

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 20200191-GU

Petition for approval of amortization
rate for Starnik customer information
system and other software accounting
adjustments, by Florida City Gas.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 12

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, December 1, 2020

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Any other -- yes, I am sorry,
3 we have one more item, don't we? We are not
4 through.

5 Item No. 12, Mr. Futrell.

6 MR. FUTRELL: Item 12 is staff's
7 recommendation on the petition of Florida City Gas
8 to establish FERC subaccounts and an amortization
9 rate for the utility's newly installed Starnik
10 Customer Information System. This item also
11 addresses accounting treatment of FCG's traditional
12 capitalized software. Requested new subaccounts
13 would place Starnik software in account 303,
14 Miscellaneous Intangible Plant, based on a
15 five-percent amortization rate, thereby replacing
16 the current rate of 8.3 percent.

17 This action would be consistent with
18 previously approved petitions pertaining to new
19 customer information systems filed with the
20 Commission. Staff recommends approval.

21 Staff also recommends approval of FCG's
22 proposed transfer of traditional capitalized
23 software the new subaccounts within the
24 Miscellaneous and Tangible Plant account. Staff
25 recommends all such new subaccounts transfers in

1 the Starnik amortization rate to become effective
2 on the date of the issuance of a final order in
3 this docket.

4 Representatives of the company would like to
5 address the Commission, and staff is available for
6 questions.

7 CHAIRMAN CLARK: Thank you, Mr. Futrell.
8 Ms. Keating, are you on the line?

9 MS. KEATING: Good afternoon, Mr. Chairman.
10 Can you hear me all right?

11 CHAIRMAN CLARK: Yes, ma'am. You are
12 recognized.

13 MS. KEATING: Thank you, Mr. Chairman.

14 Good afternoon, Chairman, Commissioners. Beth
15 Keating with the Gunster Firm here for Florida City
16 Gas.

17 First, thank you for the opportunity to
18 address you on this item. I realize that this has
19 been a long day, and FCG first wants to say that we
20 really appreciate staff's efforts in analyzing the
21 company's request, and including having this item
22 before you prior to the end of the year. For the
23 most part, FCG agrees with your staff's
24 recommendations. We do have, however, have one
25 area of concern.

1 In Issue 2, staff recommends that the new
2 final depreciation rate should not become effective
3 prior to the date the order becomes final, and they
4 note that this is a requirement of the gas
5 depreciation rule, Rule 25-7.045. We think this is
6 an incorrect reading of the rule and it's
7 inconsistent with prior Commission rulings under
8 the rule. In fact, this is a different reading of
9 the gas depreciation rule than that applied to
10 Florida City Gas itself back in 2008.

11 It's also inconsistent with your decisions
12 applying the electric version of the depreciation
13 rule, which is Rule 25-6.0436, which, for the
14 pertinent portions that are cited by staff,
15 reflects exact same language verbatim as that of
16 the gas rule. Most notably, it differs from the
17 interpretation afforded to FCG's sister company
18 Gulf Power earlier this year when Gulf sought to
19 establish a new subaccount and depreciation rate
20 for the Customer Account Management System.

21 In that most recent case, the Commission
22 determined that it was appropriate to match the
23 useful life of the asset with the depreciation
24 expense, and thus allowed Gulf to implement the new
25 depreciation rates effective as of February 2020,

1 as was requested.

2 Commissioners, if staff's recommendation is
3 accepted, this will be the first and only instance
4 that we have been able to find where the rule has
5 specifically been interpreted to require an
6 effective date that coincides with the final order,
7 or subsequent to the final order. Certainly, there
8 have been decisions in which the Commission has
9 rejected a requested effective date, but none that
10 I am aware of where it has done so based on the
11 wording of the rule.

12 By and large, the orders we've reviewed
13 reflect a desire to sync the effective of the new
14 depreciation rate with the in-service date of the
15 asset, which, in this case, actually would have
16 been June 2020. But, Commissioners, the
17 interpretation applied in this case permits
18 significant regulatory uncertainty and, at a
19 minimum, it suggests that the rule language applies
20 differently as between gas and electric utilities.

21 As such, Commissioners, FCG would respectfully
22 request that you reject staff's recommendation on
23 this one particular point and allow the new rate to
24 become effective in August, as requested from FCG.

