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July 8, 2010

BY US MAIL
Ms. Ann Cole, Commission Clerk
Office of Commission Clerk
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 100315-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Miami-Dade County are the following documents:

1. An original and one copy of Miami-Dade County's Response in Opposition to Florida City Gas' Motion to Dismiss Complaint. 05673-10

2. An original and seven copies of Miami-Dade County's Notice of Intent to Request Confidential Classification. 05674-10

3. An envelope containing the confidential version of Miami-Dade's Response in Opposition to Florida City Gas' Motion to Dismiss Complaint. 05675-10

Please acknowledge receipt of these documents by date stamping the enclosed extra copy of this letter.

Thank you for your assistance with this filing.

Sincerely yours,

Henry N. Gillman
Assistant County Attorney

COM ___
APA ___
ECR 1
GCL ___
RAD ___
SSC ___
ADM ___
OPC ___
CLK ___

C: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint by Miami-Dade County for Order Requiring Florida City Gas to Show Cause Why Tariff Rate Should Not be Reduced and for the Commission to Conduct a Rate Proceeding, Overearnings Proceeding, or other Appropriate Proceeding Regarding Florida City Gas' Acquisition Adjustment
_____/

Docket No. 100315-GU

MIAMI-DADE COUNTY'S RESPONSE IN OPPOSITION TO FLORIDA CITY GAS' MOTION TO DISMISS COMPLAINT

Miami-Dade County, by and through its undersigned counsel, files its Response in Opposition to Florida City Gas' Motion to Dismiss and states:

Florida City Gas ("FCG") seeks to dismiss Miami-Dade County's Complaint for Order Requiring Florida City Gas to show cause why its tariff rate should not be reduced and for the Commission to conduct a rate proceeding, overearnings proceeding or other appropriate proceeding regarding Florida City Gas' acquisition adjustment. As grounds for its motion, FCG asserts that the complaint fails to state a cause of action, is duplicative of issues in Docket No. 090539-GU and is premature.

In determining the sufficiency of a complaint, all factual allegations of the complaint must be taken as true. Varnes v. Dawkins, 624 So.2d 349 (Fla. 1st DCA 1993).

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The complaint states a cause of action. In the acquisition adjustment order, the Commission reserved the right to reevaluate the acquisition adjustment at any time during the 5-year stay-out period and to initiate proceedings including but not limited to overearnings proceedings. The County's complaint seeks for the Commission to exercise such authority and reevaluate the acquisition adjustment in light of FCG's treatment of the County. Nothing in the order or in the statutes prohibits the County from making such a request. Section 366.076, Florida Statutes, expressly permits the Commission to conduct a limited proceeding upon petition or its own motion regarding any matter which requires a public utility to adjust its rates consistent with the statutory provisions. Section 366.07, Florida Statutes, also provides the Commission with authority upon its own motion or a complaint to fix fair and reasonable rates whenever it finds the rates to be unjust, unreasonable, insufficient, excessive or unjustly discriminatory or preferential or violative of law.

Contrary to FCG's assertion, the County's complaint is not an untimely motion for reconsideration of the positive acquisition order. The subject order contemplated that a request to review the reasonableness of the acquisition adjustment may be made within 5 years of the effective date of the stay-out period which began on October 23, 2007. The cases cited by

FCG are inapplicable to the instant case because those cases required a motion for reconsideration to be filed within 15 days of the subject order. The County is not seeking reconsideration of the positive acquisition order but rather for the Commission to reevaluate the adjustment based on the circumstances of the 2008 Special Gas Transportation Services Agreement between FCG and the County ("2008 Agreement") and FCG's subsequent treatment of the County.

