

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

Docket No. 090539-GU

(REDACTED VERSION)

DIRECT TESTIMONY

OF

JACK LANGER

**ON BEHALF OF MIAMI-DADE COUNTY WATER AND SEWER
DEPARTMENT**

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DIRECT TESTIMONY
OF
JACK LANGER
TO
THE STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

RE: 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

Docket No. 090539-GU

December 29, 2010

DIRECT TESTIMONY OF JACK LANGER ON BEHALF OF
MIAMI-DADE WATER AND SEWER DEPARTMENT

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Jack Langer and my business address is 913 Andalusia Avenue, Coral
3 Gables, Florida, 33134.

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

5 A. I am self-employed. I am Chief Executive Officer and President of Langer Energy
6 Consulting, Inc.

7 Q. WHAT DOES LANGER ENERGY CONSULTING, INC. DO?

8 A. Langer Energy Consulting Inc., which I will refer to as LEC provides consulting
9 services to several customers including the Miami-Dade Water and Sewer
10 Department which I will refer to as "Miami-Dade" or "WASD." LEC advises the
11 Department on all issues relating to natural gas. The contract's scope of services
12 generally requires LEC to ensure continuous natural gas supply in normal and
13 emergency environments, while identifying and exploring all opportunities for natural
14 gas cost savings for WASD. The work includes but is not limited to: evaluating
15 potential cost savings and risks associated with each viable gas transporter and
16 supplier; providing technical assistance during meetings and negotiations of
17 agreements; providing technical support in securing capacity reservation in local and
18 national pipelines, either through negotiations with Florida Gas Transmission
19 Company or "FGT" and Florida City Gas, "FCG", or by purchasing capacity from
20 other transporters directly to the water and wastewater treatment plants; oversight of
21 FCG, FGT and others for accurate gas metering and telemetry capabilities to be
22 properly installed on WASD equipment as needed for WASD to purchase third party
23 gas on a direct basis; review, evaluate and advise on natural gas transportation
24 invoices for WASD treatment plants; and review and assist with planning and
25 negotiations for renewal of a Transportation Service Agreement with FCG. I

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1 specifically advise Greg Hicks, the Department's Procurement Chief and Joe Ruiz,
2 the Department's Deputy Director in charge of Operations.

3 **Q. PLEASE PROVIDE YOUR EDUCATION AND WORK BACKGROUND.**

4 A. I have a bachelor's degree in Business and Finance from the University of Miami. I
5 have been involved in the natural gas industry for over 50 years. My family owned
6 and operated FCG between 1949 and 1991. We subsequently sold FCG and I later
7 began LEC.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

9 A. The purpose of my testimony is to set forth the facts regarding Miami-Dade's gas
10 transportation agreement with FCG which I will refer to as the "2008 Agreement."

11 **Q. CAN YOU PROVIDE THE COMMISSION A FACTUAL TIME-LINE AND**
12 **BACKGROUND OF THIS DISPUTE?**

13 A. Yes, I can. Miami-Dade County owns, and the Miami-Dade Water and Sewer
14 Department operates, the Alexander Orr Water Treatment Plant and the Hialeah-
15 Preston Water Treatment Plant. The Orr Plant is located at 6800 SW 87th Avenue,
16 Miami, Florida. The Hialeah Plant is located at 700 W. 2nd Avenue, Hialeah, Florida.
17 Both plants produce their own lime for the water treatment process. The County uses
18 natural gas to fuel the lime kilns and other gas burning equipment. The kilns operate
19 24 hours a day, 7 days a week, 365 days a year. The Department uses over 6 million
20 therms of gas each year for their plants.

21 **Q. I SHOW YOU EXHIBIT ___ (JL-1) UNDER COVER PAGE ENTITLED "1986**
22 **MILLER GAS AGREEMENT." WAS THIS EXHIBIT PREPARED BY YOU**
23 **UNDER YOUR DIRECTION AND SUPERVISION?**

24 A. Yes, it was.

25 **Q. PLEASE BRIEFLY DESCRIBE THIS EXHIBIT?**

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1 A. This exhibit consists of a copy of an agreement between Miami-Dade and Miller Gas
2 Company dated 1986, which I will refer to as the "1986 Miller Gas Agreement." This
3 agreement required Miller Gas to pay for and install approximately 3,700 feet of
4 dedicated pipeline from its gate station to the Orr Plant. The pipe was later conveyed
5 to FCG when FCG acquired Miller Gas. Between 1986 and 1997, Miami-Dade
6 purchased natural gas from Miller Gas, then FCG.

7 **Q. DID ANY CHANGES OCCUR IN THE NATURAL GAS INDUSTRY IN**
8 **FLORIDA?**

9 Yes, in 1990, the sale of natural gas was deregulated and in 1997, Miami-Dade began
10 purchasing gas on the spot market and considered bypassing FCG's local distribution
11 system and having the gas delivered directly to the water treatment plants from FGT's
12 main transmission line. I represented the County in negotiating new contract terms
13 with FCG for the transportation of natural gas to the water treatment plants in lieu of
14 such a bypass.

15 Despite the Department being FCG's largest customer, FCG initially refused to
16 discount their standard transportation rates. Consequently, Miami-Dade's Board of
17 County Commissioners approved an agreement with FGT for construction of
18 facilities for direct access to the statewide distribution system, which would by-pass
19 FCG's lines.

20 In January 1998, FGT filed an application with the Federal Energy Regulatory
21 Commission ("FERC") for approval to construct a tap, meter station and short lateral
22 to allow Miami-Dade to receive natural gas for their Orr Plant Meter Station directly
23 from FGT.

24 **Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-2) TITLED "FERC**
25 **APPROVAL OF ORR BYPASS." DO YOU RECOGNIZE IT?**

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1 A. Yes. This is a copy of the FERC Order dated April 14, 1998 approving the bypass to
2 the Orr Plant Meter Station.

3 **Q. WHAT OCCURRED AS A RESULT OF THE FERC ORDER?**

4 A. In light of the bypass approval by the FERC and to avoid the loss of its largest
5 customer, FCG agreed to a substantial reduction of their transportation charges to
6 WASD and entered into an Agreement with Miami-Dade effective on July 1, 1998.

7 **Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-3) TITLED "1998**
8 **AGREEMENT." WAS THIS EXHIBIT PREPARED BY YOU OR UNDER**
9 **YOUR DIRECTION AND SUPERVISION AND, IF SO, COULD YOU**
10 **PLEASE DESCRIBE IT?**

11 A. This exhibit includes a copy of the Natural Gas Transportation Agreement between
12 NUI Corporation and Miami-Dade, which I will refer to as the "1998 Agreement."
13 NUI was the parent company of FCG in 1998. The 1998 Agreement was for 10 years
14 and allowed Miami-Dade to request renewal for an additional 10 years. The 1998
15 Agreement provided the following maximum annual quantities of gas and rates per
16 therm:

17	Alexander Orr Water Treatment Plant - 4,200,000 Therms	-\$0.010
18	Hialeah Facility - 3,300,000 Therms	-\$0.030
19	South District Wastewater Treatment Plant - 400,000 Therms	-\$0.030

20 The 1998 Agreement also required Miami-Dade to pay FCG a one time "Aid to
21 Construction" charge of \$300,000 for FCG to design, construct, own, maintain and
22 operate natural gas service lines and related facilities to enable FCG to transport gas
23 to Miami-Dade's South District Wastewater Treatment Plant located at 8950 SW 232
24 Street, Miami, Florida, in sufficient size to meet Miami-Dade's demand of 400,000
25 annual therms. The Agreement also provided for Miami-Dade to reimburse FCG the

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1 amount of \$825.00 per meter for any telemetry equipment required at the plant.
2 Therefore, FCG made no investment in the pipe or the meter or telemetry equipment
3 serving the South District Wastewater Treatment Plant.

4 **Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-4) TITLED "FERC**
5 **APPROVAL OF HIALEAH AND SOUTH DISTRICT BYPASS." DO YOU**
6 **RECOGNIZE IT?**

7 A. Yes. Following entry of the 1998 Agreement, FERC entered an Order Denying
8 Protests and Authorizing Construction of bypass facilities to Miami-Dade's Hialeah-
9 Preston Meter Station and the Miami-Dade South Meter Station. Since the 1998
10 Agreement with FCG was then in place, Miami-Dade did not exercise its right to
11 bypass. However, both of the FERC Orders are still effective and allow Miami-Dade
12 to bypass FCG's local distribution system.

