on appeal. We have case jurisdiction because FCG's Petition in the present docket is distinct from the case decided by our 2023 Rate Case Order that is currently pending before the Florida Supreme Court, and because FCG's Petition does not raise issues that affect the appeal.[8]

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[5] *Viverette v. State, Dep't of Transp.*, 227 So. 3d 1274, 1278 (Fla 1st DCA 2017).
[6] *Allen v. Helms*, 293 So. 3d 572, 577-578 (Fla. 1st DCA 2020).
[7] Art. V., § 3(b)(2), Fla. Const.
[8] *Dep't of Revenue ex rel. Simmons v. Wardlaw*, 25 So. 3d 80, 82 (Fla. 4th DCA 2009); *Schultz v. Schickendanz*, 884 So. 2d 422, 424 (Fla. 4th DCA 2004); *Thursby v. Stewart*, 138 So. 742, 751 (Fla. 1931).

- Even if FCG's Petition is in some way connected with the prior case and could affect the issues on appeal, Florida law favors administrative hearings to develop and flesh out the differences between successive administrative proceedings.[9] Thus, it would be premature to dismiss the case for lack of jurisdiction.

For these reasons, as discussed in more detail below, we deny OPC's Motion to Dismiss and find that we have jurisdiction over FCG's Petition in this case.

A. Legal Standard of Review & Jurisdiction

Florida courts distinguish "subject matter jurisdiction," which concerns the power of the trial court to deal with a class of cases to which a particular case belongs, and "procedural" or "case" jurisdiction, which concerns the power of the court over a particular case that is within its subject matter jurisdiction. *Allen v. Helms*, 293 So. 3d 572, 577-78 (Fla. 1st DCA 2020). If at any stage of a proceeding an agency determines that it lacks jurisdiction and thus the power to adjudicate a particular claim, it must enter an appropriate order. *Polk Cty. v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997).

Subject matter jurisdiction relates to the power of a court or agency to deal with the class of cases to which a particular case belongs, and does not depend upon whether a plaintiff ultimately has a good cause of action in the particular case. *Viverette v. Dep't of Transp.*, 227 So. 3d 1274, 1278 (Fla. 1st DCA 2017). Subject matter jurisdiction is conferred upon a court by constitution or statute, and thus cannot be waived or created by agreement of the parties. *See, e.g.*, *Snider v. Snider*, 686 So. 2d 802, 804 (Fla. 4th DCA 1997); *see also, City of Cape Coral v. GAC Utilities, Inc. of Fla.*, 281 So. 2d 493, 495-96 (Fla. 1973) (stating that as a "creature[] of statute . . . the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute"). Thus, to determine whether an agency has subject matter jurisdiction over a class of cases, one must look to Florida's constitution and statutes.

Subject matter jurisdiction is "generally tested by the good-faith allegations in the complaint and is not dependent upon the ultimate disposition of the lawsuit." *Faulk v. Dep't of Revenue*, 157 So. 3d 534, 536 (Fla. 1st DCA 2015) (quoting *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 350 (Fla. 1st DCA 2003)). However, when considering a motion to dismiss for lack of subject matter jurisdiction, we may look beyond the four walls of the petition. *See Morgan v. Dep't of Envtl. Protection*, 98 So. 3d 651, 653 (Fla. 3d DCA 2012) ("A trial court may look to facts gathered outside the pleadings, including affidavits, to determine subject matter jurisdiction."); *Mancher v. Seminole Tribe of Fla., Inc.*, 708 So. 2d 327, 328 (Fla. 4th DCA 1998) ("A motion to dismiss based on lack of subject matter jurisdiction may properly go beyond the four corners of the complaint when it raises solely a question of law."). Additionally, the test for whether a pleading sufficiently involves the jurisdiction of a court is not as stringent as the test to determine whether the claimant has failed to state a cause of action. *See Fla. Power & Light Co. v. Canal Auth. of Fla.*, 423 So. 2d 421, 425 (Fla. 5th DCA 1982).