FCG's motion to dismiss the complaint assumes that the 2008 Agreement is not effective because it was not approved by the Commission within the time period provided in the contract and that the contract rates do not meet the minimum statutory requirements for a contract rate under FCG's tariff schedule and governing law. FCG's assumption is simply preposterous. The County's position is that the 2008 Agreement is a special contract that is exempt from Commission approval pursuant to the Commission's rules. To the extent the Commission finds that the 2008 Agreement is not exempt, the Commission should hold FCG to the terms of the agreement that it bargained-for with the County. [1]

In 1998, the County received the authority to bypass FCG's local distribution system. To avoid bypass, FCG entered into a 10-year special

[1] The Agreement was approved by Miami-Dade County's Board of County Commissioners in October 2008.

contract with the County to provide gas transportation services to the County at an agreed-upon contract rate and included a renewal provision for an additional 10 years. In 2007, representatives of the County and FCG agreed to renew the 1998 contract for transportation services at the same contract rate for an additional 10 years. For 14 months (June 2007-August 2008), FCG and its parent company, AGL Resources, had ample opportunity to thoroughly review every contract provision to ensure that the contract complies with its tariff and is otherwise satisfactory. FCG made a business decision to keep the County as a long-term customer and to continue to provide transportation services to the County at the same contract rate. Although the contract was reviewed by FCG and AGL executives including corporate counsel and outside counsel, no one from FCG or AGL informed the County that the rates were insufficient to meet FCG's other legal and regulatory requirements. In the "eleventh hour" of contract review, FCG inserted a contract condition requiring Commission approval. However, FCG itself withdrew the petition for approval prior to Commission consideration of the contract which prevented the condition from being realized. FCG cannot take advantage of its own wrongful actions and relieve itself of the responsibility to perform the contract and the Commission should not condone such actions.

Moreover, FCG presumably knows the requirements and terms of its own tariff schedule better than anyone else and had ample opportunity to ensure that the 2008 Agreement, which was voluntarily signed by Hank Linginfelter, AGL Resources Inc's Executive Vice-President and President of Pivotal Utility Holdings Inc., was in accordance with its own tariff and statutory requirements. FCG consistently and without fail led the County to believe that the contract terms FCG negotiated with the County met all required conditions of the tariff and applicable statutory provisions.

The root of the County's complaint is the brazen manner in which FCG summarily dismisses the 2008 Agreement that FCG executed with its largest transportation customer following a lengthy period of negotiations and comprehensive management review of the terms of the contract. It is undisputed that the parties intended for FCG to provide natural gas transportation services to the County at the contract rates provided in the contract.

Section 12 of FCG's FPSC Natural Gas Tariff Volume No. 8, effective December 2004, Sheet No. 19 provides, in pertinent part, regarding Transportation-Special Conditions: "A Transportation Service Agreement or other means of enrollment accepted by the Company is a condition precedent for Transportation Service under each applicable Rate

Schedule.... Company's execution of a Transportation Service Agreement under each applicable Rate Schedule may be conditioned on Customer's agreement to pay the total incremental cost of such facilities as specified herein and in the Service Agreement." (emphasis added). The 1998 Agreement for transportation services applied the Contract Interruptible Large Volume Transportation Service Rate Schedule. Nothing in the Agreement conditioned the County to pay the total incremental cost to serve the County's facilities. The County paid the contract rates for 10 years without any objections by FCG or Commission staff. Like the 1998 Agreement, the successor 2008 Agreement includes the same contract rates and also does not have any language requiring the County to pay the total incremental cost to serve the facilities.[2]

Yet, FCG now claims that the 2008 Agreement that FCG executed was essentially a sham and ineffective because FCG cited to the wrong Rate Schedule (Contract Demand Service which requires an additional load of 250,000 therms per year), and the rate FCG agreed to allegedly does not allow FCG to collect its incremental costs. FCG unilaterally began charging the County a tariff rate which included a "competitive rate adjustment" ("CRA"), among other charges. FCG asserts that the County cannot show

[2] FCG and AGL attorneys inserted various additional provisions in the 2008 Agreement presumably to comply with FCG's Tariff, including revised force majeure language. Yet, neither FCG/AGL staff nor their attorneys added language regarding incremental costs.

any overearnings because the increased billings to the County are revenue neutral to FCG since FCG is no longer charging the CRA to its general ratepayers. FCG takes no responsibility for its actions and claims that it has no option but to increase the County's rates by 670%. Of course, FCG conveniently disregards the option of applying the Flexible Gas Service Rate Schedule to the County because that would put FCG's shareholders at risk of a shortfall, if any, in revenue requirements.[3]