13 **Q. DID FCG OR ITS SUCCESSORS SAY ANYTHING TO YOU ABOUT THE**
14 **RATES OR COST OF SERVICE DURING NEGOTIATIONS OF THE 1998**
15 **AGREEMENT?**

16 A. During the negotiation of the 1998 Agreement and for the 10 years that the 1998
17 Agreement was in effect, FCG never mentioned that the rates were too low or that the
18 rates did not meet FCG's cost of service for transporting gas to the water treatment
19 plants. Also, after AGL Resources purchased the stock of NUI and FCG in 2004, and
20 after AGL and FCG began operating the pipelines, neither AGL nor FCG informed
21 Miami-Dade that the rates were too low or did not meet their incremental cost of
22 service.

23 Between 1998 and 2008, there were no issues regarding quality of service and only
24 routine maintenance was performed by FCG on the facilities serving Miami-Dade.

25 **Q. PLEASE TELL US ABOUT THE PARTIES' NEGOTIATION OF THE**

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1 Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-6) TITLED "FCG
2 ERROL WEST, MAY 8, 2008 LETTER TO JACK LANGER AUTHORIZING
3 SIGNING OF THE 2008 AGREEMENT." DO YOU RECOGNIZE THIS
4 EXHIBIT?

5 A. Yes.

6 Q. PLEASE DESCRIBE THIS EXHIBIT.

7 A. On May 8, 2008, I received this letter from Errol West, Manager, Market
8 Development for FCG. In this letter, Mr. West stated that FCG had granted Ed
9 Delgado permission to sign the 2008 Agreement. He included the 2008 Agreement
10 executed by Mr. Delgado with the letter.

11 However, FCG's corporate seal was not affixed to the Agreement and WASD
12 requested that I inquire whether the corporate seal was necessary. FCG referred me
13 to Joanne Abrams, the lawyer at AGL Resources, FCG's parent company. Ms.
14 Abrams advised that she was not aware of the 2008 Agreement and requested a copy
15 along with Mr. West's letter.

16 I sent the 2008 Agreement to Ms. Abrams on May 30, 2008 and kept Greg Hicks at
17 WASD apprised of all communications.

18 Q. WHAT HAPPENED NEXT REGARDING THE 2008 AGREEMENT?

19 Several times I inquired as to the status of the 2008 Agreement and FCG's
20 representatives advised that it was being reviewed by AGL's management and legal
21 staff. On June 26, 2008, I spoke with Ed Delgado who told me that the people in
22 Atlanta reviewed the Agreement and agreed with the terms including the rates but
23 that they wanted the Florida Public Service Commission to approve it. As I stated
24 earlier, it is important to note that no one from FCG or AGL ever stated that the rates
25 in the 2008 Agreement were too low or that they did not meet FCG's cost of service,

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1 incremental or otherwise.

2 **Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-7) TITLED "2008**
3 **AGREEMENT." PLEASE DESCRIBE THIS DOCUMENT.**

4 A. This is the Natural Gas Transportation Agreement between FCG and Miami-Dade
5 County which is for a 10-year term and has the same rates as the 1998 Agreement. It
6 was executed by the parties on August 28, 2008. One significant change from the
7 1998 Agreement is the requirement of PSC approval which FCG insisted upon at the
8 eleventh hour. It was agreed to by Miami-Dade because FCG informed me that PSC
9 approval was ministerial. In fact, FCG suggested that it would only take 60 to 90
10 days to secure the PSC's approval.

11 **Q. I SHOW YOU WHAT IS MARKED AS EXHIBIT __ (JL-8) TITLED "FIRST**
12 **AMENDMENT TO 1998 AGREEMENT." WHAT IS THIS EXHIBIT?**

13 A. Since the 2008 Agreement was not executed prior to the expiration of the 1998
14 Agreement, the parties agreed to extend the 1998 Agreement on a month to month
15 basis until the 2008 Agreement was approved. This exhibit provides a copy of the
16 Amendment to the 1998 Agreement extending its term, which I will refer to as the
17 "Amendment to the 1998 Agreement."

18 It is interesting and important to note that unlike the 2008 Agreement, FCG never
19 stated in any conversations we had that the Amendment to the 1998 Agreement
20 needed PSC approval, FCG did not include any condition for PSC approval in the
21 Amendment and FCG did not bring the Amendment to the PSC for approval.

22 **Q. WHAT HAPPENED WITH FCG'S REQUEST FOR PSC APPROVAL?**

23 Since FCG is the regulated utility and is thus obliged to be familiar with PSC
24 requirements and procedures, Miami-Dade relied on FCG to diligently obtain PSC
25 approval of the 2008 Agreement. However, even though the 2008 Agreement was

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1 executed on August 28, 2008, I had not heard anything from FCG about the status of
2 PSC approval, and neither Miami-Dade nor I received a copy of FCG's petition until
3 I inquired of Mr. Delgado on November 26, 2008. In response to my inquiry, Mr.
4 Delgado advised that a petition for approval was recently filed and provided me with
5 the docket number. I found out that the petition was filed on November 18, 2008. In
6 December, I called PSC staff to inquire on the progress of the request for approval. I
7 spoke to Connie Kummer and asked whether Miami-Dade needed to do anything.
8 She advised me that it was a procedural matter and that Miami-Dade did not need to
9 take any action.

10 After my discussion with Connie Kummer, I monitored the progress of FCG's
11 petition by communicating with FCG's local staff. However, I was surprised to find
12 out from FCG's representatives in February 2009 that the matter was not on the PSC
13 Agenda for February for consideration by the Commissioners even though FCG was
14 supposed to obtain Commission approval of the 2008 Agreement by February 24,
15 2009.

16 On February 11, 2009, Greg Hicks and I met with several people from FCG to
17 discuss the status of the 2008 Agreement. FCG's representatives included Melvin
18 Williams, Assistant General Manager, Carolyn Bermudez, Manager, Business
19 Operations, Errol West, Manager, Market Development and Ed Delgado, Major
20 Accounts Representative.

21 FCG's representatives informed us that the PSC staff raised several questions and
22 concerns regarding the terms of the 2008 Agreement. No one from FCG provided us
23 with any documents from the PSC or any orders from the PSC. FCG's representatives
24 only stated that the major issue was the cost of service calculation used by FCG to
25 arrive at the proposed rates. FCG's representatives informed us that PSC staff had

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1 told them that the petition would be rejected and the 2008 Agreement not approved
2 because the rates were too favorable to Miami-Dade and that much of WASD's cost
3 of serving Miami-Dade was subsidized by other retail customers. However, the
4 matter had not been heard or considered by the Commission, no written
5 recommendation was provided by PSC Staff to the Commission and FCG never
6 informed Miami-Dade that they intended to withdraw the petition from PSC
7 consideration. FCG's subsequent withdrawal of the petition was based only on
8 alleged communication with PSC Staff. It should be noted that PSC Staff never
9 requested any information from Miami-Dade. PSC Staff also did not ask Miami-
10 Dade to verify information regarding service to Miami-Dade. The only document
11 provided to Miami-Dade by FCG at the meeting was a chart titled "Rate Design
12 Comparison and Margin Comparison." This was given to us by Melvin Williams and
13 he did not state that it was confidential.

14 **Q. I SHOW YOU EXHIBIT___ (JL-9) TITLED "MIAMI-DADE WATER PLANT**
15 **- RATE DESIGN COMPARISON." CAN YOU KINDLY DESCRIBE THIS**
16 **EXHIBIT?**

17 **A.** Yes. This exhibit includes a copy of the chart FCG gave to us on February 11, 2009.

18 **Q. IS THIS THE FIRST INFORMATION WHICH FCG PROVIDED TO MIAMI-**
19 **DADE ALLEGEDLY TO ESTABLISH THE COST OF SERVING MIAMI-**
20 **DADE?**

21 **A.** To my knowledge, yes.

22 **Q. PLEASE BRIEFLY DESCRIBE THIS DOCUMENT.**

23 **A:** The document suggests that for the Orr Plant, FCG's "total incremental cost of
24 service" was allegedly \$74,048 and \$190,672 in 1999 and 2008, respectively. For the
25 Hialeah and South Dade Plants combined, FCG's "total incremental cost of service"

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1 was allegedly \$146,779 and \$223,497 in 1999 and 2008, respectively. The huge
2 jump between 1998 and 2008 does not make sense particularly when no major
3 maintenance changes were made and no additional capital costs were added to the
4 distribution system serving WASD. FCG did not explain to us how they came up
5 with these "incremental cost of service" amounts. The chart was alleged to compare
6 the incremental cost of service between 1998 and 2008. The rate that FCG suggested
7 needed to be substituted in the 2008 Agreement was approximately \$0.05 per therm, a
8 300% increase over the agreed-upon rates.

9 **Q. WHAT WAS MIAMI-DADE'S REACTION TO THIS SUGGESTION?**

10 A. They were shocked and believed they had a valid agreement in the form of the 2008
11 Agreement as written. I advised WASD that it was feasible for Miami-Dade to bypass
12 FCG. A capital cost of approximately \$650,000 for the Orr Plant would eliminate the
13 proposed per therm charge of \$0.05 and would save \$140,000 per year based on
14 3,500,000 therms. Over 10 years, the County would save \$1.4 million less the capital
15 investment.