Lack of "case jurisdiction" is an issue where a lower court has subject matter jurisdiction over the class of cases but is divested of jurisdiction over a particular case due to, for instance,

[9] *Delray Medical Center, Inc. v. State, Agency for Health Care Admin.*, 5 So. 3d 26, 30 (Fla. 4th DCA 2009).

procedural posture. *See Stokes v. Jones*, 319 So. 3d 166, 169 (Fla. 1st DCA 2021). Courts have sometimes referred to this as "continuing jurisdiction" or "procedural jurisdiction" because it turns on the procedural posture of a case or whether certain issues remain to be resolved after a final judgment.[10] In the context of gas utility regulation, the Florida Supreme Court has exclusive jurisdiction to "review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service."[11] However, we do not lose jurisdiction over the utility involved in the case on appeal, nor over the entire class of subject matter involved in the appeal; the appellate court's jurisdiction only covers the subject matter of the particular case on appeal. *See, e.g.*, *Thursby v. Stewart*, 138 So. 742, 751 (Fla. 1931) (stating that "when an appeal is perfected . . . [t]he authority of the lower court is terminated, and it cannot proceed in the cause, *at least as to the subject-matter of the appeal*, until the appeal is heard and determined") (emphasis added); *Schultz v. Schickendanz*, 884 So. 2d 422, 424 (Fla. 4th DCA 2004) (holding that a court "is divested of jurisdiction upon notice of appeal *except with regard to those matters which do not interfere with the power and authority of the appellate court*." (emphasis added) (quoting *Palma Sola Harbour Condo., Inc. v. Huber*, 374 So. 2d 1135, 1138 (Fla. 2d DCA 1979)).

Additionally, "the test to determine loss of jurisdiction is not whether the [Commission] is proceeding in matters *related to the final judgment*, but rather the proper test is whether the [Commission] is proceeding in a matter which *affects the subject matter on appeal*." *Dep't of Revenue ex rel. Simmons v. Wardlaw*, 25 So. 3d 80, 82 (Fla. 4th DCA 2009) (emphasis added); *see Hollywood, Inc. v. Clark*, 15 So. 2d 175, 181 (Fla. 1943) ("The scope of the 'subject matter of an appeal' must be measured by what the appeal is from and what it brings before the appellate court for review."); *Waltham A. Condo. Ass'n v. Vill. Mgmt., Inc.*, 330 So. 2d 227, 234 (Fla. 4th DCA 1976) ("[S]ubsequent proceedings in the lower court may not interfere with the power of the appellate court to make its jurisdiction effective with respect to the . . . order on appeal."). Therefore, the Commission may lose case jurisdiction over certain issues in a case where those issues affect the subject matter of a pending appeal, but retain case jurisdiction as to issues that would not affect the appeal.

Florida law also recognizes significant differences between courts and administrative agencies, and cautions against applying analogous procedural and jurisdictional doctrines in a manner that precludes an agency from exercising its regulatory jurisdiction. As the Florida Supreme Court has explained:

> We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. . . . [W]hereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently

[10] *See* Judge Scott Stephens, *Florida's Third Species of Jurisdiction*, 82 Fla. Bar J. 10, 16 (Mar. 2008).
[11] Art. V., § 3(b)(2), Fla. Const.

precluding agency-initiated action concerning the subject matter dealt with in an earlier order.[12]

Likewise, Florida law generally "favors administrative hearings to develop and flesh out the differences between" cases before arriving at conclusions on an agency's power to hear and decide the issues. *Delray Medical Center, Inc. v. State, Agency for Health Care Admin.*, 5 So. 3d 26, 30 (Fla. 4th DCA 2009). Thus, our view is that Florida law favors allowing a proceeding to continue if a potential decision on a utility's petition could fall within the our jurisdiction, and that dismissal for lack of jurisdiction prior to the point of a final agency action in such cases would be premature.