Moreover, it is inconceivable that the Commission should deprive the County of its "day in court". The County should have the opportunity to test the accuracy of FCG's incremental costs. As shown below, FCG's alleged incremental costs to provide gas transportation services to the Alexander Orr Plant with a dedicated gas line increased over 250% between 1999 and 2009. The County believes the Commission's "show cause" docket best serves to protect the County's interests in relation to FCG's other customers as FCG

[3] In response to Commission Staff Data Request No. 1, FCG stated that if there is no contract and no service under the KDS schedule, FCG is required by statute to charge the County only rates that have been approved by the Commission, which would be one of the other rate schedules in the tariff. The Flexible Gas Service is a lawfully approved rate schedule which expressly states:

> Customers, the Company shall not be precluded from using the schedule to keep existing Customers from leaving its system. Flexible gas service rates for existing Customers, shall be determined on a case-by-case basis. If this Rate Schedule is applied to an existing Customer, in addition to excluding all incremental capital costs from rate base, the existing depreciated cost of the gas service line, metering equipment and any other facilities that were specifically installed to serve the particular Customer shall be removed from rate base. Also, a portion of the depreciated costs of common distribution mains reflecting that Customer's distance from the nearest point on an interstate Gas Pipeline and the size of pipe required to serve that Customer's peak demand for gas shall be removed from rate base. FCG Natural Gas Tariff, Vol. 8, Sheet No. 48.

should not be permitted to charge the County excessive rates without any ramification on the rates FCG charges its other customers.

Additionally, FCG should not be rewarded for misleading the County during contract negotiations during which the County was advised by FCG that approval of the agreed-upon contract rates was ministerial in nature. Instead, FCG should be held accountable for its actions and the contractual commitment FCG made to the County in the 2008 Agreement.

Even assuming, *arguendo*, that FCG is entitled to the incremental cost of serving the County's facilities to meet its revenue requirements, and further assuming that such incremental costs exceed the revenue generated under the 2008 Agreement contract rates, such cost is a far cry from the amount FCG has been billing the County as a GS-1250K customer.

According to information provided to the County from Melvin Williams, FCG's General Manager, FCG's incremental cost to annually serve the lime facility and the generators at the Alexander Orr Water Plant increased from [redacted] in 1999 to $[redacted] in 2008. The annual incremental cost to serve the lime facility at the Hialeah Water Plant and the generators at the South District Wastewater Plant (Blackpoint) increased from $[redacted] in 1999 to $[redacted] in 2008. In FCG's Responses to Staff's Data Request No. 1 (filed February 16, 2010), FCG asserts that the

December 2009 Surveillance Report indicates that the total incremental cost to serve the Alexander Orr Plant and the Hialeah/South District Plants was $[redacted] and $[redacted] respectively. Although FCG claims that the County should only be responsible for paying the incremental cost (approximately $[redacted], FCG's billings using the GS 1250K Rate Schedule is approximately [redacted] per year.

In light of the fact that FCG has a gas transmission line that only serves the Alexander Orr Water Treatment Plant, a 30-year old gas line that serves Hialeah's Water Treatment Plant and a gas line that the County paid FCG $300,000 to design, construct, maintain and operate for the South District Wastewater Treatment Plant, FCG should be required to explain to the Commission and the County the basis for the substantial increase in the cost of operations and maintenance and depreciation between 1999 and 2009 for these facilities. FCG must also establish that the excessive revenues generated from its proposed charges to the County do not place FCG in an overearnings situation.

The complaint does not duplicate all issues pending in Docket No. 090539-GU. Although the Petition pending in Docket No. 090539-GU will address many issues including the cost of transportation service to the County, certain issues raised by the complaint such as whether FCG would

overearn if allowed to increase the County's rate by 670% is not a duplicative issue. Furthermore, FCG objected during the informal issues conference in Docket No. 090539-GU to having certain issues heard in that docket because FCG asserted that such issues would be addressed in the instant proceeding.

Since the complaint states a cause of action, is not duplicative of issues in Docket No. 090539-GU and is not premature, FCG's motion to dismiss should be denied.

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by U.S. Mail this 8 day of July, 2010 to:

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By: _____
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