25 Thank you, Commissioners.

1 COMMISSIONER GRAHAM: Thank you, Ms. Keating.
2 Staff, would you address Ms. Keating's
3 concerns?

4 MR. FUTRELL: Commissioners, I believe Mr.
5 Stiller --

6 MR. STILLER: Yes, Commissioner --

7 MR. FUTRELL: -- will respond.

8 MR. STILLER: Yes, I am sorry. This is Shaw
9 Stiller from the General Counsel's Office. Good
10 afternoon.

11 The staff recommendation is based on Rule
12 25-7.0545(2 (a) which reads: No utility shall
13 change any existing depreciation rate or initiate
14 any new depreciation rate without prior Commission
15 approval.

16 Commission approval in this instance, under
17 Chapter 120 and this Commission's rules, occurs
18 when the final order -- or when a final order is
19 entered after preliminary or proposed agency
20 action. There is no expressed allowance in this
21 rule for retroactivity or any effective date
22 language in this rule.

23 I would contrast that with an annual
24 depreciat -- or the depreciation study, pardon me,
25 in subsection (4), where there is expressed

1 allowance for retroactive application of a new
2 depreciation rate. That's staff's analysis of the
3 plain language of the rule.

4 Ms. Keating is correct, that there has been a
5 variety of applications of that rule. And I
6 believe one of my colleagues in Economics has
7 analyzed those decisions and can present that for
8 the Commission.

9 CHAIRMAN CLARK: All right. Someone from
10 economics on the line?

11 MR. MCNULTY: Good afternoon, Chairman. This
12 is Bill McNulty, and we did -- staff did kind of do
13 a look-back to see how we have addressed the
14 effective date issue that we have been discussing
15 here today. And it is correct that we have had
16 instances where we have retrospectively applied a
17 effective date prior to Commission -- prior to the
18 Commission vote on several different occasions.

19 On the other hand, there have been times when
20 the Commission has established a forward-looking
21 date that was consistent with what we recommended
22 in this case, which was the issuance of a final
23 order.

24 There was even an instance where, in 2019, a
25 request was made for a date that was the same month

1 as the filing, and the Commission determined that
2 there would be an effective date that would be the
3 final order. So in some instances, the Commission
4 actually rejected the company's request.

5 I will say that I agree with Ms. Keating, that
6 we haven't had an express -- or we haven't been
7 able to find an instance of an expressed instance
8 where the rule was used as the basis for making a
9 decision for a post Commission effective date, and
10 I think she's correct on that. However, you know,
11 there are -- there are certain benefits, I think,
12 to, to get outside of the legal realm, to having a
13 effective date that is a Commission vote or
14 thereafter.

15 We have -- as you know, we have looked at this
16 in terms of the filing issuance date, but I think,
17 you know, there is a fairly strong argument that
18 administrative efficiency is served if a utility
19 makes a filing for a change in existing
20 depreciation rate, or a new depreciation rate,
21 makes a filing prior to the asset going into
22 service, in the sense that it allows staff to
23 process the case and to bring forth the
24 recommendation to the Commission to make a
25 decision. By doing so, we eliminate some of the

1 requirements that would otherwise occur.

2 If we have to retroactively apply a
3 depreciation rate, that also implies that we would
4 have to do transfer from one account to another,
5 and do true-ups as well. And it also implies an
6 impact, to some extent, on the earnings that -- and
7 when the earnings are applied.

8 So we see some benefit to having -- a
9 practical benefit to interpreting the rule the way
10 Mr. Stiller has suggested because it allows the
11 application of the rate to be more smoothly
12 administered within our system of regulation.

13 With that, I will just turn it back to Mr.
14 Stiller.

15 CHAIRMAN CLARK: All right. Thank you, Mr.
16 McNulty.

17 Commissioners, do you have any further
18 questions?

19 MS. KEATING: Mr. Chairman --

20 CHAIRMAN CLARK: Yes, Ms. Keating.

21 MS. KEATING: -- I apologize, but may I have
22 just an opportunity to respond very briefly?

23 CHAIRMAN CLARK: Yes.

24 MS. KEATING: Thank you, Mr. Chairman. Just
25 two quick points.

1 With regard to interpretation of the rule
2 itself and the language that's in it, I just want
3 to be clear that our interpretation is that, yes,
4 the Commission must approve the depreciation rate
5 itself before the utility applies it, but the rule
6 doesn't say that the rate cannot be applied
7 retroactively. It simply says it cannot be applied
8 by the utility and utilized on the company's books
9 until it's been approved.