B. OPC's Arguments

In its Motion to Dismiss, OPC argues that "[t]he Commission lacks the authority, at this time, to change FCG's RSAM-adjusted depreciation rates when the legality of the Commission's approval of those same depreciation rates and application of Rule 25-7.045, F.A.C.[,] is currently pending before the Florida Supreme Court." (OPC Motion to Dismiss 5) OPC alleges that "a Commission decision to change the depreciation rates in the instant docket *affects* the depreciation rates on appeal." *Id.* (emphasis in original) (citing *Wardlaw*, 25 So. 3d at 82). Similarly, in its Motion for Reconsideration, OPC states that "the Commission lacks jurisdiction to proceed with determining whether to change depreciation rates in this docket since doing so directly affects the very same depreciation rates currently being reviewed by the Florida Supreme Court." (OPC Motion for Reconsideration 6)

C. FCG's Response

FCG argues that we are vested with subject matter jurisdiction by Chapters 350 and 366, and that the depreciation study filed in this docket was "filed in accordance with Rule 25-7.045, F.A.C." (FCG Dismissal Response 2) FCG argues that *Wardlaw* is inapplicable because, unlike this case, the *Wardlaw* case arose when a party appealed an agency order then subsequently filed a motion to vacate the same order from which he appealed. FCG argues that this case is distinguishable because "[t]he depreciation study, parameters, and reserve surplus addressed in the [2023 Final Order] are not at issue in the current proceeding, nor is the 2025 Depreciation Study the subject of an ongoing appeal at the Florida Supreme Court." *Id.* at 3. FCG also states that the two cases OPC cites along with *Wardlaw*[13] involve cases in which "the appellate courts determined the trial court retained jurisdiction to address the separate requests for attorney's fees." *Id.*

FCG also argues that:

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[12] *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966). *See also*, *Cmtys. Fin. Corp. v. Fla. Dep't of Envtl. Regulation*, 416 So. 2d 813, 817 (Fla. 1st DCA 1982) (stating that the purpose of the Administrative Procedures Act is to favor resolution by agencies rather than courts those "disputes which are particularly within the administrative agency's expertise").

[13] *Casavan v. Land O'Lakes Realty, Inc. of Leesburg*, 526 So. 2d 215 (Fla. 5th DCA 1988); *Bernstein v. Berrin*, 516 So. 2d 1042 (Fla. 2d DCA 1987).

> While it is true that FCG is seeking to change the actual rates that are a component of the issues appeal [*sic*], FCG's requests in this docket do not alter the prior Rate Case Order whatsoever, nor would a Commission decision addressing FCG's current requests impede the Court's ability to address the Commission's prior decision to accept the RSAM and RSAM-adjusted depreciation parameters. *Id.* at 4.

FCG also argues that OPC's argument "blurs the line between 'subject matter jurisdiction' and 'case jurisdiction.'" (FCG Dismissal Response 4-5) FCG states that subject matter jurisdiction "involves the power of a court to hear a class of cases," while case jurisdiction is "the power of a court or agency over a particular case that is within its subject matter jurisdiction." *Id.* Although FCG states that distinguishing between the two types of jurisdiction is "critical, because lack of 'case' jurisdiction does not render proceedings or decisions automatically void," FCG argues that we have both case jurisdiction and subject matter jurisdiction to address FCG's Petition and 2025 Depreciation Study. *Id.* at 5-6 (emphasis removed).

D. Analysis

A closer look at OPC's Motion to Dismiss shows that it is not actually arguing that we do not have subject matter jurisdiction over this case. Because OPC's arguments relate to our power to proceed in a particular case based on procedural posture, we agree with FCG that OPC's arguments are better understood as a challenge to our "case jurisdiction," according to the legal doctrine articulated by Florida courts.[14] However, construing OPC's Motion to Dismiss liberally, and applying the relevant law, the threshold legal standards for both subject matter jurisdiction and case jurisdiction are satisfied in this case, and we therefore have jurisdiction to consider and decide FCG's Petition.

