

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 29, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Guffey, Draper, Rome)
Office of the General Counsel (DuVal, Crawford)

RE: Docket No. 160175-GU – Petition for review and determination on the project construction and gas transportation agreement between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation, and approval of an interim service arrangement.

AGENDA: 07/13/17 – Regular Agenda – Decision Prior to Hearing – Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

On May 4, 2017, Florida City Gas (FCG, City Gas, or Company) and Florida Crystals Corporation (Florida Crystals or Crystals) filed a joint petition to approve the Amended and Restated Gas Transportation Agreement (Amended and Restated GTA). The proposed Amended and Restated GTA is a negotiated special contract between City Gas and Crystals that, with the Commission's approval, will resolve all issues in this docket. FCG is an investor-owned natural gas utility subject to the Commission's jurisdiction, pursuant to Section 366.02(1), Florida Statutes (F.S.). Florida Crystals is a national sugar manufacturer and a large commercial transportation customer of FCG.

This docket was initiated on July 22, 2016, by City Gas's Petition for Review and Determination on the "Project Construction and Gas Transportation Agreement (GTA) between NUI Utilities,

Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001” and Approval of an Interim Service Arrangement. City Gas filed a subsequent Motion for Approval of a Temporary Interim Service Arrangement on August 31, 2016. Florida Crystals filed several preliminary, procedural motions including: a Motion to be Designated a Party or in the Alternative Motion to Intervene; a Motion to Dismiss City Gas’s Petition, along with a Request for Oral Argument; and a Response in Opposition to City Gas’s Motion for Approval of a Temporary Interim Service Arrangement, along with a Request for Oral Argument. On September 19, 2016, City Gas filed its Response in Opposition to Florida Crystals’ Motion to Dismiss Petition.

On October 18, 2016, staff issued a Notice of Apparent Violation to City Gas, which stated that the Utility appeared to be in violation of Rule 25-9.034, Florida Administrative Code (F.A.C.), for failing to submit its April 24, 2001 contract with Florida Crystals for the Commission’s approval prior to its execution. City Gas filed its Response to Notice of Apparent Violation on November 1, 2016, and Florida Crystals filed comments concerning City Gas’s Response to Notice of Apparent Violation on November 17, 2016. Subsequently, the parties submitted the Amended and Restated GTA for the Commission’s review and approval. Additionally, City Gas has represented to staff that the Company is not a party to any other contract that should have been submitted to the Commission for its approval prior to the contract’s execution. As such, staff is not pursuing a show cause action. However, if any such contracts are identified in the future, staff intends to bring a subsequent recommendation that show cause proceedings be initiated.

At the December 6, 2016 Agenda Conference, after considering the written and oral arguments provided by the parties, the Commission voted: (1) to deny Crystals’ Motion to Dismiss; (2) to set the matter for hearing; (3) to grant Crystals’ Motion to be Designated a Party or in the Alternative Motion to Intervene; (4) to deny City Gas’s August 31, 2016 Motion for Approval of a Temporary Interim Service Arrangement; and (5) that the Make-Up Period GTA rates will be in effect for a transition period beginning on December 6, 2016, subject to true-up, until a final Commission decision in this docket. That vote was codified in Order No. PSC-16-0581-PCO-GU.¹

On January 6, 2017, Florida Crystals filed its timely Unopposed Motion for Clarification of Order No. PSC-16-0581-PCO-GU, pursuant to Rules 25-22.0376 and 28-106.204, F.A.C. The Commission approved Crystal’s Motion for Clarification in Order No. PSC-17-0062-FOF-GU.

On January 24, 2017, the Commission issued an Order Establishing Procedure which established the guidelines and schedule for an administrative hearing as approved by the Commission at its December 6, 2016 Commission Conference. Accordingly, in compliance with Section 366.06(2), F.S., an administrative hearing was scheduled beginning on September 12, 2017, with additional dates of September 13-14, as needed.

¹ Order No. PSC-16-0581-PCO-GU, issued December 27, 2016, in Docket No. 160175-GU, *In re: Petition for review and determination on the project construction and gas transportation agreement between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation, and approval of an interim service arrangement.*

Docket No. 160175-GU

Date: June 29, 2017

On April 25, 2017, the joint petitioners provided staff a settlement agreement dated April 19, 2017. Additionally, on April 25, 2017, staff held a noticed meeting with the parties to discuss the progress of the negotiations between the two parties, the settlement agreement, a proposed amended and restated GTA, cost support overview, and a joint petition to be submitted for Commission review and consideration.

