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November 14, 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:

Attached for electronic filing in the above-referenced docket, please see Florida City Gas's Motion to Strike Exhibit to Staff's Testimony or, in the alternative, Motion in Limine.

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  
Gunster, Yoakley & Stewart, P.A.  
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ENCL

CC:// (certificate of service)

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: November 14, 2025 |
| Imbalance.                              | )                          |

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

Florida City Gas ("FCG" or "Company"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, Rule 28-106.203, Section 120.569(2), Florida Statutes, Rule 1.140(f), Florida Rules of Civil Procedure, and Order No. 2025-0366-PCO-GU, issued October 2, 2025 in this docket, hereby files this Motion to Strike or, in the alternative, Motion in Limine requesting that Exhibit EAK-5 to the Direct Testimony of Edwin A. Kunkler, IV, on behalf of Commission Staff be stricken and not entered into the record of this proceeding. As explained below, Witness Kunkler's exhibit EAK-5 is an exhibit submitted in a prior proceeding by a witness who is not testifying in this proceeding. Moreover, that exhibit, which is the entire depreciation study submitted by Ned Allis in Docket No. 20220069-GU was not approved by the Commission in that proceeding, nor were Mr. Allis's recommendations therein accepted by the Commission in that proceeding. For the reasons outlined herein, Witness Kunkler's Exhibit EAK-5 should be stricken as irrelevant, unduly prejudicial, and beyond the scope of this proceeding.

**I. Introduction**

1. On February 24, 2025, FCG 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.).

2. On February 26, 2025, the Office of Public Counsel (“OPC”) filed a Notice of Intervention. The following day, OPC filed a Motion to Hold Proceedings in Abeyance, which was denied by Order No. PSC-2025-0102-PCO-GU, issued April 1, 2025. OPC timely filed a Motion for Reconsideration of that Order, along with a Request for Oral Argument. Separately, on June 20, 2025, OPC filed a Motion to Dismiss on jurisdictional grounds, along with another Request for Oral Argument. The Commission denied both Motions and Requests for Oral Argument by Order No. PSC-2025-0360-PCO-GU, issued September 24, 2025.

3. Thereafter, by Order No. PSC-2025-0366-PCO-GU (“OEP”), issued October 2, 2025, this matter was set for hearing on December 11, 2025. The OEP set forth the procedural requirements for all parties to this docket and included, as Attachment A, the Preliminary List of Issues for this proceeding.

4. On November 13, 2025, the Testimony and Exhibits of Edwin A. Kunkler, IV were filed in the docket. Among Mr. Kunkler’s identified exhibits is his Exhibit EAK-5, which consists of the entirety of Ned Allis’s Exhibit NWA-1, submitted May 20, 2022, in Docket No. 20220069-GU (“2022 Rate Case”).

**I. Unduly Prejudicial, Irrelevant, and Immaterial**

5. While FCG acknowledges that the rules regarding admission of evidence in administrative proceedings are broad, those rules are not without limit. Section 120.569(2)(g), Florida Statutes, provides that “irrelevant, immaterial, and unduly

repetitious” evidence shall be excluded in administrative proceedings. In this instance, Exhibit EAK-5 is not only irrelevant and immaterial, admitting EAK-5 into the record of this proceeding would also be unduly prejudicial to FCG and deprive it of its due process rights.

6. First, Exhibit EAK-5 consists of the entire 179 pages of Mr. Allis’s Exhibit in the 2022 Rate Case, which was submitted May 20, 2022, over 3.5 years ago. Even though submitted by Witness Allis in that proceeding on behalf of FCG, it was not submitted as the preferred proposal of the Company, as reflected at paragraph 4, on page 7, of the Company’s Petition for Approval of Rate Increase and Request for Approval of Depreciation Rates, filed May 20, 2022. Rather, it was offered as a lesser alternative in the event that the Commission did not approve the Company’s preferred request for approval of a 4-year rate plan.

7. In that 2022 Rate Case proceeding, as reflected in the Final Order, Order No. PSC-2023-0177-FOF-GU (“2022 Order”), issued June 9, 2023, Mr. Allis’s depreciation study was not endorsed by the Commission nor were his recommendations accepted. Instead, the Commission accepted the RSAM-adjusted parameters proposed by Witness Campbell.<sup>1</sup> A motion for reconsideration of that decision was filed by OPC, which was denied by Order No. PSC-2023-0299-FOF-GU, issued October 2, 2023. Thereafter, OPC filed a Notice of Appeal, which remains pending at this time in Supreme Court Case No. SC2023-0988.