With respect to subject matter jurisdiction, the Legislature granted us exclusive jurisdiction "to regulate and supervise each public utility with respect to its rates and service."[15] Thus, there is no question that we have subject matter jurisdiction over the class of cases regulating FCG's depreciation rates. Because FCG's Petition requests approval of its 2025 Depreciation Study, approval of new depreciation parameters resulting from that study, and approval of a two-year amortization of a resulting depreciation reserve surplus, our view is that this docket falls into the class of cases addressing FCG's depreciation rates. Therefore, we find that we have subject matter jurisdiction over FCG's Petition.

Next, we find that we have case jurisdiction over FCG's Petition for two reasons: (1) the prior case decided by the 2023 Rate Case Order is distinct and independent of the present case; and (2) even assuming the two proceedings originate from the same "case," we retain jurisdiction to address FCG's Petition because a final order would not alter the Court's analysis of the issues raised in OPC's appeal of the 2023 Rate Case Order nor impair the court's ability to resolve the appeal. Each of these reasons is sufficient on its own to find that we have case jurisdiction, and they are supported by the facts discussed below.

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[14] *Allen v. Helms*, 293 So. 3d at 577-578; *Stokes v. Jones*, 319 So. 3d at 169.
[15] Section 366.04(1), F.S.

First, we view the prior case decided by the 2023 Rate Case Order as distinct and independent of the current case because each arises from a separate petition supported by an independent evidentiary record. While OPC does not explicitly allege in its Motions that FCG's Petition in this docket is so interrelated with the prior proceeding as to essentially originate from the same "case," it argues in its Motion for Reconsideration that the reserve surplus at issue in this case is the same as that recognized by us in the 2023 Rate Case Order. (OPC Motion for Reconsideration 5) Additionally, OPC argues that "the depreciation parameters and rates on appeal and the proposed depreciation parameters and rates in FCG's 2025 Depreciation Study are inextricably intertwined." *Id.* at 7.

We disagree. In utility regulation, a depreciation study is meant to provide the regulator with a current-view update on the utility's recovery of its plant investment, and a request for updated depreciation rates and parameters is meant to align the cost recovery period for utility assets on a going-forward basis with the projected service lives of those assets.[16] Thus, while it is clear from FCG's Petition that the Company is requesting that we change depreciation rates previously established by the Rate Case Order, that is the extent of the relationship between the cases. We would not be considering modifying our previous order nor any aspect thereof. Rather, we would consider FCG's current circumstances and updated projections to decide the questions at issue on the basis of a distinct, independent petition and evidentiary record.

Here, FCG's Petition requests approval of its 2025 Depreciation Study, approval of updated depreciation parameters resulting from that study, and approval of a two-year amortization of a resulting depreciation reserve surplus. As previously observed by the Prehearing Officer in this docket, FCG represents that this petition is supported by an independent record, including a different expert witness and a new depreciation study.[17] Further, our staff is actively engaging with the Company in the discovery process to investigate FCG's requests based upon the evidence provided in this docket. Thus, FCG's Petition initiated a new case, and we therefore have case jurisdiction because the Florida Supreme Court's jurisdiction extends only to the prior case on appeal.

Second, even if the two dockets originate from the same "case," we retain case jurisdiction over FCG's Petition in this docket because it does not affect the issues raised by OPC on appeal. As discussed above, an appeal from one of our orders only divests use of jurisdiction over matters that affect the issues on appeal.[18]

In its appeal of our 2023 Rate Case Order, OPC raised three main arguments related to FCG's depreciation rates. First, OPC argued that our approval of FCG's alternative, RSAM-Adjusted Depreciation Parameters to create a reserve surplus was inconsistent with Rule 25-

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[16] *See, e.g.*, Rule 25-7.045(5)(b), F.A.C. (requiring a utility depreciation study to provide "[a] comparison of current and proposed annual depreciation rates and expenses" and to "identify the proposed effective date for the proposed rates"); Order No. PSC-10-0153-FOF-EI, at p. 82 n.25, issued Mar. 17, 2010, in Docket No. 080677-EI, *In re: Petition for increase in rates by Florida Power & Light Company*. (stating that "[t]he matching of the period of time over which depreciation expense is collected with the service life of the group of assets is called the matching principle").

