

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Miami-Dade County through  
The Miami-Dade Water and Sewer Department  
for Approval of Special Gas Transportation  
Service Agreement with Florida City Gas

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Docket No. 090539-GU

(FULL VERSION)

DIRECT TESTIMONY

OF

GREGORY HICKS

ON BEHALF OF MIAMI-DADE COUNTY WATER AND SEWER  
DEPARTMENT

**CONFIDENTIAL**

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**DECLASSIFIED**

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THE STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION

RE: In re: Petition of Miami-Dade County through  
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MIAMI-DADE WATER AND SEWER DEPARTMENT

1 Q: **PLEASE STATE YOUR NAME AND ADDRESS.**

2 A: My name is Gregory Hicks and my business address is 3071 SW 38 Avenue, Coral Gables,  
3 Florida 33146.

4 Q: **BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

5 A: I am employed by Miami-Dade County's Water and Sewer Department. I have been a Dade  
6 County employee for twenty-three (23) years and have held several positions. I am currently  
7 the Acting Chief, Procurement and Stores.

8 Q: **WHAT ARE YOUR RESPONSIBILITIES?**

9 A: I am in charge of procuring all materials, goods and equipment necessary for the Water and  
10 Sewer Department's operations. This includes the purchase and transportation of natural gas  
11 that is used to fuel the Department's water and wastewater treatment plants and specifically for  
12 the lime kilns at the Alexander Orr Water Treatment Plant and the Hialeah-Preston Water  
13 Treatment Plant.

14 Q: **PLEASE PROVIDE SOME BRIEF INFORMATION ON YOUR BACKGROUND**  
15 **AND EXPERIENCE.**

16 A: My education includes an Associate Science degree from Miami-Dade Community College  
17 Marketing Management, an Associate of Arts degree from Miami-Dade Community College in  
18 Pre-Business Administration, and a Bachelor of Arts degree in Professional Studies from Barry  
19 University. I received my certification as a Professional Public Buyer (CPPB) from the  
20 National Institute of Governmental Purchasing. My work experience includes twenty two (22)  
21 years of public purchasing and contracting in a wide variety of commodities, services, and  
22 capital construction matters.

23 Q: **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

24 A: The purpose of my testimony is to set forth the facts regarding Miami-Dade's gas  
25 transportation services agreement with Florida City Gas which are included in the contract

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1 | which I will call the "2008 Agreement."

2 | **Q: HOW WERE YOU INVOLVED IN THE CONTRACT NEGOTIATIONS BETWEEN**  
3 | **FLORIDA CITY GAS AND MIAMI-DADE COUNTY?**

4 | A: Since 1998, Miami-Dade has obtained its gas supply from a third-party and uses less than  
5 | two miles of Florida City Gas' local distribution system to transport the gas to our treatment  
6 | plants. The natural gas is primarily used to fuel the lime kilns that produce lime for the water  
7 | treatment process. The gas is also used to power high service pumps that pump water through  
8 | Miami-Dade's water distribution system. Approximately a year prior to the expiration of the  
9 | 1998 Transportation Services Agreement, which I will call the "1998 Agreement," with Florida  
10 | City Gas, which I will refer to as "FCG," I began working with Miami-Dade's natural gas  
11 | consultant, Langer Energy Consulting, Inc. and its president, Jack Langer on the renewal of that  
12 | agreement.

13 | Pursuant to the 1998 Agreement, on May 31, 2007, Tom Segars, Miami-Dade's Chief of Water  
14 | Production Division, sent a letter to FCG giving notice of our intent to renew the agreement at  
15 | its present rates and conditions for an additional 10 years.

16 | Mr. Langer then pursued the negotiations with FCG and kept me informed regularly of his  
17 | communications with FCG representatives regarding the renewal. Following a lengthy meeting  
18 | with FCG representatives in October 2007, Mr. Langer advised me that FCG agreed to continue  
19 | its business relationship with Miami-Dade for an additional 10 years at the same rates and  
20 | conditions.