10 So, for instance, in this situation, if the
11 Commission were to approve the new depreciation
12 rate, it would be -- and applied it to August, it
13 would be a change on the books and a catch-up would
14 be done from an accounting perspective.

15 Secondly, with regard to a couple of Mr.
16 McNulty's comments, I just wanted to note that the
17 philosophy that he stated is really counter to the
18 way the Commission has looked at application of
19 depreciation rates to assets. I mean, in the prior
20 cases that we've looked at, the Commission has
21 emphasized that it's important that the new
22 depreciation rate is effective as close to as
23 possible to the in-service date of the asset. In
24 this instance, you would be looking at -- because
25 the date would not become final until at least of

1 2021, you would have a new depreciation rate
2 applied to an asset that went into service in 2020.

3 So, you know, looking back at the other
4 Commission orders in this regard, I can just tell
5 you that there are quite a number of orders in
6 which the request for a new depreciation rate was
7 made after the asset was in service and the
8 depreciation rate was applied retroactively to the
9 in-service date of the asset.

10 So I just wanted to make those two
11 clarifications. Thank you. I appreciate your
12 indulgence.

13 CHAIRMAN CLARK: Thank you very much, Ms.
14 Keating.

15 Commissioners. Commissioner Graham, you had a
16 question? Commissioner Graham.

17 COMMISSIONER GRAHAM: Yes, Mr. Chairman. I
18 want to hear from OPC, Ms. Christensen, on her --
19 on this specific issue.

20 CHAIRMAN CLARK: Ms. Christensen, are you on
21 the line?

22 MS. CHRISTENSEN: Yes, I am. I don't know if
23 our accountants are on the line, because this seems
24 to be more a specific accounting question. If Mr.
25 Willis is still on the line, I would ask that he

1 address this question, because this seems to me to
2 be more of an accounting question; although, we had
3 no objection to the request as proposed by the
4 company in applying the depreciation rate back to
5 August, but if he wanted to comment further, or Ms.
6 Price, I would invite them to speak now.

7 CHAIRMAN CLARK: All right. They are not
8 there. Commissioner Graham, did that answer your
9 question?

10 COMMISSIONER GRAHAM: Well, I gave them the
11 opportunity, yes.

12 CHAIRMAN CLARK: She said they did not object.

13 MR. HETRICK: Mr. Chairman --

14 CHAIRMAN CLARK: Yes.

15 MR. HETRICK: -- if I might?

16 CHAIRMAN CLARK: Mr. Hetrick.

17 MR. HETRICK: I know we've had a long day and
18 a lot of discussion on this, I have conferred with
19 my deputy here, but as I have heard the discussion
20 back and forth, I think the Commission does have
21 some discretion on Issue 2 with respect to
22 accommodating Ms. Keating's request, and we would
23 pledge to go back and look at our rule to see if
24 there is any changes needed.

25 CHAIRMAN CLARK: Okay. Great point, Mr.

1 Hetrick. Thank you.

2 Commissioner Brown.

3 COMMISSIONER BROWN: Thank you. And I know
4 it's almost 1:00 and everyone's stomach is probably
5 growling, but I thought Beth -- Ms. Keating's
6 comments were very poignant. I just want to make
7 sure that by retroactively applying the
8 depreciation date, we are not retroactively
9 applying rate-making. As Mr. McNulty pointed out,
10 it could potentially have issues with the revenue.

11 CHAIRMAN CLARK: I am getting head shakes
12 across the room here that said no, so I don't think
13 that's the concern.

14 Mr. Futrell, you want to address it, or have
15 someone else?

16 MS. CHRISTENSEN: -- (inaudible) -- if my
17 accountant stayed on the line.

18 CHAIRMAN CLARK: I am sorry, say again. Who
19 is it that's on the line?

20 MS. CHRISTENSEN: I am sorry. This is Patty
21 with OPC, we have nothing further to add. Thank
22 you.

23 CHAIRMAN CLARK: Thank you, Ms. Christensen.

24 Mr. Futrell.

25 MR. FUTRELL: No, Commissioners. I believe

1 you do, as Mr. Hetrick said, you have some
2 discretion here. There may be some marginal
3 impacts and considerations, but I think, as Mr.
4 McNulty explained the history, that there has been
5 some flexibility recognized in applying the date of
6 the depreciation, when it begins.