16 **Q. HOW DO YOU UNDERSTAND "INCREMENTAL COST" TO BE DEFINED**
17 **FOR PURPOSES OF DETERMINING A REASONABLE RATE?**

18 A. I understand incremental costs to include the annual operating and maintenance costs
19 which include meter reading, billing and maintenance solely of the facilities added to
20 FCG's existing facilities in order to transport gas to Miami-Dade. The capital cost of
21 the incremental pipe and meters necessary to serve Miami-Dade may also be included
22 if the associated pipe or meters had not been paid for or contributed by Miami-Dade
23 or fully depreciated by FCG since they originally were placed into service.

24 **Q. HAS FCG PERFORMED AN INCREMENTAL COST ANALYSIS OR ANY**
25 **TYPE OF INCREMENTAL COST STUDY?**

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1 A. No. FCG never gave me or anyone at Miami-Dade any incremental cost study or
2 analysis. I only saw the one-page chart showing the cost comparison between 1999
3 and 2008 which I have included as Exhibit __ (JL-9). Also, in response to a staff data
4 request, FCG stated these represent average costs, not incremental costs.

5 **Q. HOW DID FCG ARRIVE AT THE AMOUNTS STATED AS "ACTUAL 2008"**
6 **COST OF SERVICE?**

7 A. Based on FCG's answers to discovery requests, Miami-Dade recently learned that
8 FCG provided this information to PSC Staff on January 9, 2009 in Response to Staff's
9 Second Data Request in Docket No. 080672-GU.

10 **Q. I SHOW YOU EXHIBIT __ (JL-10) TITLED "FCG CONFIDENTIAL**
11 **RESPONSE TO COMMISSION STAFF DATA REQUEST IN DOCKET**
12 **080672-GU." IS THIS THE DISCOVERY RESPONSE TO WHICH YOU ARE**
13 **REFERRING?**

14 A. Yes, this exhibit includes a copy of the January 9, 2009 FCG response to staff's data
15 request.

16 **Q. IS THE INFORMATION IN EXHIBIT __ (JL-10) CORRECT?**

17 A. No. For example, FCG states that the estimated cost to by-pass FCG services is
18 approximately \$██████████ for the Orr Plant. I do not know where FCG received this
19 information from but it is totally inflated and absolutely incorrect. I estimate the
20 bypass cost for Orr to be \$650,000. FCG also suggests that the cost to bypass the
21 Hialeah Plant is approximately \$██████████ which is also highly inflated. I estimate
22 the bypass cost for the Hialeah Plant to be approximately \$1.2 million. FCG also
23 states that it would cost \$██████████ for Miami-Dade to bypass the South Dade Plant.
24 Again, I believe this amount is wrong. FCG never stated the basis for these amounts
25 and FCG did not share the information with Miami-Dade for verification or even for

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1 informational purposes before or after providing it to PSC Staff. This was
2 disconcerting to Miami-Dade since they thought they had a good relationship with
3 FCG and, as FCG's largest transportation customer, believed Miami-Dade deserved
4 better treatment.

5 Also, a footnote in the FCG chart presented in Exhibit ____ (JL-9) states that FCG
6 used "Approved Customer Cost Allocation Factors from Order PSC-04-0128-PAA-
7 GU dated 2/9/04 pg 95" to calculate the incremental cost rate. This was the first
8 indication that FCG had not performed an incremental cost study despite FCG having
9 identified the information provided in its charge as "incremental cost of service" data,
10 which it obviously is not.

11 **Q. WHAT RATE SCHEDULE FROM FCG'S TARIFF DID FCG APPLY TO**
12 **MIAMI-DADE WHEN IT PROVIDED INFORMATION TO PSC STAFF IN**
13 **JANUARY 2009?**

14 **A.** Exhibit _ (JL-9) includes a copy of a document confirming that FCG applied the GS-
15 1250K rate schedule which charges fully embedded costs to customers using over
16 1,250,000 therms per year. FCG had 12 customers in 2003 that were billed at the GS-
17 1250K rate. One transportation customer was billed by FCG at the Contract Demand
18 Rate, which FCG also refers to as the "KDS Rate."

19 **Q. AS OF THE DATE YOU SUBMITTED THIS TESTIMONY, HAS ANYONE**
20 **FROM FCG OR FROM PSC STAFF EVER ASKED YOU OR MIAMI-DADE**
21 **FOR ANY INFORMATION THAT WOULD ASSIST IN DETERMINING**
22 **THE INCREMENTAL COST TO SERVE THE COUNTY?**

23 **A.** No.

24 **Q. DOES MIAMI-DADE HAVE INFORMATION THAT YOU BELIEVE MORE**
25 **ACCURATELY REFLECTS FCG'S ACTUAL INCREMENTAL COSTS TO**

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1 **SERVE THE COUNTY?**

2 A. Yes. For the Orr Plant, FCG owns a 4-inch gas line that is about 6000 feet in length
3 from the point it receives the County's gas at FGT's gate station to the meter
4 locations serving the Orr Plant.

5 **Q. PLEASE PROVIDE THE COMMISSION WITH THE LENGTH AND**
6 **INVESTMENT IN THE INCREMENTAL PIPE SERVING MIAMI-DADE.**

7 A. Yes. The original pipe to the Orr Plant was about 3700 feet and was installed by
8 Miller Gas pursuant to the 1986 Miller Gas Agreement with Miami-Dade, which I
9 have identified as Exhibit ____ (JL-1), earlier in my testimony. The cost to install the
10 original 3,700 feet of pipe was between \$110,000 and \$130,000. This equates to
11 approximately \$35.13 per foot which is in line with 1986 pricing for this size gas line.
12 The entire gas line is dedicated to serving only the County's Orr Plant. FCG suggests
13 that it has invested \$██████ in this line which appears excessive. I also recently
14 learned that on February 27, 2009, one residential customer was connected to that gas
15 line. The consumption for the residence is approximately 10-15 therms per month
16 and by comparison has no real effect on Miami-Dade or FCG since the consumption
17 at Orr is approximately 350,000 therms per month.

18 The pipe to the Hialeah-Preston Plant from the FCG system is very short -
19 approximately 200 feet from FCG's distribution system to the Hialeah Plant. I
20 estimate that the capital cost of the Hialeah pipe was approximately \$25,000,
21 dramatically less than the \$██████ which FCG claims as its investment in the pipe in
22 FCG's response to a Commission Staff inquiry. The pipe to the South Dade
23 Wastewater Treatment Plant cost \$300,000 and was paid in full by Miami-Dade in
24 "Aid of Construction" pursuant to the 1998 Agreement. Therefore, FCG has no
25 capital investment in the pipe unless a portion was replaced without the knowledge of

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1 **PETITION FOR APPROVAL OF THE 2008 AGREEMENT, WHAT**
2 **HAPPENED?**

3 A. WASD staff and I met on several occasions with FCG staff and we told FCG that we
4 had an agreement that was signed by Hank Linginfelter, as President of Pivotal Utility
5 Holdings Inc. and Vice-President of AGL Resources. We believed FCG failed to act
6 in good faith by withdrawing the Petition without a ruling from the PSC or even any
7 consideration by the PSC.

8 Miami-Dade and FCG had agreed on transportation rates and Miami-Dade believed
9 that FCG should abide by the terms of the 2008 Agreement. However, Melvin
10 Williams, FCG's manager, told us that he would not resubmit the 2008 Agreement to
11 the PSC. He also stated that FCG had agreed with the PSC to a 5-year rate freeze for
12 its customers. This was never mentioned during the period between May 2007 and
13 August 2008, when the 2008 Agreement was being negotiated and the rates were
14 agreed upon. Miami-Dade later learned that the PSC had issued an Order Granting a
15 Positive Acquisition Adjustment in 2007 which prevents FCG from any increase to
16 customer base rates.

17 **Q. NOTWITHSTANDING THE FACT THAT THE 2008 AGREEMENT**
18 **REFERRED TO THE CONTRACT DEMAND SERVICE RATE OR "KDS"**
19 **SCHEDULE, IS IT REASONABLE TO USE THE FLEXIBLE GAS SERVICE**
20 **RATE SCHEDULE?**

21 A. Yes. This rate is an approved rate schedule in FCG's tariff and it is more than
22 reasonable to have it applied in the 2008 Agreement. The Flexible Gas Service
23 ("Flex") Rate Schedule provides that FGT must separately account for all incremental
24 capital costs which then would be excluded from the rate base. The Flex rate also
25 requires FCG to perform an incremental cost analysis to determine the rate. It was

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1 my understanding that FCG would abide by the 2008 Agreement rates even if the
2 Agreement had referenced the Flexible Gas Service Rate Schedule or any other rate
3 schedule. It appears that FCG wanted to avoid referencing the more appropriate
4 Flexible Gas Rate Schedule since this schedule puts the burden of any shortfall
5 between the Agreement rates and FCG's incremental cost of service on FCG and its
6 shareholders. As FCG's Flexible Gas Service Rate Schedule states, "This tariff places
7 the Company's shareholders at risk, not the general body of ratepayers."