21 | On March 6, 2008, our Director sent a letter to FCG to confirm the renewal and stated that the  
22 | renewal agreement would commence on July 1, 2008 following approval by the  
23 | Miami-Dade County Board of County Commissioners and the Mayor. On March 13, 2008,  
24 | these terms were agreed to and accepted by Ed Delgado, Major Accounts Representative, on  
25 | behalf of FCG.

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1 The 2008 Agreement was subsequently executed by Ed Delgado, Major Accounts Executive, on  
2 behalf of FCG, a subsidiary of Atlanta Gas Light, which I will refer to as "AGL." The 2008  
3 Agreement included the same rates as the 1998 Agreement. We were then informed by FCG's  
4 representatives that the 2008 Agreement had to be forwarded to AGL's legal department in  
5 Atlanta for review.

6 On May 8, 2008, Errol West, FCG's Manager, Market Development, informed Mr. Langer that  
7 FCG granted Ed Delgado permission to sign the 2008 Agreement.

8 On May 29, 2008, FCG's representatives told Mr. Langer to contact Joanne Abrams, an  
9 attorney with AGL Resources. Mr. Langer spoke to Ms. Abrams who was not aware of the  
10 2008 Agreement and asked that it be sent to her for review.

11 On May 30, 2008, I emailed the 2008 Agreement to Ms. Abrams and informed her that it is  
12 scheduled to begin on July 1, 2008 and must be approved by the Board of County  
13 Commissioners. I also told her that the Department's attorney requested AGL Resources'  
14 counsel confirm Mr. Delgado's authority to execute the 2008 Agreement.

15 On June 26, 2008, a few days prior to the expiration of the 1998 Agreement, Mr. Langer  
16 advised me that AGL agreed with the terms in the 2008 Agreement but wanted it to be approved  
17 by the Florida Public Service Commission. We did not understand why Commission approval  
18 was being sought by FCG at this time as the 1998 Agreement did not require Commission  
19 approval and we later learned that FCG in fact never had filed the 1998 Agreement with the  
20 PSC. Since the 2008 Agreement would not be fully executed by July 1, 2008, FCG proposed  
21 amending the 1998 Agreement to address the gap period between July 1, 2008 and the date of  
22 approval by the PSC of the 2008 Agreement.

23 On July 21, 2008, I received the 2008 Agreement and a proposed First Amendment to the 1998  
24 Agreement. The 2008 Agreement had several changes including making the renewal contingent  
25 on approval by the PSC. The First Amendment to the 1998 Agreement extended the 1998

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1 Agreement until the effective date of the 2008 Agreement.

2 On July 31, 2008, I asked Ms. Abrams to send a working copy with tracked changes of the 2008  
3 Agreement and advised that we intended to deal with the short term extension and long term  
4 renewal at the same time. Finally, I stated that AGL will have the "ball in their court" for PSC  
5 agenda placement and rate approval.

6 Shortly after receiving my email, Ms. Abrams sent the redlined 2008 Agreement with a general  
7 list of the changes. The Agreement was changed by FCG/AGL from referencing the Contract  
8 Interruptible Large Volume Transportation Service Rate Schedule to referencing the Contract  
9 Demand Service Rate Schedule. There was no language regarding incremental cost of service  
10 and the issue was never raised by FCG/AGL representatives. FCG's representatives did not  
11 attach any significance to the change in the referenced rate schedules. Neither FCG nor AGL  
12 proposed any changes to Article VII, Rates and Charges for Service, of the 2008 Agreement  
13 which provides that the County shall continue to pay FCG same rates as previously paid under  
14 the 1998 Agreement which are as follows: \$0.010 per therm for the Orr Plant; \$0.030 per therm  
15 for the Hialeah Plant; and \$0.030 per therm for the South District Plant.