7 COMMISSIONER BROWN: So it is not retroactive
8 rate-making?

9 CHAIRMAN CLARK: That is acknowledged.
10 Ms. Helton.

11 MS. HELTON: I hesitate to say this, because
12 as you all know, I am not an accountant. That is
13 definitely not my area of expertise. But it's my
14 understanding this is just an accounting treatment,
15 not necessarily a direct rate impact.

16 COMMISSIONER BROWN: I think we need to look
17 at our rule and be consistent, and I think Ms.
18 Keating raises very valid points.

19 CHAIRMAN CLARK: All right. Do I have a
20 motion?

21 Commissioner Brown.

22 COMMISSIONER BROWN: I was going to let
23 Commissioner Polmann make his last motion.

24 COMMISSIONER POLMANN: Well, thank you.
25 That's pretty scary.

1 I think what I have heard here is that we have
2 some flexibility in the legal context. I think
3 this is accounting -- these are accounting issues.
4 I have heard from staff in the accounting area. I
5 understand there may be some, I don't want to say
6 complexity, but there is some burden in terms of,
7 you know, how it's resolved there, but that's work.
8 I am not exactly sure what needs to be done to
9 accommodate or resolve the issue that Ms. Keating
10 brought up, but I would support it.

11 I would -- I would move -- heading in that
12 direction, I don't know, Mr. Chairman, if the staff
13 recommendation as written needs to be modified in
14 order to accommodate that. So I am not making the
15 motion, Commissioner Brown, even though you wanted
16 me to.

17 COMMISSIONER BROWN: I will absolutely make
18 the motion.

19 CHAIRMAN CLARK: Hold on one second.

20 COMMISSIONER BROWN: Okay.

21 CHAIRMAN CLARK: Commissioner Graham, for a
22 motion or a question?

23 COMMISSIONER GRAHAM: No, I had a question.
24 If this is not time sensitive, we can punt this to
25 next month.

1 CHAIRMAN CLARK: Say again, Mr. Futrell.

2 MR. FUTRELL: If the Commission wishes to -- I
3 think I heard some acknowledgment of some agreement
4 with Ms. Keating's position. If you wish to modify
5 staff's recommendation in Issue 2 to recognize the
6 date that is, from reading it, August 1st, 2020, is
7 what's been proposed by the company, that's an
8 option you can consider.

9 CHAIRMAN CLARK: I think all we need to do is
10 to modify the recommendation to approve the
11 depreciation date going back to August 1st. OPC
12 had no objection to it. Everybody seems to be good
13 with it. I think we can move it along.

14 Commissioner Graham, would that answer your
15 question?

16 COMMISSIONER GRAHAM: Mr. Chairman, my
17 suggestion was if our General Counsel still had
18 questions, and Commissioner Brown had questions
19 about being consistent, we can put this off until
20 the January meeting and give staff time to look
21 into it and make sure we're consistent.

22 CHAIRMAN CLARK: Absolutely, we could. That
23 is not a problem if we need to do that. General
24 Counsel staff, I think, is fine.

25 MR. HETRICK: Yeah. I am fine with the motion

1 that you kind of laid out, Chairman, and we will go
2 back and look at the rule and get back with the
3 Commission.

4 CHAIRMAN CLARK: Commissioner Brown --

5 MR. HETRICK: On this case, that's fine.

6 CHAIRMAN CLARK: I am going to punt to
7 Commissioner Brown. If she's ready to make a
8 motion, do so. If not, move to defer it.

9 COMMISSIONER BROWN: I sure am. I am ready to
10 make a motion on all issues, with Issue 2 being
11 modified to match the effective depreciation rate
12 with the in-service rate of August 1st -- pardon
13 me, is it August 1st?

14 CHAIRMAN CLARK: Yes.

15 COMMISSIONER BROWN: August 1st, 2020.

16 COMMISSIONER POLMANN: Second.

17 CHAIRMAN CLARK: Motion and a resounding
18 second from Doc.

19 Any discussion on the motion?

20 All those in favor say aye.

21 (Chorus of ayes.)

22 CHAIRMAN CLARK: Motion carries unanimously.

23 All right. That concludes agenda. Anyone
24 have any final parting comments?

25 COMMISSIONER POLMANN: It's been a pleasure.

1 COMMISSIONER BROWN: We love you, Doc.

2 CHAIRMAN CLARK: It's been a pleasure, Doc.

3 See you at IA.

4 We stand adjourned.

5 (Agenda item concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 15th day of December, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024