On May 3, 2017, City Gas and Crystals filed a joint motion to suspend the hearing schedule set forth in Order No. PSC-17-0033-PCO-GU, issued on January 24, 2017.

On May 4, 2017, the City Gas and Crystals submitted a joint petition seeking Commission approval of the Amended and Restated GTA in its entirety. The Amended and Restated GTA is attached as Exhibit A to the joint petition. In addition, the petitioners provided a copy of the Settlement Agreement for informational purposes (Exhibit B in the joint petition). The petitioners note that the parties are not seeking Commission approval of the Settlement Agreement. Confidential portions of the filing were submitted separately on May 5, 2017. Approval of the Amended and Restated GTA would obviate the need for a hearing in this matter. This is staff's recommendation on the Amended and Restated GTA.

On May 8, 2017, the Commission issued Order No. PSC-17-0161-PCO-GU suspending the hearing schedule.

On May 10, 2017, after review of City Gas's newly filed, revised, confidential data, staff issued its second data request to City Gas for which redacted responses were received on May 24, 2017, and the confidential portions of the responses were received on May 25, 2017. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the Amended and Restated GTA?

Recommendation: Yes, the Commission should approve the Amended and Restated GTA effective July 13, 2017. City Gas should make a refund to Crystals equal to the difference between the temporary rates approved pursuant to Order No. PSC-16-0581-PCO-GU and the final rates for the Extended Term included in the Amended and Restated GTA, as applied and calculated with respect to Crystals' usage of gas transportation service from November 16, 2016, through and including the date on which the Commission's order approving the Amended and Restated GTA becomes final by operation of law. City Gas should make such refund, including interest, either by a direct payment to Crystals or by crediting the full amount of the refund to Crystals' bills for service beginning on the date the Commission order becomes final by operation of law and continuing until the full refund amount has been credited to Crystals' bills as the parties jointly requested. As provided in Order No. PSC-16-0581-PCO-GU, the amount of interest shall be calculated pursuant to Rule 25-7.091(4), F.A.C. City Gas and Crystals should file an executed copy of the Amended and Restated GTA with the Commission within 10 days of the issuance of the final order by the Commission. (Draper, Guffey, Rome)

Staff Analysis: Prior to discussing the Amended and Restated GTA, staff offers the following brief summary of the nature and status of the original GTA.

Background

The original GTA was executed by City Gas and Crystals on April 24, 2001, and has a 30-year term. The GTA contains a Primary Term, a Make-Up Period, and an Extended Term. The rates of the Extended Term differ from the rates applicable during the prior two terms. The duration of the Extended Term is 15 years; Crystals provided documentation in response to staff's first data request to support its assertion that the Extended Term began on November 15, 2016.

At the December 6, 2016 Agenda Conference, the Commission voted to approve the staff recommendation to leave the Make-Up Period GTA rates in effect beginning on December 6, 2016, subject to true-up, until a final Commission decision in this docket. The Commission stated in Order No. PSC-16-0581-PCO-GU that this temporary solution would allow City Gas and Crystals additional time to negotiate a mutually acceptable operating arrangement. After extensive negotiations, City Gas and Crystals developed the proposed Amended and Restated GTA which was submitted as a joint petition for Commission approval on May 4, 2017.

Amended and Restated GTA

City Gas and Crystals jointly submitted the Amended and Restated GTA for Commission approval in an effort to resolve all issues in this docket including a going-forward service arrangement that complies with applicable regulatory requirements.² City Gas and Crystals have agreed to certain key amendments to the original GTA which have been incorporated into the Amended and Restated GTA, including those listed below:

² Joint Petition, page 3, paragraph 4; May 4, 2017

- Modifications to the contract term to provide that the duration of the Extended Term would be from November 16, 2016 through November 15, 2031, with an option to extend for an additional five years,
- A provision to allow Crystals to request additional quantities of gas over and above the Maximum Daily Contract Quantity (MDCQ) on a non-firm basis, and
- Modifications to the rates included in the original GTA.

Staff's examination of the proposed Amended and Restated GTA considered factors which would have an impact on coverage of the cost to serve Crystals. These factors include projected gas transportation volumes, allocation of costs to Crystals, and modifications to the rates paid by Crystals. These factors are discussed below.