8. Witness Allis’s depreciation study clearly falls within the category of “irrelevant, immaterial, and unduly repetitious” and is not otherwise “evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs” given that it is

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<sup>1</sup> 2022 Order at pages 13-14.

dated, was not the preferred or primary recommendation when filed, and was not approved or accepted by the Commission at that time.

9. It is important to note that FCG was acquired by Chesapeake Utilities Company (“CUC”) from FPL at the end of December 2023, well after the hearing in the 2022 rate case. In this proceeding, FCG has hired Patricia Lee to conduct a new depreciation study based upon updated information and account changes resulting from FCG’s acquisition by CUC. Introduction of a 3.5-year-old depreciation study conducted by a witness who is not appearing on behalf of any party in this proceeding and which is based upon books and records that predate the acquisition of FCG by CUC certainly constitutes the introduction of evidence that is “irrelevant, immaterial, and unduly repetitious.”

10. Moreover, allowing entry of this dated exhibit into the record of this proceeding would be highly prejudicial to FCG. While CUC acquired the local distribution company that is FCG at the end of 2023, it did not acquire all employees and records associated with the 2022 rate case, as many of the witnesses were either FPL employees or outside consultants. Certainly, CUC, upon acquiring FCG, did acquire a good many critical documents, but others, such as Mr. Allis’s complete Excel workbook, were not included, nor were the current owners and employees of FCG privy to any consultations with Mr. Allis regarding the conduct of his depreciation study. Thus, while Mr. Allis’s testimony and exhibit NWA-1 were filed on behalf of the entity “FCG,” the entity in 2022 was very different from the entity that exists today as a subsidiary of CUC. Consequently, allowing Mr. Allis’s dated depreciation study to be admitted into this record, as an exhibit of Witness Kunkler, would be unduly prejudicial and deprive FCG of due process because FCG would not be able to conduct discovery and cross-examination of the witness, Mr. Ned Allis, who actually sponsored the exhibit and conducted that depreciation study.

11. FCG therefore asks that Mr. Kunkler's Exhibit EAK-5 be stricken and not allowed to be admitted into the hearing record of this proceeding.

**II. Unusable Hearsay Contrary to Rule 28-106.213, Florida Administrative Code**

12. Witness Kunkler's Exhibit EAK-5 should be stricken for another reason. It constitutes hearsay that is not offered to support or supplement other evidence; as such it is irrelevant and should be stricken.

13. The Florida Evidence Code provides that "hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Section 90.801(1)(b), Florida Statutes. The code further provides that a "statement" can be either a verbal or written statement. In civil proceedings, such a "statement" does not constitute "hearsay" if the declarant otherwise testifies at trial and the statement is either inconsistent with the declarant's testimony but also given under oath or is consistent and offered to rebut a charge that the witness has fabricated testimony on the stand. Section 90.801(2), Florida Statutes. Otherwise, "hearsay" is inadmissible at hearing. Section 90.802, Florida Statutes.

14. In administrative proceedings governed by Chapter 120, Florida Statutes, a more relaxed standard applies to the admissibility of evidence.<sup>2</sup> As set forth in Section 120.569(2):

(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

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<sup>2</sup> See, *Florida Industrial Power Users Group v. Graham*, 209 So. 3d 1142, 1145 (Fla. 2017)(stating that the rules of evidence do not strictly apply in administrative proceedings.).

However, as set forth in Section 120.57(1)(c), Florida Statutes, and as codified in Rule 28-106.213, Florida Administrative Code, even this relaxed standard has its limits.<sup>3</sup> As it specifically pertains to “hearsay,” the rule provides that:

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

[Emphasis added].