[17] Order No. PSC-2025-0102-PCO-GU, at p. 3.

[18] *Wardlaw*, 25 So. 3d at 82; *Schultz*, 884 So. 2d at 424; *Thursby*, 138 So. at 751.

7.045, F.A.C.[19] Second, OPC argued that our approval of the RSAM and RSAM-Adjusted Depreciation Parameters deviated without explanation from a policy that "reserve imbalances represent intergenerational inequity and . . . that such imbalances therefore should be corrected."[20] And third, OPC argued that our approval of the RSAM and RSAM-Adjusted Depreciation Parameters was not supported by competent, substantial evidence.[21]

We agree with OPC that the test of determining loss of jurisdiction is "whether [we are] proceeding in a matter which affects the subject matter on appeal."[22] A decision by us in this docket would not affect or interfere with the Florida Supreme Court's ability to resolve the case on appeal because none of the three aforementioned issues could be considered or altered by a decision in this docket. FCG's Petition here does not include a new RSAM, RSAM-adjusted depreciation parameters, nor a request to modify the terms of the 4-year RSAM approved in the 2023 Rate Case Order. We agree with FCG that "FCG's requests in this docket do not alter the prior Rate Case Order whatsoever, nor would a Commission decision addressing FCG's current requests impede the Court's ability to address the Commission's prior decision to accept the RSAM and RSAM-adjusted depreciation parameters." (FCG Dismissal Response 4)

The depreciation reserve imbalance in each case is a calculation – or "a fallout issue" – based on the depreciation rates and parameters and record evidence established in the separate dockets. In this docket we will determine appropriate depreciation parameters and rates for FCG's assets on a going-forward basis, and, if a reserve imbalance exists as a result of that decision, we will prescribe a going-forward treatment to address that imbalance. Thus, our decisions in this docket will not have a retroactive effect that would interfere with the case on appeal.

Therefore, because our view is that matters involved in this docket do not affect the issues raised in OPC's appeal of the 2023 Rate Case Order, we find that we have case jurisdiction to hear and decide FCG's Petition in this case.

E. Conclusion

For the reasons stated above, we find that we have jurisdiction to hear and decide FCG's Petition in this case. We have subject matter jurisdiction because Section 366.04(1), F.S., grants us jurisdiction to regulate the rates and service of public utilities, including depreciation rates. We have case jurisdiction because the present case is distinct and independent from the one decided by the 2023 Rate Case Order currently pending on appeal, and because the matters at issue in this docket do not affect the issues raised in the appeal.

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[19] *See* Citizens' Initial Brief at 26, *Citizens of State v. Fla. Pub. Serv. Comm'n*, No. SC2023-0988 (Fla. filed Jan. 31, 2024).
[20] *Id.* at 33.
[21] *Id.* at 40.
[22] *Wardlaw*, 25 So. 3d at 82. In some of the pleadings in this docket, OPC seems to reverse this test, arguing instead based on the potential for the *Supreme Court's* decision to impact the Commission's ability to resolve FCG's Petition in *this* docket.

Even assuming for the sake of argument that we *could* make a decision in this case that affects the subject matter of the appeal, we find it is premature to dismiss the case before completing discovery and litigating the case to help us "develop and flesh out the differences between" the two cases and the potential effect a decision in this docket might have. *See Delray Medical*, 5 So. 3d at 30. Therefore, we deny OPC's Motion to Dismiss.

2. OPC's Motion for Reconsideration

A. Law: Standard of Review

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.,* 294 So. 2d at 317.

B. OPC's Arguments

As an initial matter, OPC asserts that "the Commission practice of applying the same review standard when the full Commission reviews the decision of a single Commissioner is neither in the public interest nor just." (OPC Motion for Reconsideration 2) OPC argues the ordinary standard for reconsideration should not apply here because "the majority of the Commission has not reviewed, considered, or ruled upon the specific matters in OPC's [Abeyance Motion]," and because the matters OPC raises "have not been previously considered by a majority of the Commission nor have they been the subject of any hearing or public deliberation." *Id.* OPC therefore asks that we apply a *de novo* standard of review to its motion.