Projected Gas Transportation Volumes

The confidential exhibits supporting the joint petition seeking approval of the Amended and Restated GTA contain projections of the number of therms that City Gas anticipates will be transported on behalf of Crystals through 2031. These quantities differ from the volumes historically used by Crystals. Accuracy of volume forecasts is essential to a determination regarding whether or not sufficient revenues would be generated under the revised contract to cover City Gas's cost of serving Crystals.

In response to staff's second data request, City Gas offered several statements to support the assertion that Crystals' prospective transportation volumes will equal or exceed the quantities indicated in City Gas's confidential break-even analysis.³ As reflected in the information provided in support of the joint petition, City Gas has been transporting significantly increased amounts of gas on behalf of Crystals over the past several years. City Gas further stated that the process of negotiating the Amended and Restated GTA with Crystals reaffirmed a reasonable expectation of continued future growth in service to Crystals. City Gas represented that for Crystals, it was imperative that Crystals have access to the MDCQ provided for in the Amended and Restated GTA. In addition, Crystals sought a further increase in potential transportation service in excess of the MDCQ on a non-firm basis. City Gas averred that in its experience, a customer does not request availability of additional gas transportation capacity unless the customer has a reasonable expectation of need.

City Gas acknowledged that Crystals' actual transportation volumes may not exceed what is projected for 2017 and 2018. However, City Gas asserted that the Amended and Restated GTA provides appropriate and effective incentives for Crystals to grow into the maximum potential volumes that are available to it under the Amended and Restated GTA. Based on a review of the confidential materials provided in support of the joint petition and in response to staff's second data request, staff believes City Gas's projections of the gas transportation volumes needed to serve Crystals over the remainder of the Extended Term appear to be reasonable.

³ Revised Confidential Exhibit C-2C; May 25, 2017.

Allocation of Costs to Crystals

The assumptions used in City Gas's cost allocation presentation are key elements that factor into a determination of whether or not the Amended and Restated GTA covers City Gas's cost to serve Crystals on a going-forward basis. In the joint petition filed on May 4, 2017, City Gas included a footnote stating that the confidential cost study analysis provided in support of the joint petition differed from materials previously provided to the Commission.⁴ City Gas stated that it had revisited its entire analysis and determined that there were some mathematical errors and incorrect assumptions in the previously submitted documentation. City Gas asserted its belief that the analysis provided in support of the joint petition was the correct methodology with the correct numbers.⁵ However, in its May 24 and 25, 2017, responses to staff's second data request, City Gas provided a revised confidential cost study exhibit to correct an error in the calculation of historical depreciation expense.

Crystals is served by a lateral connected to a pipeline that is referred to as the East-West Pipeline. The East-West Pipeline has a tie-in to Florida Gas Transmission Company, and is used by City Gas to transport gas to Crystals and other customers. Therefore, the appropriate allocation of the costs associated with the East-West Pipeline to Crystals is relevant. In response to staff's second data request, City Gas included a discussion of the steps City Gas took to reevaluate its East-West Pipeline allocation factor.

During that review, City Gas determined that it had not captured all of the actual and potential volumes that could be transported and that the prior analysis did not include any excess capacity available for future customers.⁶ City Gas determined that a better measure of pipeline capacity is a methodology based upon the maximum hourly flow of Crystals divided by the sum of the maximum hourly flow requirements that must be reserved for each customer plus the remaining capacity available at the end of the pipeline, rather than using Crystals' proportion of the total annual flow volumes.⁷ City Gas further noted that in developing this analysis to support the proposed rates, it utilized the maximum daily flow reserved for Crystals on a firm service basis under the Amended and Restated GTA and not the additional daily capacity that would be available on a non-firm basis to Crystals.⁸

Staff reexamined the four cost study presentations made by City Gas since the inception of this docket in July 2016.⁹ Based on its review of the information in the record, staff believes that the Company's assumptions supporting the revised presentation included in the May 24 and 25, 2017 responses to staff's second data request appear to be reasonable.

Staff recognizes that City Gas and Crystals have different views regarding the manner in which City Gas's cost allocations to Crystals should be presented. As previously explained in its pleadings in this docket, Crystals does not agree that City Gas's method of presentation is the methodology contemplated by the Company's tariff, but according to the joint petition, this

⁴ Joint Petition, page 8, paragraph 14, footnote 3; May 4, 2017

⁵ *Id.*

⁶ City Gas Response to Staff's Second Data Request, Question 2; May 24, 2017

⁷ *Id.*

⁸ *Id.*

⁹ Original petition, July 22, 2016; Responses to staff's first data request, November 1, 2016; Joint petition, May 4 and 5, 2017; and Responses to staff's second data request, May 24 and 25, 2017.

difference of opinion does not detract in any way from Crystals' support for the Amended and Restated GTA. In brief, Crystals believes that the correct methodology would show that service to Crystals pursuant to the Amended and Restated GTA would be even more cost effective than indicated by the Company's exhibit.¹⁰ Staff discusses proposed rate modifications and the prospective coverage of cost of service below.