8 **Q: IS THERE ANY SHORTFALL BETWEEN THE REVENUES DERIVED BY**
9 **FCG UNDER THE 2008 AGREEMENT RATES AND THE TRUE**
10 **INCREMENTAL COST OF SERVICE?**

11 **A:** I did not think it was at all likely that there is a shortfall in light of the information I
12 have provided regarding the small capital investment of FCG in the pipes serving
13 Miami-Dade's three sites, how the pipes were paid for and the minimal incremental
14 costs for maintenance, meter reading and billing incurred for transporting gas to
15 Miami-Dade's sites. Miami-Dade hired a professional cost of service expert, Fred
16 Saffer, who performed a preliminary cost of service analysis using the information
17 available to Miami-Dade. Mr. Saffer's analysis confirms my belief that the 2008
18 Agreement rates are sufficient to pay for FCG's true incremental cost of serving
19 Miami-Dade.

20 **Q. WHAT IS THE RATE THAT FCG IS CURRENTLY BILLING MIAMI-**
21 **DADE?**

22 **A.** When Miami-Dade and FCG were at an impasse on having the PSC consider and rule
23 on the 2008 Agreement, Mr. Williams threatened to terminate gas transportation
24 service to Miami-Dade. Although FCG did not terminate the service, FCG began
25 charging the GS-1250K tariff rate in July 2009 suggesting that the 2008 Agreement

DIRECT TESTIMONY OF JACK LANGER ON BEHALF OF
MIAMI-DADE WATER AND SEWER DEPARTMENT

1 was not valid since it was not approved by the PSC within 180 days of August 28,
2 2008, the date it was executed.

3 This made WASD even more upset because the \$0.1225 margin rate per therm in the
4 GS-1250K tariff and other additional charges results in a 670% increase over the
5 2008 Agreement rates that were negotiated in good faith and agreed to by the parties.

6 In addition to the \$0.1225 per therm margin rate, FCG also charges the Department
7 the following under the GS-1250K tariff rate: \$500.00 monthly meter charge, \$.289
8 per therm demand charge and a competitive rate adjustment rate that was \$.0103 per
9 therm. The average of the total charges is \$0.147 per therm which provides
10 \$1,029,000.00 of annual revenue to FCG based on transporting 7,000,000 therms for
11 Miami-Dade per year. The same amount of therms at the agreed upon contract rate in
12 the 2008 Agreement is \$133,000. The rate schedule unilaterally imposed by FCG
13 would result in FCG receiving from Miami-Dade almost \$900,000 more than the
14 2008 Agreement rates. The GS-1250K rate for the transportation services to Miami-
15 Dade is clearly excessive, unreasonable and unjust.

16 **Q. DO YOU HAVE ANY OTHER FACTS FOR THE COMMISSION TO**
17 **CONSIDER?**

18 **A.** The 1998 Agreement was in effect for a decade with no problem. At no time during
19 that 10 year period did FCG, NUI or AGL ever mention that the rates were too low
20 and I, for one, assumed that since the rates were in effect for the previous 10 years
21 that, in the normal course of business, the PSC would have reviewed them and found
22 them to be acceptable. I have been in the gas industry business for over 50 years and
23 have never seen a regulated utility act in the manner that FCG has acted in this
24 matter. FCG should not be rewarded by the Commission by forcing, or attempting to
25 force, Miami-Dade to pay FCG higher rates. The Commission should approve the

**DIRECT TESTIMONY OF JACK LANGER ON BEHALF OF
MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 2008 Agreement as written.

2 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

3 **A.** Yes, it does.

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Docket No. 090539-GU
1986 Miller Gas Agreement
Exhibit _____ (JL-1)

LIME PLANT

Docket No. 090539-GU
1986 Miller Gas Agreement
Exhibit JL-1, page 1 of 14

GAS SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 16th day of April, 1986, between MILLER GAS COMPANY, hereinafter called "COMPANY" and METROPOLITAN DADE COUNTY, FLORIDA, hereinafter called "COUNTY".

WHEREAS, the COUNTY owns and operates the Alexander Orr, Jr. Water Treatment Plant located at 6800 S.W. 87th Avenue, Miami, Florida, hereinafter referred to as "Orr Plant";

WHEREAS, the COMPANY has furnished natural gas service to the water pumping equipment at the Orr Plant;

WHEREAS, the COUNTY has converted the lime kiln at the Orr Plant to operate on natural gas and desires natural gas service for operation of the kiln in addition to the water pumping equipment;

WHEREAS, the Orr Plant is located within the gas service area of the COMPANY as on file with and approved by the Florida Public Service Commission;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the COUNTY and COMPANY hereby agree as follows:

1. The COUNTY agrees to purchase from the COMPANY and the COMPANY agrees to sell to the COUNTY all natural gas requirements for the Orr Plant, but subject to the terms and conditions in this Agreement.

2. The COUNTY requires natural gas service for operation of the lime kiln by June 15, 1986, therefore, time is of the essence in this Agreement.

3. The COMPANY agrees to install, maintain and own, at its own cost and expense except as otherwise provided herein, approximately 3,715 feet of 4-Inch gas line, together with all necessary metering and regulation equipment and appurtenances, up to and including the outlet from the metering station, to supply natural gas to the lime kiln at the Orr Plant in accordance with the routing as specified by the Miami-Dade Water and Sewer Authority Department as reflected on Exhibit "A" attached hereto

3,715'
4" line

FCG claim
6,145'

FCG says
another line on
sw 64 pt. D
Cognizer

and made a part hereof. Existing connected gas facilities for the high pressure water pumping facilities at the Orr Plant will be utilized for continuation of natural gas supply presently provided by the COMPANY to the COUNTY when activated by COUNTY request.

4. It is anticipated by the COMPANY that the ordering, delivery and complete installation of the pipeline, metering equipment, and other necessary materials for supply of natural gas to the lime kiln will require approximately 90 days. Since time is of the essence in this Agreement, the COMPANY agrees to use its best efforts to complete installation of said facilities within the above-referenced time period which shall commence upon execution of this Agreement by both parties.

5. Should it become necessary to relocate the gas facilities described in Paragraph 3. above, the COMPANY shall be liable for all costs and expenses related to such relocation. However, notwithstanding the foregoing, if the COUNTY or any of its agencies should require said facilities to be relocated, then the cost and expense of such relocation shall be the responsibility of the COUNTY.

6. It is understood and agreed between the parties that gas service under this Agreement will be rendered pursuant to RATE SCHEDULE IS-LV, INTERRUPTIBLE GAS SERVICE-LARGE VOLUME as defined in the Natural Gas Tariff of the COMPANY filed with the Florida Public Service Commission and subject to the provisions of paragraphs 7 and 11 hereof. See copy of Rate Schedule IS-LV which is attached hereto as Exhibit "C".

7. If the COUNTY does not purchase 1,200,000 therms of gas per year it will not qualify for RATE SCHEDULE IS-LV (Exhibit "C"), in which case COUNTY agrees to be subject to all gas billings for that year under RATE SCHEDULE IS. A copy of RATE SCHEDULE IS is attached hereto as Exhibit "B". COUNTY shall pay COMPANY for any such differential within thirty (30) days of billing therefor.

8. Gas service provided under this Agreement will be for a period of two (2) years from the date of commencement of billing for gas service to the lime kiln as provided herein. However COUNTY shall have the right to terminate this Agreement at any time during the contract period, subject to the provisions of paragraph 9 hereof, by giving ninety (90) days written notice to the other party hereto. Minimum gas usage charges will not apply after a termination notice is given. The Agreement will automatically be renewed for successive one year periods unless terminated by either party as provided above.

one year periods

9. If the COUNTY elects to terminate service to the lime kiln during the initial two year period commencing with turn-on of service to the lime kiln, the COUNTY will reimburse Company for one twenty-fourth the cost of the pipeline installation and related metering and gas regulation equipment (referred to as "lime kiln gas facilities") for each full or partial month of the 24 months that remain from the date of turn-on of gas service to the lime kiln. It is estimated that the cost to the COMPANY of the lime kiln gas facilities will be approximately \$110,000 to \$130,500; however, the actual costs used in the above calculation shall be substantiated by submission of actual cost records by the COMPANY to the COUNTY. No lime kiln gas facilities reimbursement of costs by the COUNTY to the COMPANY will be required after the initial two year period, commencing with the turn-on of gas service to the lime kiln.