In regard to the merits of its Motion, OPC makes three arguments. First, OPC argues that, in its original Motion for Abeyance, it stated "[i]t would be premature of the Commission to initiate proceedings regarding amortization of the remaining $27.3 million reserve surplus when the legality of the creation of the surplus is pending before the Florida Supreme Court." *Id.* at 4-5. OPC asserts this is the same as stating we lack jurisdiction to hear this case at this time. To support this position, OPC argues that "[t]he Commission cannot entertain the transmutation or relabeling of the reserve surplus and associated parameters on appeal without encroaching on the Florida Supreme Court's jurisdiction" and that "[p]roceeding with this docket directly affects the subject matter of the appeal in violation of Florida Law." *Id.* at 5. OPC argues the Prehearing Officer overlooked or failed to consider this point of law.

Second, OPC argues we should reconsider its Order because the Prehearing Officer overlooked or failed to consider that the issue of whether FCG conducted its in-house 2025

Depreciation Study "in accord with previous practices" is a legal issue to be litigated in this docket and therefore must not be prejudged. (OPC Motion for Reconsideration 5-6)

Third, OPC argues that the Prehearing Officer failed to consider the fact that the depreciation parameters on appeal and those from the 2025 Depreciation study are from the same source, namely, FCG. *Id.* at 7. OPC states that, as FCG is the source of both the 2022 and the 2025 Depreciation Study, "the [Prehearing] Order's conclusion that the in-house 2025 Depreciation Study 'is a new study conducted by a different expert' is not accurate." *Id.* OPC additionally argues that this fact further demonstrates how the depreciation parameters on appeal and the proposed depreciation parameters are inextricably intertwined. OPC argues that "[s]ince the Commission overlooked or failed to consider this point of fact, the Commission should reconsider its Order and hold these proceedings in abeyance." *Id.*

C. FCG's Response

In response, FCG argues that, as we have recognized time and again, the appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering his or her decision. (FCG Reconsideration Response 1) FCG argues that OPC's motion fails to elaborate on why departing from the norm in this case is necessary or why the application of the traditional standard is not in the public interest, and that some rationale is required to make such a departure. FCG states that we previously rejected OPC arguments and should reject them again here. Applying the traditional standard, FCG argues that OPC's Motion must be denied because it fails to identify any mistake of fact or law in the Prehearing Officer's decision, or anything that was overlooked in rendering that decision. *Id.* at 2. Instead, OPC simply disagrees with the Prehearing Officer's conclusion, which is not sufficient to merit reconsideration. *Id.*

FCG states OPC's first argument regarding jurisdiction is wrong for several reasons, but mainly contends the matter pending before the Commission is FCG's 2025 Depreciation Study, while the subject matter of the appeal pending before the Florida Supreme Court in Docket SC2023-0988 is FCG's 2022 Depreciation Study.

FCG argues OPC's second argument, which claims that the Prehearing Officer prejudged whether FCG's 2025 Study was conducted "in accord with previous practices," is demonstrably incorrect by the language in the Denial Order itself. FCG contends that, as stated in the Denial Order, the Prehearing Officer simply determined that the subject of the appeal and the 2025 Depreciation Study which is the subject of this docket were "sufficiently distinct to allow this docket to proceed." (FCG Reconsideration Response 4-5) In that context, the Prehearing Officer also recognized that the 2023 Final Order, as well as the 2023 Clarifying Order regarding FCG's 2022 rate Request and 2022 Depreciation Study, have not been stayed. FCG argues OPC has identified no mistake of fact or law in the Prehearing Officer's Decision on this point.

FCG states that OPC's final argument is a re-argument that should not serve as the basis for reconsideration. *Id.* at 5. The Prehearing Officer both understood and acknowledged that the depreciation study that is the subject of the appeal currently being considered in SC2023-0988

was submitted by the same Company that has submitted the 2025 Depreciation Study in this proceeding. That both were submitted by the same Company does not, however, demonstrate that the parameters and rates are "inextricably intertwined" nor does it demonstrate that the Prehearing Officer's determination that to allow this case to proceed was erroneous. FCG states that OPC has failed to identify a mistake of fact or law in the Denial Order on this point and argues that its motion must therefore be denied.