16 There were no discussions at any time leading up to the signing of the 2008 Agreement, and  
17 certainly no agreement, that the Department could be treated as a GS-1250K customer or that  
18 the Department would be subject to a monthly customer charge or monthly demand charge  
19 pursuant to such service classification. Instead, we understood that the 2008 Agreement was a  
20 special contract that by definition changed the terms of whatever rate schedule was identified in  
21 the 2008 Agreement so the schedule referenced in it was not particularly significant.

22 On August 21, 2008, Ms. Abrams emailed executed versions of the 2008 Agreement and First  
23 Amendment to the 1998 Agreement. Both were executed by Henry Linginfelter, President of  
24 Pivotal Utility Holdings Inc. D/B/A Florida City Gas.

25 Since the Board of County Commissioners was in recess, the County Mayor or his designee had

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1 authority to take certain actions including the execution of agreements subject to the Board's  
2 ratification. The County Mayor's designee signed both the 2008 Agreement and the First  
3 Amendment to the 1998 Agreement. Both Agreements were presented to the County Board and  
4 ratified on October 7, 2008.

5 **Q. WHAT HAPPENED AFTER THE 2008 AGREEMENT WAS RATIFIED BY MIAMI-**  
6 **DADE?**

7 A. On behalf of Miami-Dade, Mr. Langer monitored the 2008 Agreement and FCG's progress  
8 before the PSC. Mr. Langer advised us that FCG submitted an application for approval in  
9 November. He also stated that he spoke with Connie Kummer, PSC Staff, who informed him  
10 that there was no reason for the County's involvement in the matter or that Miami-Dade had to  
11 file anything in the docket.

12 While FCG's approval application was pending, neither I nor anyone else at Miami-Dade nor  
13 our consultant, Jack Langer, ever received any requests for information from either FCG or the  
14 PSC. I did not hear anything from FCG until they informed Mr. Langer that they wanted to  
15 meet in February 2009 to discuss the 2008 Agreement. Mr. Langer and I met with FCG on  
16 February 11, 2009. In attendance from FCG were: Melvin Williams, Assistant General  
17 Manager; Carolyn Bermudez, Manager, Business Operations; Errol West, Manager, Market  
18 Development; and Ed Delgado, Major Accounts Executive.

19 These FCG representatives said that PSC Staff had concerns about the "cost of service"  
20 calculation used by FCG to arrive at the proposed Miami-Dade rates. They provided us with a  
21 copy of what they described as a "Rate Design Comparison and Margin Comparison" for the  
22 2008 Agreement. They did not give us any written communications between PSC Staff and  
23 FCG or any other documents that they had submitted to the PSC.

24 We were shocked to hear that the PSC informed FCG that the 2008 Agreement would be  
25 rejected because the rates allegedly were too favorable. FCG stated for the first time that much

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1 of WASD's cost of service is being subsidized by the other retail customers. However, FCG  
2 never showed us how they arrived at the cost of service or the "comparison" and never provided  
3 any substantiation, documents or otherwise, for this statement or for their actual cost to serve  
4 Miami-Dade. The FCG representatives informed us that the rates must be increased by 300%.  
5 FCG did not inform us of the possibility that they would withdraw their application for approval  
6 of the 2008 Agreement from the PSC.

7 We were surprised to find out on March 13, 2009 that FCG had withdrawn its petition for  
8 approval of the 2008 Agreement on February 17, 2009 without any notification to us.

9 **Q. WHAT WAS MIAMI-DADE'S RESPONSE TO FCG'S DEMAND FOR A 300%**  
10 **INCREASE IN THE 2008 AGREEMENT RATES?**

11 A. On March 18, 2008, Mr. Langer sent a letter objecting to FCG's proposed 300% rate  
12 increase. Miami-Dade requested that FCG abide by the terms of the 2008 Agreement. We  
13 informed FCG that many business decisions such as bypass were considered since 2007 when  
14 Miami-Dade first sent notice of its intent to renew but were not exercised because WASD relied  
15 on FCG's good faith in negotiating and abiding by the 2008 Agreement. We did not understand  
16 why there was any question by PSC staff as to the legitimacy of the rates in the 2008 Agreement  
17 as FCG never even questioned the adequacy of the rates.

