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June 27, 2025

**BY E-PORTAL**

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

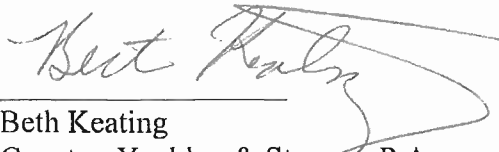
**Docket No. 20250035-GU – Petition for approval of 2025 depreciation study and for approval to amortize reserve imbalance, by Florida City Gas.**

Dear Mr. Teitzman:

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

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

Sincerely,



Beth Keating  
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ENCL

CC:// (Office of Public Counsel)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|   |                           |
|---|---------------------------|
| In re: Petition for Approval of Florida | ) Docket No.: 20250035-GU |
| City Gas's 2025 Depreciation Study and  | )                         |
| for Approval to Amortize Reserve        | ) Filed: June 27, 2025    |
| Imbalance.                              | )                         |

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**FLORIDA CITY GAS'S RESPONSE IN OPPOSITION TO CITIZEN'S MOTION  
TO DISMISS AND RESPONSE TO REQUEST FOR ORAL ARGUMENT**

Florida City Gas ("FCG" or "Company"), by and through its undersigned counsel, hereby responds to the Motion to Dismiss filed in this case by the Office of Public Counsel ("OPC"), as well as OPC's Request for Oral Argument. OPC's Motion to Dismiss should be denied, because OPC has not demonstrated that, accepting all of the allegations in the Petition as true, the Petition fails to state a cause of action upon which the Commission can grant relief. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); and City of Gainesville v. Florida Dept. of Transportation, 778 So. 2d 519 (Fla. 1<sup>st</sup> DCA 2001). FCG's Petition initiating this proceeding states a cause of action for which the Commission can grant relief. Thus, OPC's Motion to Dismiss should be rejected.

**I. Background**

1. For the sake of efficiency, FCG will not restate in full the background of the pending appeal of the Commission's decision in Docket No. 20220069-GU. The Company agrees with OPC's statement of the background as set forth in Paragraphs 1 – 9 of its Motion to Dismiss.

2. The Company likewise generally agrees with OPC's recitation of the posture of this case as set forth in Paragraphs 10 - 16 of its Motion to Dismiss, but does not take a position on OPC's request to add this to the July 1 Agenda Conference.

3. In its latest motion, OPC argues, for a second time, that the Commission lacks subject matter jurisdiction to approve changes to FCG's current depreciation rates because the prior rates, set in Docket No. 20220069-GU, are the subject of an ongoing appeal at the Florida Supreme Court in SC2023-0988. This argument finds no basis in Florida law. As such and as more specifically set forth herein, FCG asks that the Commission deny OPC's Motion to Dismiss.

## **II. Argument**

### **A. The Commission has subject matter jurisdiction**

FCG's depreciation study submitted in this proceeding has been filed in accordance with Rule 25-7.045, Florida Administrative Code. The statutory basis for that Rule is primarily found in Sections 366.06 and 366.04(2)(f), Florida Statutes. As set forth in Sections 350.011 and 366.04, Florida Statutes, the Commission is the agency charged with regulating the rates and service of all Florida public utilities, including FCG. Thus, contrary to OPC's argument, the Commission does, in fact, have subject matter jurisdiction over the subject of this proceeding.

As for Dep't of Revenue ex rel. Simmons v. Wardlaw, 25 So. 3d 80, 82 (4th DCA 2009),<sup>1</sup> cited by OPC in both its Motion for Reconsideration and its Motion to Dismiss, the circumstances of that case are quite distinguishable from the current situation. In Wardlaw,

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<sup>1</sup> Motion to Dismiss, page 1, also noting the court's citation to Casavan v. Land O'Lakes Realty, Inc. of Leesburg, 526 So. 2d 215, 215-16 (Fla. 5th DCA 1988); and Bernstein v. Berrin, 516 So. 2d 1042, 1043 (Fla. 2d DCA 1987).

Wardlaw had appealed a Department of Revenue (“DOR”) paternity support order to the First District Court of Appeal (“1<sup>st</sup> DCA”). He then filed a motion to vacate the very same DOR order with the Broward Circuit Court and requested an injunction, which was granted. The Fourth District Court of Appeal (“4<sup>th</sup> DCA”) reversed the Broward Circuit court’s injunction order, determining that the subject of the appeal before the 1<sup>st</sup> DCA was the very same order that was the subject of the circuit court’s injunction; and thus, any action by the circuit court would necessarily affect the subject matter of the appeal before the 1<sup>st</sup> DCA.