D. Analysis

In regard to the appropriate standard of review, we agree with FCG that the our traditional standard regarding motions for reconsideration should apply here, and OPC failed to provide sufficient rationale to differ from our long-standing precedent for review of a Prehearing Officer's decision on a motion for abeyance. OPC contends a mistake of fact or law standard does not fit this scenario because the matters for which OPC seeks review have either not been previously considered by the majority of the Commission, or have not been the subject of a hearing. Pursuant to Rule 28-106.211, F.A.C., the Prehearing Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case. Accordingly, the Prehearing Officer has wide discretion in balancing the interests of parties in the furtherance of the orderly administration of justice.[23] We have repeatedly held that the traditional standard, whether a point of fact or law was overlooked or unconsidered, applies to reconsideration by the Commission of a Prehearing Officer's order.[24] OPC has failed to provide a compelling reason to differ from prior practices, and therefore, we will not do so in this case.

In our view, by requesting *de novo* review rather than our traditional standard of review, OPC is essentially requesting something approximating *en banc* review by the full Commission. Contrary to OPC's assertions, the fact that a majority of Commissioners has not considered the specific matters raised in a prehearing motion is not grounds to grant a motion for reconsideration. As we have previously stated, "[t]he unequivocal rejection by the Prehearing Officer of [a party's] arguments . . . does not allow [the party] to restate the entirety of its

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[23] Order No. 25245, issued October 23, 1991, in Docket No. 19880069-TL, *In re: Petitions of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief* (balancing competing interests of new counsel desiring more time to prepare and party seeking to proceed with discovery by delaying deposition).

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

arguments under the guise of a motion for reconsideration or clarification by this whole Commission."[25]

Not only would granting OPC's request be a departure from our established practice, it would also be contrary to well-established principles of Florida law governing motions for reconsideration and rehearing.[26] For example, the Florida Supreme Court has held that the purpose of a motion for rehearing is "merely to bring to the attention of the trial court or, . . . the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance." *Diamond Cab*, 146 So. 2d at 891.[27] Florida courts have also explained that the alleged overlooked fact or law must be such that if it was considered, the court would have reached a different decision. *Sherwood*, 111 So. 2d at 98 (citing *State ex rel. Jaytex Realty Co.*, 105 So. 2d at 818-19). Furthermore, it is not necessary for a Prehearing Officer to respond to every argument and fact raised by each party. *State ex rel. Jaytex Realty Co.*, 105 So. 2d at 819). Additionally, the Florida Supreme Court has upheld our denial of a motion for reconsideration under our traditional standard of review.[28]

We do not find it appropriate for us to, contrary to guidance from Florida Supreme Court, grant OPC's motion to reconsider the same arguments already presented to the Prehearing Officer based upon an "arbitrary feeling that a mistake may have been made," nor merely because OPC disagrees with the judgment of the Prehearing Officer. *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317. In our view, it is not the role of the full Commission sitting in a prehearing posture to second-guess every decision made by individual Commissioners, acting within their capacity as Prehearing Officers, with which any party disagrees. Rather, we find that limiting our review in such cases to ensuring that a Prehearing Officer properly considers all the facts and law relevant to a motion or issue that arises strikes a fair balance between justice and

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[25] Order No. PSC-08-0549-PCO-TP, issued Aug. 19, 2008, in Docket No. 20070691-TP, *Complaint and request for emergency relief against Verizon Florida, LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC.*, and Docket No. 20080036-TP, *Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.*

[26] A motion for rehearing is the civil or criminal law analogue to a motion for reconsideration in the administrative law context. *See, e.g.*, *State v. Clark*, 373 So. 3d 1128, 1131-32 (Fla. 2023) (discussing principles derived from cases addressing motions for rehearing and applying them to motions for reconsideration before the Commission).