2 yr

10. (a) In the event COMPANY initiates its construction of the lime kiln gas facilities and is required by the County to stop construction for a period of at least sixty (60) days prior to initiation of gas service to lime kiln, COUNTY shall, within thirty (30) days of billing, reimburse COMPANY for its actual costs of the lime kiln gas facilities incurred to that date. COMPANY agrees not to render subject billing for reimbursement until sixty (60) days has expired from date COUNTY requested COMPANY to stop construction.

Docket No. 090539-GU
1986 Miller Gas Agreement
Exhibit JL-1, page 4 of 14

(b) Notwithstanding the provisions of this paragraph, the COUNTY shall not be responsible or liable for the COMPANY's costs of installation of the lime kiln gas facilities if construction is halted or stopped for a period of at least sixty (60) days due to actions of the COMPANY itself. However, in the event said construction is halted by actions, direct or indirect, by third parties, except as noted herein, then COUNTY shall be responsible and liable for only fifty percent (50%) of COMPANY's costs of the lime kiln gas facilities.

(c) In the event construction is halted or delayed due to the order of a Court of competent jurisdiction entered in favor of City Gas Company and arising out of the facts and circumstances involved in Public Service Commission Docket Nos. 850115 and 85018 GU, then and in that event COUNTY shall not be responsible or liable for said costs during said delayed period. In the event said Court order is, thereafter, reversed, reconsidered, quashed or set aside, then COMPANY shall reinstate construction and the provisions of this contract shall remain in full force and effect. If, under such circumstance, COUNTY requests COMPANY to not reinstate construction or to later halt same, then the provisions for reimbursement of paragraph 10(a) shall apply. In the event that a Court of competent jurisdiction finally (after all appeals have been exhausted) determines that said construction should be permanently enjoined or halted, then and in that event COMPANY shall only be reimbursed by COUNTY fifty percent (50%) of said costs of the lime kiln gas facilities.

11. Billing for gas service under this Agreement shall commence on the date gas service is turned on for the lime kiln, at which time the combined anticipated consumption of the lime kiln and water pumping facilities at the Orr Plant will qualify for RATE SCHEDULE IS-LV. If turn-on of gas service to the lime kiln is not requested by the COUNTY six (6) months after the date of execution of this Agreement, and construction by the COMPANY of the lime kiln gas facilities are completed and operational, the

minimum charges detailed in the Rate Schedule IS-LV shall be applied. The billing of said minimum charge shall constitute a monthly payment toward the lime kiln gas facilities reimbursement by the COUNTY under Paragraph 10. above.

12. However, notwithstanding any provisions to the contrary in this Agreement, if the operation of the lime kiln at the Orr Plant should be discontinued, the water pumping gas consumption will be changed to RATE SCHEDULE IS, INTERRUPTIBLE GAS SERVICE, under which the COUNTY had been billed prior to initiation of lime kiln gas service.

13. The COUNTY reserves the right to review and participate in any future rate case the COMPANY may seek before the Florida Public Service Commission.

14. It is further understood and agreed between the parties that gas service under this Agreement will be rendered in accordance with and subject to the General Rules and Regulations and applicable Rate Schedules of the COMPANY which are referenced in the Natural Gas Tariff of the COMPANY as filed with, approved and subject to change by the Florida Public Service Commission.

15. It is understood and agreed between the parties that the COMPANY is a natural gas distributor operating under the jurisdiction of and subject to the rules and regulations of the Florida Public Service Commission.

16. As condition precedents to the effectiveness of this Agreement, the COMPANY shall dismiss without prejudice that certain lawsuit styled Miller Gas Company v. Metropolitan Dade County, et al., Case No. 85-23766, in the Circuit Court for Dade County, Florida and the COUNTY shall reject all bids received on Dade County Bid No. 0590-6/30/87.

17. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give any person, firm, corporation or other entity other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or by reason of any term, covenant, condition, promise and agreement

contained herein and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns. No third party beneficiary rights are intended or implied.

18. This Agreement has been duly authorized, executed and delivered by each party hereto and constitutes a legal, valid and binding obligation of each party enforceable against each party in accordance with its terms.

19. This document embodies the entire agreement and understanding between the parties hereto, and any other agreements and understandings, whether verbal or written, with reference to the subject matter of this Agreement are merged herein or superseded hereby.

20. No alteration, change or modifications of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

21. All notices and correspondence pursuant to this Agreement shall be sent to the following:

Mr. Garrett Sloan, Director
Miami-Dade Water and Sewer
Authority Department
P.O. Box 330316-1316
Miami, Florida 33233-1316

Mr. Richard M. Fleisher
Vice President-Finance
Miller Gas Company
9301 S.W. 56th Street
Miami, Florida 33165

22. The COMPANY hereby warrants and represents that the COUNTY will be supplied with natural gas by the COMPANY at the Orr Plant under the jurisdiction of the Florida Public Service Commission and that the Orr Plant is located within the service area of the COMPANY defined in the Natural Gas Tariff of the COMPANY as filed with and approved by the Florida Public Service Commission and as specifically determined by the P.S.C. in Order No. 15268 in Docket Nos. 850115 GU and 85018 GU and issued on the 18th day of October, 1985, and related reconsideration denied, Order No. 15511 (1/2/86).

23. This Agreement shall bind and benefit the parties hereto, their successors and assigns.

ATTEST:

Anne Slaw
DEPUTY Clerk



METROPOLITAN DADE COUNTY, FLORIDA
By [Signature]
COUNTY MANAGER

Witnesseth:

[Signature]
[Signature]

MILLER GAS COMPANY
By [Signature]
RICHARD M. FLEISHER
Vice President-Finance

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: C. Jay Stangler
ASSISTANT COUNTY ATTORNEY