The current situation and facts are quite different. The issue pending before the Florida Supreme Court in Case No. 2023-0988 arises from FCG’s 2022 rate case conducted in Docket No. 20220069-GU, and focuses primarily on the depreciation study, the separate RSAM analysis, and the RSAM depreciation parameters addressed in Order No. PSC-2023-0177-FOF-GU (“Rate Case Order”). The matter before the Commission in this proceeding is FCG’s 2025 Depreciation Study, which proposes new rates and in certain accounts, new service lives. RSAM is not a component of FCG’s request in this proceeding. The depreciation study, parameters, and reserve surplus addressed in the Rate Case Order are not at issue in the current proceeding, nor is the 2025 Depreciation Study the subject of the ongoing appeal at the Florida Supreme Court.

Likewise, the Casavan and Bernstein cases referenced by the court in Wardlaw do not support OPC’s arguments. Both cases involved requests for attorney’s fees submitted after appeal. In both cases, the appellate courts determined the trial court retained jurisdiction to address the separate requests for attorney’s fees.<sup>2</sup> Attorney’s fees are not currently at issue in this case.

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<sup>2</sup> Supra, fn. 6.

While it is true that FCG is seeking to change the actual rates that are a component of the issues appeal, 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.

In the event that the Florida Supreme Court were to reverse and/or remand the Commission's prior Rate Case Order, the Company's Petition and Depreciation Study initiating this proceeding would not be rendered moot or nullified. At the very most, any such decision by the Supreme Court could change the rates and amounts in the "current" columns of FCG's 2025 Depreciation Study but would have no impact on the "proposed" remaining lives and rates for which FCG seeks approval.

Moreover, applying OPC's rationale that the Commission cannot set new rates while the prior rates are on appeal would lead to the absurd result that any party could foreclose any utility's ability to seek appropriate rate adjustments, whether to depreciation rates or base rates, simply by filing an appeal. For example, FPL would currently be bound by rates set in Docket No. 20210015-EI and would be unable to pursue its pending request in Docket No. 20250011-EI.

B. Pending Appeal Does Not Impair the Commission's Ability to Proceed

As has been noted by Commission staff, Florida law recognizes that during the pendency of an appeal, the appellate court has exclusive jurisdiction over the subject matter covered by the appeal, not to the subject matter in its entirety.<sup>3</sup> OPC's jurisdictional

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<sup>3</sup> See Willey v. W.J. Hoggson Corp., 105 So. 126, 128 (Fla. 1925) ("When the jurisdiction of the appellate court attaches, it is exclusive as to the subject covered by the appeal.")

argument, however, suggests otherwise and in so doing, blurs the line between “subject matter jurisdiction” and “case jurisdiction.”

Florida courts, particularly in recent years, have been careful to distinguish between these two types of jurisdiction.<sup>4</sup> Subject matter jurisdiction involves the power of a court to hear a class of cases and is conferred by the state constitution and statutes.<sup>5</sup> Florida courts have been clear that “a challenge to subject matter jurisdiction is proper only when the court lacks authority to hear a class of cases, rather than when it simply lacks authority to grant the relief requested in a particular case.”<sup>6</sup>

In contrast, “case jurisdiction” is the power of a court or agency over a particular case that is within its subject matter jurisdiction.”<sup>7</sup> This type of jurisdiction is also referred to as “continuing jurisdiction” and “procedural jurisdiction.”<sup>8</sup> The distinction between “subject matter” jurisdiction and “case jurisdiction” is critical, because lack of “case” jurisdiction does not render proceedings or decisions automatically void.<sup>9</sup>

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<sup>4</sup> U.S. Bank Nat’l Association v. Anthony-Irish, 204 So.3d 57, 60 (Fla. 5<sup>th</sup> DCA 2016)(“Jurisdiction is an overarching concept that refers to three distinct elements: personal jurisdiction, subject-matter jurisdiction, and procedural jurisdiction.”)

<sup>5</sup> Allen v. Helms, 293 So. 3d 572, 576-577 (Fla. 1<sup>st</sup> DCA 2020)(addressing petitioners contention that the trial court lacked subject matter jurisdiction by stating “That contention reveals not only a misunderstanding of the substance of the trial court’s decision, but of the nature of subject matter jurisdiction.”)

<sup>6</sup> Id. at 577, *citing* In re Adoption of D.P.P., 158 So. 3d 633, 636-637 (Fla. 5<sup>th</sup> DCA 2014); *citing* Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1994); *citing* Lovett v. Lovett, 112 So. 768 (1927).

<sup>7</sup> Trerice v. Trerice, 250 So. 3d 695 (Fla. 4<sup>th</sup> DCA 2018); *citing* MCR Fundgin v. CMG Funding Corp., 771 So. 2d 32,35 (Fla. 4<sup>th</sup> DCA 2000); *citing* T.D. v. K., 747 So.2d 456, 457 (Fla. 4<sup>th</sup> DCA 1999)(, noting that when a final judgment or order is entered, the court [or agency] loses its “jurisdiction” or power over that particular case.)