Rate Modifications and Prospective Coverage of Cost of Service

The proposed rates for the Extended Term of the Amended and Restated GTA are confidential and are stated in Section 9 of the proposed agreement. The proposed rates have been modified from the temporary rates approved pursuant to Order No. PSC-16-0581-PCO-GU and apply whether gas is delivered on a firm or a non-firm service basis. The proposed rates per therm are less than the temporary rates currently in place, but are more than the rates that Crystals would have paid during the Extended Term under the original GTA. Staff's analysis focused on whether the proposed rates would cover City Gas's cost to serve Crystals on a going-forward basis.

With regard to the proposed rates, City Gas addressed the prospective coverage of cost of service in the confidential exhibits filed in support of the joint petition and in the revised exhibits provided in the Company's response to staff's second data request. Based on staff's review of the information provided by City Gas, staff believes that the Company has made a reasonable demonstration that the proposed rates included in the Amended and Restated GTA are sufficient to cover City Gas's cost to serve Crystals.

As noted above, City Gas and Crystals disagree regarding the exact cost standard that should be applied. However, based on staff's review of the prospective cost of service information provided in support of the Amended and Restated GTA, staff believes that the joint petitioners' assertion "...that the revenues to be provided by Florida Crystals pursuant to the Amended & Restated GTA will satisfy either Party's proposed cost standard..."¹¹ appears to be reasonable. Staff's assessment that the joint petitioners' representation is reasonable should not be construed as a final determination regarding which of the parties' cost standards should be applied.

True-Up

Order No. PSC-16-0581-PCO-GU provides for a true-up between City Gas and Crystals. Since the proposed rates included in the Amended and Restated GTA are less than the temporary rates currently in effect, Crystals would be entitled to a refund from City Gas under the true-up provisions in the referenced order. The confidential amount of the portion of the refund accumulated for the period December 2016 through March 2017 was included in the revised Exhibit D submitted by City Gas in response to staff's second data request. As agreed upon by the joint petitioners, the duration of the true-up period is from November 16, 2016, through the date the order approving the Amended and Restated GTA is final by operation of law. When this order becomes final, the full amount of the refund, including interest, will be determined.

¹⁰ Joint Petition, page 8, paragraph 14, footnote 3; May 4, 2017

¹¹ Joint Petition, page 12, paragraph 19, footnote 4; May 4, 2017

Conclusion

Staff believes that the Amended and Restated GTA negotiated by City Gas and Crystals represents a viable business solution between the joint petitioners as encouraged by the Commission in Order No. PSC-16-0581-PCO-GU. Based on its review of the filings in this docket, staff believes that the proposed contract rates cover City Gas's cost to serve Crystals and thus provide sufficient protection for City Gas's general body of ratepayers.

Therefore, staff recommends that the Commission approve the Amended and Restated GTA effective July 13, 2017. As requested in the joint petition, City Gas should make a refund to Crystals equal to the difference between the temporary rates approved pursuant to Order No. PSC-16-0581-PCO-GU (which are the Make-Up period rates under the original GTA) and the final rates for the Extended Term included in the Amended and Restated GTA, as applied and calculated with respect to Crystals' usage of gas transportation service from November 16, 2016, through and including the date on which the Commission's order approving the Amended and Restated GTA becomes final by operation of law (*i.e.*, the time for filing a notice of appeal has expired or any appeals have been decided).

City Gas should make such refund, including interest, either by a direct payment to Crystals or by crediting the full amount of the refund to Crystals' bills for service beginning on the date the Commission order becomes final by operation of law and continuing until the full refund amount has been credited to Crystals' bills as the parties jointly requested. As provided for in Order No. PSC-16-0581-PCO-GU, the amount of interest shall be calculated pursuant to Rule 25-7.091(4), F.A.C. City Gas and Crystals should file an executed copy of the Amended and Restated GTA with the Commission within 10 days of the issuance of the final order by the Commission.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. If the Commission does not approve staff's recommendation in Issue 1, this docket should remain open to continue the hearing process. (DuVal)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. If the Commission does not approve staff's recommendation in Issue 1, this docket should remain open to continue the hearing process.