[27] *See also State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 818-19 (Fla. 1st DCA 1958) ("The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. . . . It is only in those instances in which [a careful] analysis leads to an honest conviction that the court did in fact fail to consider (as distinguished from agreeing with) a question of law or fact which, had it been considered, would require a different decision, that a petition for rehearing should be filed."). The Florida Supreme Court recently clarified that a motion for reconsideration is also appropriate "when a final order addresses substantive issues or reaches legal conclusions that have not been previously raised or challenged." *State v. Clark*, 373 So. 3d at 1131. However, as the order challenged by OPC the present docket is a non-final order, and because OPC's rights to argue and make objections and its ability to preserve arguments for appeal are not at issue, this additional purpose and standard for a motion for reconsideration is inapplicable.

[28] *See McDonald v. Fla. Pub. Serv. Comm'n*, 147 So. 3d. 524 (Fla. 2014) (holding that the Commission "properly denied [a] motion for reconsideration when [the movant] did not provide any facts or law overlooked by the Commission").

efficiency. Florida law provides an aggrieved party ample remedies for review of agency decisions, whether non-final or final, and we see no need to add another administrative hurdle that delays a final order resolving a party's petition for regulatory relief. Thus, we find that our traditional standard of review is sufficient in this instance.

Turning to the merits of the Motion for Reconsideration, we find that OPC has not clearly identified any specific mistakes of fact or law the Prehearing Officer made or overlooked in issuing the Denial Order. Without a specific point of fact or law overlooked or unconsidered, a motion for reconsideration must be denied, even if the reviewing body may have reached a different decision.[29]

As to OPC's first argument, OPC essentially acknowledges it is simply restating an argument that was considered and rejected by the Prehearing Officer and therefore will be rejected here.[30]

As to OPC's second argument, a plain reading of the Order does not reflect any prejudgment in regard to the study or the veracity of any of the claims made by FCG, nor of any of the claims made by OPC. Instead, the Denial Order merely concludes that the two matters are sufficiently distinct to proceed "[b]ased on the representations of FCG," and that moving forward "pragmatically balances regulatory efficiency, fairness to all the concerned parties, and the public interest in general." Accordingly, OPC has identified no mistake of fact or overlooked point of law in the decision on this point, and therefore, no relief will be granted on these grounds.

As to OPC's third argument, we find that the Prehearing Officer correctly denied the abeyance motion because, as discussed above in Section 1, there has been no demonstration that the cases are "inextricably intertwined" such that a decision in this case would affect the matter on appeal. The Denial Order acknowledges that FCG filed both the depreciation study that is the subject in this docket and the depreciation study that is the subject of the appeal currently being considered in SC2023-0988. That alone sufficiently demonstrates that the Prehearing Officer did not overlook or fail to consider this fact. Furthermore, the fact that both were submitted by the same Company does not demonstrate that the parameters and rates are "inextricably intertwined." Nor does it render "the Order's conclusion that the in-house 2025 Depreciation Study 'is a new study conducted by a different expert'" inaccurate, as the Denial Order explicitly states this conclusion is based on FCG's representations. OPC has failed to identify a mistake of fact or law in the Prehearing Officer's Denial Order and therefore, the Motion for Reconsideration will not be granted on these grounds.

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[29] *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974); Order No. PSC-2016-0231-FOF-EI, issued June 10, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company* (page 5).

[30] To the extent OPC claims the Commission lacks jurisdiction, these arguments were discussed above in Section 1.

E. Conclusion

We deny OPC's Motion for Reconsideration under our traditional standard of review for such motions because OPC has failed to articulate a reason to depart from that standard and because the Motion fails to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Denial Order.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion to Dismiss is denied. It is further,

ORDERED that the Office of Public Counsel's Motion for Reconsideration is denied. It is further

ORDERED that this docket shall remain open pending the Commission's final resolution of Florida City Gas's Petition for Approval of Depreciation Study and for Approval to Amortize Reserve Imbalance.

By ORDER of the Florida Public Service Commission this 24th day of September, 2025.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.