<sup>8</sup> Allen v. Helms, *supra* fn. 4, at 578. *See also*, Renovaship, Inc. v. Quatremain, 208 So.3d 280, fn. 6 (Fla. 3<sup>rd</sup> DCA 2016)(“This court (and regrettably, this author) has on prior occasions referred to this issue as one involving subject-matter jurisdiction. [referenced citation omitted] . . . The type of jurisdiction at issue in this case is therefore more accurately characterized as “procedural jurisdiction,” “case jurisdiction,” or “continuing jurisdiction.”), *citing* Paulucci v. General Dynamics Corp. 842 So. 2d 797, 801 at n. 3 (Fla. 2003).

<sup>9</sup> State v. King, 426 so.2d 12,14 (Fla. 1982)(“If a court has jurisdiction of the subject matter and of the parties, the proceeding is not a nullity and the judgment is not void.”)

Regardless, the Commission has both subject matter jurisdiction and case jurisdiction to address FCG's 2025 Depreciation Study. The Commission has subject matter jurisdiction over this case in accordance with Sections 366.06 and 366.04(2)(f), Florida Statutes, and can therefore proceed without impinging on the Florida Supreme Court's jurisdiction over the separate matter involving FCG's prior rate case and depreciation study pending before it in Case No. SC2023-0988.

Furthermore, OPC has largely restated the same arguments, and case law, in its Motion to Dismiss that it previously raised in its Motion for Reconsideration of Order No. PSC-2025-0102-PHO-GU. It filed its latest motion, the Motion to Dismiss, the day following the Commission staff's issuance of its recommendation that OPC's Motion for Reconsideration be denied. Viewed even in the most favorable light, OPC's latest motion appears to be little more than a baseless attempt to delay this proceeding, which FCG suggests, respectfully, encroaches upon the bounds of zealous advocacy.<sup>10</sup>

For all these reasons, FCG asks that OPC's Motion to Dismiss be denied.

### **III. Oral Argument Request**

FCG respectfully suggests that the issues before the Commission have been thoroughly addressed in OPC's Motion and this Response in Opposition. As such, FCG thinks it unlikely that greater clarity will be gained as a result of oral argument.

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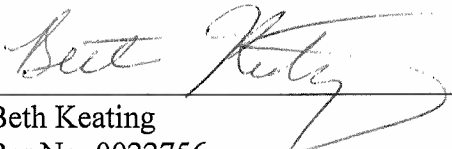
<sup>10</sup> See Boca Burger, Inc. v. Richard Forum, 912 So.2d 561 (Fla. 2005), referencing Lingle v. Dion, 776 So. 2d 1073, 1078 (Fla. 4th DCA 2001) (alterations in original) (quoting Visoly v. Sec. Pac. Credit Corp., 768 So. 2d 482, 492 (Fla. 3d DCA 2000)) ("While counsel does have an obligation to be faithful to [his] [client's] lawful objectives, that obligation cannot be used to justify unprofessional conduct by elevating the perceived duty to zealously represent over all other duties."). See also 57.105(2), Florida Statutes.

#### **IV. Conclusion**

OPC's Motion leaves no doubt that OPC strongly opposes FCG's request in this proceeding. It does not, however, demonstrate a basis for dismissal. Viewing the Petition in the light most favorable to FCG, the Company has stated a cause of action upon which relief can be granted by the Commission.

WHEREFORE, for all these reasons, Florida City Gas respectfully requests that the Citizens' Motion to Dismiss be denied.

RESPECTFULLY SUBMITTED this 27th day of June, 2025.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by Electronic Mail this 27<sup>th</sup> day of June, 2025.

|  |  |
|--|--|
| Walter Trierweiler<br>Mary Wessling<br>Charles Rehwinkel<br>Office of Public Counsel<br>c/o The Florida Legislature<br>111 W. Madison Street, Room 812<br>Tallahassee, FL 32399-1400<br><a href="mailto:Trierweiler.walt@leg.state.fl.us">Trierweiler.walt@leg.state.fl.us</a><br><a href="mailto:Wessling.mary@leg.state.fl.us">Wessling.mary@leg.state.fl.us</a><br><a href="mailto:Rehwinkel.charles@leg.state.fl.us">Rehwinkel.charles@leg.state.fl.us</a> | Adria Harper<br>Timothy Sparks<br>Office of the General Counsel<br>Florida Public Service Commission<br>2540 Shumard Oak Boulevard<br>Tallahassee, FL 32399-0850<br><a href="mailto:aharper@psc.state.fl.us">aharper@psc.state.fl.us</a><br><a href="mailto:tsparks@psc.state.fl.us">tsparks@psc.state.fl.us</a><br><a href="mailto:discovery-gcl@psc.state.fl.us">discovery-gcl@psc.state.fl.us</a> |
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By: \_\_\_\_\_



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