Docket No. 090539-GU
1986 Miller Gas Agreement
Exhibit II-1, page 8 of 14

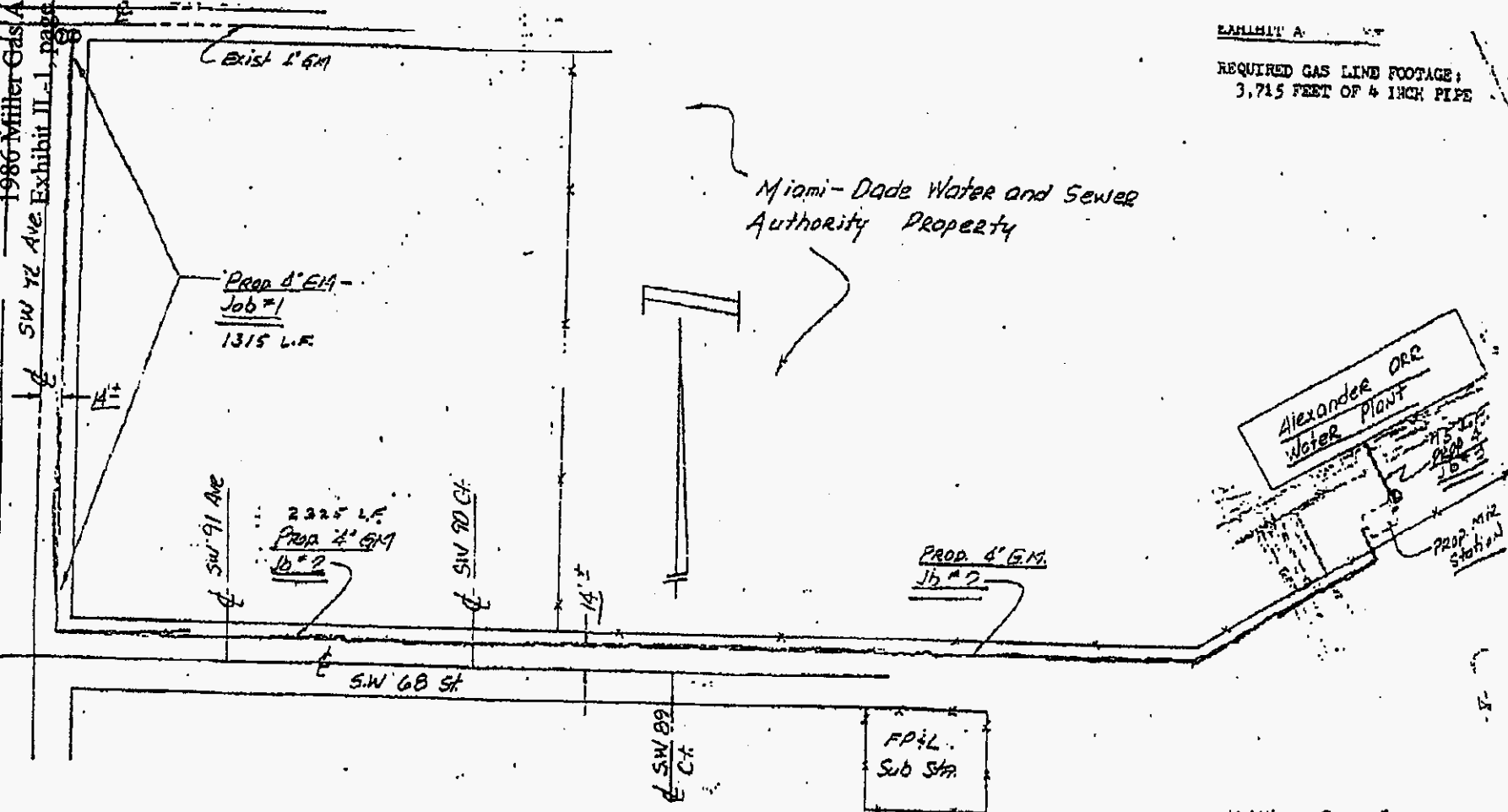


EXHIBIT A
REQUIRED GAS LINE FOOTAGE:
3,715 FEET OF 4 INCH PIPE

Miller Gas Company
Sec. 28 Twp 54 Rge 40

MILLER GAS COMPANY

FOURTH REVISED SHEET NO. 6.6
CANCELS THIRD REVISED SHEET NO. 6

RATE SCHEDULE IS
INTERRUPTIBLE GAS SERVICE

AVAILABILITY

This schedule is applicable to the area served with natural gas by the Company in Dade County, Florida.

APPLICABILITY

Service under this schedule is available to any consumer who uses in excess of 1,500 therms a day and contracts for interruptible service.

In all cases where continuous operation of the consumer's facilities is necessary, consumer shall continuously provide and maintain in operating condition during the contract period standby facilities and the fuel required for the operation thereof, of sufficient capacity to make possible the interruption of the natural gas supply.

CHARACTER OF SERVICE

Deliveries under this schedule shall be subject to curtailment or complete interruption whenever, in the discretion of the Company, such curtailment or complete interruption of service is necessary in order to assure continuous service to Customers served on a firm basis and an equitable allocation of gas among all customers of the Company. Curtailment and interruption notices shall be given at least two (2) hours in advance of their effective hour, except that when due to force majeure the notice given shall be such advance notice as may be practicable under the circumstances. Such notices specifying curtailment and restoration of service may be verbal or written.

MONTHLY RATE

Customer Charge: \$200.00

Energy Charge: (Exclusive of Fuel Costs) 13.250¢ per therm

Minimum Monthly Bill: The amount payable in accordance with the rate schedule above for the number of therms equal to the minimum daily contract quantity, multiplied by the number of days in the monthly billing period. The minimum daily contract quantity shall not be less than 1,500 therms, except when there is an interruption of service, and at that time, the monthly quantity shall be prorated.

ISSUED BY: MILLER GAS COMPANY
By: Richard M. Fleisher
Vice President-Finance

EFFECTIVE: MAR 16 1984

ISSUED ON: MARCH 10, 1984

~~EXHIBIT "B"~~
- Exhibit "B" -

MILLER GAS COMPANY

SEVENTH REVISED SHEET NO. 5.7
CANCELS SIXTH REVISED SHEET NO. 6

TERM OF CONTRACT

Two years and thereafter until terminated by ninety days written notice by either party to the other.

OVERRUN PENALTY

If a customer fails to comply with a curtailment notice calling for complete or partial curtailment of gas deliveries hereunder and by reason thereof Company is charged by its supplier with overrun penalties, Customer shall be billed for the amount of such penalties due to its failure to comply with such curtailment notices.

The payment of an overrun penalty shall not under any circumstances be considered as giving Customer the right to take unauthorized overrun gas nor shall such payment be considered to exclude or limit any other remedies (including turning off the gas service valve at the Customer's premises,) available to Company or another Customer against the offending customer for failure to comply with its obligation to stay within the provisions of all curtailment orders.

SPECIAL TERMS AND CONDITIONS OF SERVICE

1. Service under this rate schedule shall be subject to the Provision for Billing Adjustments shown under the General Applicability Provisions of Sheets No. 6.20 and 6.21.

2. Application of this rate schedule is subject to the General Terms and Conditions of the Company as they may be in effect from time to time as on file with the regulatory authorities.

3. Under no conditions will service be rendered under any agreement whereby the customer or his tenants resell the gas either within or without his premises, nor under conditions by which gas is transmitted outside the premises under contract.

ISSUED BY: MILLER GAS COMPANY
By: Richard M. Fleisher
Vice President-Finance

EFFECTIVE: MAR 16 1984

ISSUED ON: MARCH 10, 1984

RATE SCHEDULE IS-IV
INTERRUPTIBLE GAS SERVICE - LARGE VOLUMEDocket No. 090539-GU
1986 Miller Gas Agreement
Exhibit JL-1, page 11 of 14AVAILABILITY

This schedule is applicable to the area served with natural gas by the Company in Dade County, Florida.

APPLICABILITY

Service under this schedule is available to any consumer who uses in excess of 1,200,000 therms per year, 100,000 per month, and has connected gas consuming equipment using at least 2,000,000 therms per year, and who contracts with the Company for interruptible service.

In all cases where continuous operation of the consumer's facilities is necessary, consumer shall continuously provide and maintain in operating condition during the contract period, standby facilities and the fuel required for the operation thereof, of sufficient capacity to make possible the interruption of the natural gas supply.

CHARACTER OF SERVICE

Deliveries under this schedule shall be subject to curtailment or complete interruption whenever, in the discretion of the Company, such curtailment or complete interruption of service is necessary in order to assure continuous service to customers served on a firm basis and an equitable allocation of gas among all customers of the Company. Curtailment and interruption notices shall be given at least two (2) hours in advance of their effective hour, except that when due to force majeure the notice given shall be such advance notice as may be practicable under the circumstances. Such notices specifying curtailment and restoration of service may be verbal or written.

MONTHLY RATE

Customer Charge: \$20.00

Energy Charge: (Exclusive of Fuel Costs) 7.50¢ per therm

Minimum Monthly Bill: The amount payable in accordance with the monthly rate schedule above, based upon a minimum monthly contract quantity of 100,000 therms. The minimum monthly quantity to be billed shall not be less than 100,000 therms, except when there is an interruption of service, and at that time the minimum monthly contract quantity shall be prorated. The usages of separately metered gas consuming equipment of the consumer under this rate schedule shall be combined for purposes of computation of the minimum monthly bill.

ISSUED BY: MILLER GAS COMPANY
By: Richard M. Fleisher
Vice President-Finance

EFFECTIVE: NOV 18 1985

ISSUED ON: December 10, 1984

Exhibit "C"

Docket No. 090539-GU
 1986 Miller Gas Agreement
 Exhibit JL-1, page 12 of 14

TERMS OF CONTRACT

Two years and thereafter until terminated by ninety days written notice by either party to the other.

OVERRUN PENALTY

If a customer fails to comply with a curtailment notice calling for complete or partial curtailment of gas deliveries hereunder and by reason thereof Company is charged by its supplier with overrun penalties, customer shall be billed for the amount of such penalties due to its failure to comply with such curtailment notices.

The payment of an overrun penalty shall not under any circumstances be considered as giving customer the right to take unauthorized overrun gas nor shall such payment be considered to exclude or limit any other remedies (including turning off the gas service valve at the customer's premises) available to Company or another Customer against the offending customer for failure to comply with its obligation to stay within the provisions of all curtailment orders.

SPECIAL TERMS AND CONDITIONS OF SERVICE

1. Service under this rate schedule shall be subject to the Provision For Billing Adjustments shown under the General Applicability Provisions of Sheets No. 6.20 and 6.21.

2. Application of this rate schedule is subject to the General Terms and Conditions of the Company as they may be in effect from time to time as on file with the regulatory authorities.

3. Under no conditions will service be rendered under any agreement whereby the customer or his tenants resell the gas either within or without his premises, nor under conditions by which gas is transmitted outside the premises under contract.

ISSUED BY: MILLER GAS COMPANY
 By: Richard M. Fleisher
 Vice President-Finance

EFFECTIVE: NOV 18 1985

ISSUED ON: December 10, 1984

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~
 Exhibit "C"

MILLER GAS COMPANY

GENERAL APPLICABILITY PROVISIONS

AVAILABILITY

Entire service area of company in Dade County, Florida.

APPLICABILITY

Applies to all classes of gas service reflected under all effective rate schedules.

A. CHARACTER OF SERVICE - Natural gas, or its equivalent, with heating value on the order of 1,000 British Thermal Units per cubic foot.

B. PAYMENT OF BILLS - Bills are net and become delinquent if payment is not received at Company office within twenty (20) days from date bill is mailed or otherwise rendered.