18 We asked FCG to resubmit the 2008 Agreement to the PSC for approval and attempt in good  
19 faith to secure the Commission's approval of it.

20 WASD's Deputy Director Joe Ruiz, Jack Langer and I met several times with FCG and AGL  
21 representatives subsequent to Mr. Langer's March 2008 letter to attempt to convince FCG to re-  
22 file the 2008 Agreement and work with us toward getting PSC approval. At a meeting on May  
23 21, 2009, Melvin Williams informed us that he had negotiated a 5-year rate freeze for all  
24 customers which we thought should have included Miami-Dade. Instead he said that meant  
25 FCG's other customers could not subsidize any of FCG's cost of serving us. We were perplexed



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1 at this statement as these were the first meetings at which FCG raised the issue of any kind of  
2 subsidy. Upon investigation, nearly a year later, we discovered the Commission's Positive  
3 Acquisition Adjustment Order, Order No.PSC-07-0913, that provided for a 5-year rate freeze on  
4 FCG's base rates only, beginning in October 2007. From the beginning of negotiations in May  
5 2007 until execution of the Agreement in August 2008, no one from FCG or AGL mentioned  
6 any rate freeze or that the agreed-upon 2008 Agreement rate does not meet their incremental  
7 cost of service or that other FCG customers allegedly were subsidizing service to Miami-Dade.  
8 We noted among ourselves that FCG's agreement to continue to charge Miami-Dade the rates  
9 provided in the 1998 Agreement for another 10 years was consistent with its agreement to a five  
10 year base rate freeze for FCG's other customers.

11 **Q. DID FCG'S MR. WILLIAMS INFORM MIAMI-DADE OF ANYTHING ELSE**  
12 **DURING THE MEETING OF MAY 21, 2009?**

13 A. Yes. Mr. Williams threatened to terminate Miami-Dade's transportation service if we did not  
14 agree to change the 2008 Agreement to increase the rates by the 300% rate. He also threatened  
15 to terminate the First Amendment to the 1998 Agreement. In July 2009, FCG provided us with  
16 a notice of such termination.

17 In July 2009, FCG also unilaterally began invoicing Miami-Dade using the GS-1250K rate  
18 schedule. This was used for each of our four accounts, two accounts for Alexander Orr and one  
19 each for Hialeah and South District. Initially we paid the amount under written protest but since  
20 the new rates resulted in a 670% annual increase over the agreed-upon 2008 Agreement rates,  
21 and since FCG failed to even permit the PSC the opportunity to consider the 2008 Agreement,  
22 we determined that it would be grossly unjust for FCG to receive such a rate based on FCG's  
23 own self-serving actions.

24 Miami-Dade has since paid FCG for transportation services based on the 2008 Agreement rate  
25 and placed the disputed amount in a segregated account. We believe that for the reasons and

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1 facts I and other Miami-Dade witnesses are providing in this proceeding that the over-payments  
2 we made based on the GS-1250K rate schedule should be refunded to Miami-Dade.

3 **Q: IN YOUR 20 YEARS OF WORKING IN PROCUREMENT, HAVE YOU EVER**  
4 **SEEN A CONTRACTOR OR UTILITY THAT ACTED IN THE WAY FCG HAS**  
5 **CONDUCTED ITSELF IN THIS MATTER?**

6 A: Never. I have never seen a contractor or utility treat its customer, much less its largest  
7 transportation customer, the way FCG has treated the Department. It is very unprofessional and  
8 not the way business is or should be done. It is inconceivable that the Public Service  
9 Commission would force Miami-Dade to pay higher rates than FCG, its President, and its parent  
10 company, AGL, all agreed to accept in a written contract negotiated with Miami-Dade over an  
11 extended period of time.

12 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13 A: Yes.

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