15. Mr. Kunkler’s Exhibit EAK-5 does not meet any of the exceptions to the “hearsay” rule found in Sections 90.801-90.805, Florida Statutes, nor is it offered by Witness Kunkler to supplement or explain other evidence.<sup>4</sup> To the contrary, as stated in Witness Kunkler’s testimony at page 8, lines 20-21, he has in fact **relied** upon “the combined life data for Account 3761: Mains-Plastic and Account 3762: Mains-Steel” from that prior depreciation study. As such, his Exhibit EAK-5 is not merely offered to “supplement or explain other evidence.” It **is** the evidence upon which Witness Kunkler relies for his conclusions regarding these two accounts, which is directly contrary to Section 120.57(1)(c), Florida Statutes, and Rule 28-106.213, Florida Administrative Code. As such, it should be stricken.

### III. Alternative Motion in Limine

16. For all the reasons set forth above, admission of the 2022 depreciation study contained in Witness Kunkler’s Exhibit EAK-5 is legally and procedurally improper. As such, striking Exhibit EAK-5 in its entirety is the most procedurally appropriate remedy

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<sup>3</sup> See, Houston v. City of Tampa Firefighters and Police Pension Fund Board of Trustees, 303 So. 3d 233, 244 (Fla. 2<sup>nd</sup> DCA 2020)(stating that hearsay is not sufficient to support a finding unless it would otherwise be admissible over objection in a civil trial.)’

<sup>4</sup> BellSouth Advertising and Pub. Corp. v. Unemployment Appeals Commission, 654 So. 2d 292, 296 (Fla. 5<sup>th</sup> DCA 1995)(stating, “Until a predicate for admission of otherwise inadmissible hearsay is established, it has no use and should not be received.”)

under Florida law. Even viewed in the light most favorable to Witness Kunkler's exhibit, the Commission should, at a minimum, clearly limit the admissibility of Exhibit EAK-5 and specify that only limited portions can be used and for limited purposes. Specifically, Witness Kunkler's testimony indicates that he only relied upon the 2022 study for the life analysis of two accounts, Account 3761: Mains-Plastic and Account 3762: Mains-Steel.<sup>5</sup> Exhibit EAK-5, however, contains the entirety of Mr. Allis's 179-page depreciation study. Furthermore, for clarity and to address Witness Kunkler's assertion at page 6, lines 2-3, Ms. Lee has not indicated that she relied on the life analysis contained in Mr. Allis's study. Instead, as stated at page 22 of Ms. Lee's Amended Direct Testimony, she reviewed the historical statistical analysis and determined that a similar analysis was not necessary. As she noted, based on the retirement rate for most accounts, "This level of activity makes the results of any statistical analysis meaningless for developing life expectations."<sup>6</sup> Thus, at a minimum, the admission of Exhibit EAK-5 should be limited to pages 35 and 47 of 179 as supporting Witness Kunkler's testimony. The remainder of EAK-5 (or NWA-1) should be excluded as irrelevant and/or hearsay not offered to support otherwise admissible evidence.

17. For all the above reasons, FCG respectfully requests that Witness Kunkler's Exhibit EAK-5 be stricken in its entirety. In the alternative, FCG asks that the admission of Exhibit EAK-5 be limited to the two pages as described herein for the limited basis of supporting only Witness Kunkler's life analysis for Accounts 3761 and 3762.

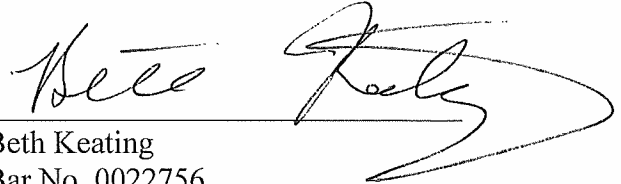
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<sup>5</sup> Direct Testimony of Edwin A. Kunkler, IV at page 8, lines 12-21.

<sup>6</sup> Amended Direct Testimony of Patricia Lee at page 22, lines 4-8 and 16-20.

18. Following consultation with opposing counsel, counsel for FCG can represent that both OPC and the Commission staff oppose FCG's motion with Commission staff further indicating they intend to file a written response.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of November, 2025.

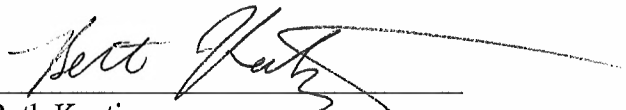
A handwritten signature in black ink, appearing to read "Beth Keating", written over a horizontal line.

Beth Keating  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing were sent via Electronic Mail on November 14, 2025, to:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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