C. PROVISION FOR BILLING ADJUSTMENTS:

1. Purchased Gas Adjustment (PGA Clause for Fuel Costs)

(a) Basic Purchased Gas Adjustment (PGA) Factor:

The above rates per therm for gas supplied in any billing period shall be adjusted by the Company's average cost of gas purchased by the Company during the billing period, including other adjustments as specified in its PGA formula as approved by the Florida Public Service Commission. Such adjustment shall be multiplied by 1.01652 for gross receipts taxes and rounded to the nearest \$.0001 per therm, to be applied to the total number of therms consumed by the customer during the billing period.

(b) Proration Billing Calculation:

The basic purchased gas adjustment factor for gas supplied in a billing period during which there has been an increase or decrease in the cost of gas purchased by the Company shall be prorated under the following formula, giving effect to the average cost of gas purchased during the billing period.

$$A \times \frac{D-Z}{D} + B \times \frac{Z}{D} = Y \text{ Effective PGA Factor As Prorated}$$

A = Basic purchased gas adjustment factor based on cost of gas immediately prior to effective date of increase or decrease

ISSUED BY: MILLER GAS COMPANY
By: Richard M. Fleisher
Vice President-Finance

EFFECTIVE: MAR 16 1984

ISSUED ON: MARCH 10, 1984

Exhibit "C"

GENERAL APPLICABILITY PROVISIONS (Continued)

C. PROVISION FOR BILLING ADJUSTMENTS: (Continued)

in Company's cost of gas during billing period.

- B = Basic purchased gas adjustment factor based on new cost of gas after increase or decrease occurring during billing period.
- D = Total number of days in billing cycle period.
- Y = Effective purchased gas adjustment (PGA) factor as prorated.
- Z = Number of days in billing period on and after effective date of increase or decrease in Company's cost of gas.

The factor determined as set forth above shall be rounded to the nearest \$.0001 per therm and applied to the total number of therms consumed by the customer during the billing period.

(c) Purchased Gas Adjustment True-Up Factor:
Any over-recovery or under-recovery of purchased gas costs by the Company as a result of adjustments made pursuant to paragraphs (a) and (b) above shall be "true-up" (refunded to customer or collected by Company), with interest, during the corresponding six month period of the succeeding year, in accordance with the methodology adopted by the Florida Public Service Commission on August 26, 1981, Order No. 18237, Docket No. 800645-GU, or as such methodology may be amended from time to time by the Commission.

(d) Other Adjustments:
Bills, including minimum bills, shall be increased by their proportion share of any additional or increased tax, fee or assessment by any governmental authority, assessed on the basis of meters or customers, or the price or revenue from natural gas or service sold in excess of those in effect, with such adjustment to the rate becoming effective on or after 30 days following the effective date of the aforementioned additional or increased tax, fee or assessment.

ISSUED BY: MILLER GAS COMPANY EFFECTIVE: MAR 16 1984
 By: Richard M. Fleisher
 Vice President-Finance

ISSUED ON MARCH 10, 1984

~~CONFIDENTIAL~~
Exhibit "C"

Docket No. 090539-GU
FERC Approval of Orr Bypass
Exhibit _____ (JL-2)



**CERTIFICATES
& REG. RPT.**

APRIL 14, 1998

FERC APPROVAL

FOR YOUR INFORMATION

Pursuant to § 157.205 of the Commission's regulations, FGT filed on January 20, 1998 for authorization to construct a tap, meter station and short lateral to allow Metropolitan Dade County, a political subdivision of the State of Florida ("County") to receive natural gas for their Orr Plant Meter Station.

CP98-192-000: To construct a tap, meter station and short lateral to allow for delivery to County at the Orr Plant Meter Station.

On January 27, 1998, the Notice was published in the Federal Register. March 13, 1998 was the 45-day for filing interventions and/or protests. One timely protest was filed by Commission Staff on or before the March 13, 1998 deadline. The protest was withdrawn by the Commission Staff pursuant to their April 10, 1998 Withdrawal and therefore, the Orr Plant Meter Station was deemed approved.

Upon receipt of all necessary environmental clearances, permits, and approvals FGT can construct the tap, meter station and short lateral to connect to County's Orr Plant.

NOTE: City Gas/NUI filed timely protests in Docket Nos. CP98-191 and CP98-193 and therefore, the Preston and South Dade Meter Station have not been approved. The 30-day withdrawal period ends on April 16, 1998 and unless City Gas/NUI file withdrawals on or before April 16, 1998, these two projects will become Section 7(c) filings and the Commission will process these projects accordingly and issue a letter order on their findings.

Docket No. 090539-GU
1998 Agreement
Exhibit _____ (JL-3)

NATURAL GAS
TRANSPORTATION SERVICE AGREEMENT
BETWEEN
NUI CORPORATION
AND
MIAMI-DADE COUNTY

Account Nos. 211-0756225-011, 211-0756239-011,
211-0754412-011

THIS AGREEMENT made and entered into as of this 29 day of OCT, 1999, by and between NUI Corporation, a New Jersey Corporation, hereinafter referred to as "Company", represented by City Gas Company of Florida, and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "Customer".

WITNESSETH:

WHEREAS, Company's Natural Gas Tariff (Tariff) establishes transportation service to be provided pursuant to Rate Schedule having certain specific terms of applicability; and

WHEREAS, Customer has requested that Company render natural gas transportation service to Customer in accordance with the terms and conditions of this Agreement and Company has agreed to transport Customer's gas,

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the parties agree as follows:

ARTICLE I

TERM OF AGREEMENT

1. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall become effective as of July 1, 1998, and shall continue in full force and effect for ten (10) years,

at which time the Agreement shall terminate. Company agrees, upon written request from Customer received by Company not less than 90 days prior to the termination date of this Agreement, to review the terms and conditions of the Agreement for the purpose of renewal for a like term. The renewal is contingent upon the Company and Customer mutually agreeing in writing to the terms and conditions for the renewal term. This Agreement supersedes and renders null and void the previous CI-LVT Transportation Service Agreement between the Company and Customer made and entered into as of November 1, 1997.

ARTICLE II

APPLICABILITY OF TARIFF

1. Based upon governing applicability provisions, the parties hereby confirm that Customer qualifies for the Contract Interruptible Large Volume Transportation Service (CI-LVT) Rate Schedule.

2. Except to the extent expressly modified by the terms of this Agreement, all service rendered by Company under this Agreement shall be provided pursuant to the terms and conditions of Company's Tariff, which is incorporated fully herein by reference, as filed with and approved by the Florida Public Service Commission.

3. Pursuant to the Affidavits of Alternate Fuel Price attached hereto, the rates for transportation of natural gas to Customer's listed facilities shall be as set forth in Article VII of this Agreement.

ARTICLE III

POINTS OF RECEIPT AND DELIVERY

Customer shall arrange for the delivery of all gas to be transported by Company hereunder to take place at those interconnections between Company and Florida Gas Transmission Company (FGT) heretofore determined (Point(s) of Receipt) in Miami, FL and Hialeah, FL. All such gas received by Company shall be redelivered to Customer at those interconnections between the distribution system of Company and the facilities of Customer heretofore determined (Point(s) of Delivery).

ARTICLE IV

OBLIGATIONS AND REPRESENTATIONS OF CUSTOMER

1. Customer represents that it meets all qualifications for Contract Interruptible Large Volume Transportation Service.
2. Customer agrees to comply with all terms and conditions of this Agreement and the Company's Tariff as approved by the Florida Public Service Commission, which terms and conditions are incorporated by reference, and the applicable Rate Schedule as the same may be amended or modified from time to time.
3. Customer warrants that it will, at the time of delivery of gas to Company for transportation hereunder, have good and merchantable title to the gas free and clear of all liens, encumbrances and adverse claims. Customer agrees to provide Company with any documentation which may be requested in writing by Company to evidence Customer's title to the gas transported. Company reserves the right, without penalty or liability, to refuse transportation of any gas in the event Customer fails to provide such documentation upon Company's written request.

4. Company understands that Customer warrants only its title to the natural gas at the Points of Receipt. Customer's contracted supplier of natural gas is responsible to warrant that all gas delivered to Company for transportation hereunder shall be of a merchantable quality and shall conform to the quality requirements set forth in the tariff of FGT as filed with and approved by the Federal Energy Regulatory Commission.

ARTICLE V

QUANTITY

1. Customer and Company agree that as of the Effective Date of this Agreement, the initial maximum annual contract quantity of gas (MACQ) that the company is obligated to deliver to Customer under this Agreement in any contract year is:

Alexander Orr Water Treatment Plant
6800 S.W. 87th Avenue
Miami, FL 33173

4,200,000 therms

Hialeah Lime Recalcination Facility
700 W. 2nd Avenue
Hialeah, FL 33010

3,300,000 therms

ARTICLE VI

PARAMETERS OF SERVICE

Company does not warrant that transportation service will be available hereunder at all times and under all conditions.

ARTICLE VII

RATES AND CHARGES FOR SERVICE

1. For the term of this Agreement, Customer shall pay Company each month the following transportation charges for services rendered under this Agreement. The rates set forth below are subject to the tax and other adjustment terms of Company's Tariff, as applicable to Customer.

<u>Facility</u>	<u>Rate per Therm</u>	<u>MACQ</u>
Alexander Orr Water Treatment Plant	\$ 0.010	4,200,000
Hialeah Water Treatment	\$ 0.030	3,300,000
South District Wastewater Treatment Plant	\$0.030	400,000

2. There shall be no charge for each therm transported to each facility in excess of the maximum annual contact quantity of gas (MACQ) as set forth in Paragraph 1 of this Article in any contract year, provided that any transportation service in excess of the MACQ figures set forth above in any contract year do not require Company to construct additional facilities to provide such service to Customer. The terms and conditions with respect to any increase in the initial MACQ and

Handwritten notes:
4,200,000
3,300,000
400,000
7,900,000

construction of associated additional facilities are subject to the terms of Paragraph 2 or Article V of this Agreement.

ARTICLE VIII

MEASUREMENT

1. Company agrees to install and maintain facilities necessary to deliver and accurately measure the gas to Customer at the Points of Delivery.
2. Quantities of gas delivered to the Company's distribution system at the Points of Receipt for the account of Customer shall be measured by FGT. All charges billed to Customer hereunder shall be based on the measurements made at the Points of Delivery. Measurement shall include temperature-correcting devices installed and maintained by Company to ensure proper billing of gas, corrected to 60 degrees Fahrenheit, at no cost to Customer.
3. Customer may, with the prior written consent of Company, which shall not be unreasonably withheld, and at no cost to Company, install check-measuring devices at the Points of Delivery.

ARTICLE IX

FULL REQUIREMENTS

It is understood and agreed that Company's rendering of gas transportation service under the terms and conditions of this Service Agreement is in consideration of Customer's agreement to utilize exclusively such services for all pipeline-transported natural gas consumed at the Customer's facilities located as listed in Article V herein, from the Effective Date hereof and during the Term of this Agreement and any renewals hereof. Accordingly, Customer agrees that Customer will not,

for the term of this Agreement and any renewals hereof, displace any service provided under this Agreement with service from any third party. However, nothing herein shall prohibit Customer from extracting and consuming landfill gas at Customer's facilities.

ARTICLE X

FACILITIES

1. All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company.

2. Customer agrees to pay Company a one time "Aid to Construction" charge of \$300,000 for Company to design, construct, own, maintain, and operate natural gas service to Miami-Dade South District Wastewater Treatment Plant, 8950 S.W. 232 Street, Miami, FL, 33170, sufficient in size to meet Customer-specified demand of 400,000 therms maximum annual quantity (MACQ). Company agrees to run gas line(s) to point(s) of use within this plant as determined by the Customer, which shall constitute Point(s) of Delivery. Customer shall reimburse Company, prior to the commencement of service, in the amount of \$825.00 per meter for any telemetry equipment required to be installed at this plant.

ARTICLE XI

NOMINATIONS AND NOTICE

1. Customer, or its agent supplier, shall make all nominations of service (advice regarding the next months-anticipated consumption) on Company's system hereunder on the appropriate form provided by Company. Customer, or its agent, shall submit any new nomination for service a minimum of ten working days prior to the commencement of the transportation service, and shall

submit a request for a change to an existing nomination a minimum of three working days prior to the date the change is to become effective.

2. Customer or its agent, not the Company, shall be responsible for making all transportation agreements and nominations to all third parties upstream of company's Points of Receipt. Customer may use a broker for this purpose. If Customer utilizes a broker to make such transportation arrangements and nominations on the interstate system that is upstream of Company's system, Customer shall identify the broker initially and upon a change.

3. All nominations and adjustments to nominations shall be directed to:

Manager, Gas Control
NUI Corporation
One Elizabethtown Plaza
Union, NJ 07083
FAX: (908) 527-9478

Any service inquiries or correspondence regarding the administration of nominations shall be directed to:

Kim T. Verran
Territory Manager
NUI/City Gas Company of Florida
One Elizabethtown Plaza
Union, NJ 07083
Phone/Fax: (908) 289-5000 Ext. 5705/ (908) 289-1370

OR

Donna Becker
Key Accounts Manager
NUJ/City Gas Company of Florida
One Elizabethtown Plaza
Union, NJ 07083
Phone/Fax: (908)289-5000 Ext. 5705/(908) 289-1370

4. All payments shall be directed to:

NUJ/City Gas Company of Florida
955 East 25th Street
Hialeah, FL 33013-3498

5. Miami-Dade Water and Sewer Department
Mr. Tom Segars, Superintendent
Water Production Division
P. O. Box 110006
Hialeah, FL 33011
Phone: (305) 888-2522
Fax: (305) 889-0156

ARTICLE XII

FORCE MAJEURE

Neither Company, nor Customer or its agents, shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rules and people, civil disturbances, explosions, temporary failure of gas supply, temporary failure of firm transportation arrangements, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, acts of third parties, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party, and which by the exercise of due

diligence such party is unable to prevent or overcome.

Such cause or contingencies affecting the performance by Company, Third Party Supplier, or Customer, however, shall not relieve Company or Customer of liability in the event of its concurrent negligence, or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. In any event, the liability of Customer for damages shall be limited as provided in Section 768.28, Florida Statutes.

ARTICLE XIII

MISCELLANEOUS

1. The captions in this Agreement are for the convenience of the parties in identification of the provisions hereof and shall not constitute a part of the Agreement, nor be considered interpretive thereof.

2. This Agreement shall be binding upon and insure of the benefit of the respective successors and assigns of the parties; provided, however, neither party may make an assignment hereunder without having first obtained the prior written consent of the other party. Such consent shall not be unreasonably withheld. If either party does not provide such consent within sixty (60) days after receipt of the other party's notification of assignment, failure to reply shall be deemed as consent. Any notification of assignment or consent to assignment shall be made by registered mail.

3. The interpretation and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for any civil action arising out of this Agreement shall be Miami-Dade County, Florida.

4. This Agreement shall be subject to all of the rules and regulations of any duly

constituted federal or state regulatory authorities having jurisdiction hereof. Company and Customer shall comply at all times with applicable federal, state, municipal, and other laws, ordinances and regulations.

5. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and may be modified only in writing duly executed by authorized representatives of the parties.

SIGNATURE PAGE FOLLOWS

In witness whereof, MIAMI-DADE COUNTY and NUI CORPORATION, represented by
CITY GAS COMPANY OF FLORIDA, by and through their duly authorized officers, have executed
this Agreement as of the date first written above.

(SEAL)

NUI CORPORATION

By: Joyce M. Fajon
Joyce M. Fajon
Assistant Secretary

By: CITY GAS COMPANY OF
FLORIDA, a Division of NUI
Corporation
By: Richard Gruber
Richard Gruber
Vice-President, Marketing

ATTEST:

MIAMI-DADE, a political
subdivision of the State of Florida

Harvey Ruvin

By Its Board of County
Commissioners

Clerk of the Board

By: Richard Ruvin
Deputy Clerk

By: For Merrett R. Stierheim
County Manager

Approved as to form and
legal sufficiency.



By: [Signature]
Assistant County Attorney

Docket No. 090539-GU
FERC Approval of Hialeah and South District Bypass
Exhibit _____ (JL-4)

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UNITED STATES OF AMERICA 85

FERC 0 61, 148

FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt H. Bert, Jr.

Florida Gas Transmission Company) Docket Nos. CP98-191-000
and CP98-193-000
(Not consolidated)

ORDER DENYING PROTESTS AND AUTHORIZING CONSTRUCTION

(Issued October 29, 1998)

On January 20, 1998, Florida Gas Transmission Company (FGT) filed separate prior notice requests in Docket No. CP98-191-000 and CP98-193-000, pursuant to its Subpart F, Part 157 blanket certificate and section 157.212 of the Commission's Regulations, to construct, own and operate certain facilities to provide transportation services to waste treatment plants in Metropolitan Dade County, Florida. For the reasons discussed and as conditioned below, we will grant the requested authorizations.

Background and Proposal

Section 157.212 of the Commission's Regulations authorizes a Part 157; Subpart F blanket certificate holder, among other things, to construct and operate new delivery points and appurtenant facilities unless protests are filed within 45 days of the issuance of the notice of the request. If a protest is not withdrawn within 30 days (reconciliation period) after the end of the 45-day notice period, the prior notice request is treated as a case-specific NGA section 7(c) application. (See 18 C.F.R. 0 157.205(g).) The Commission Staff and NUI Corporation, City Gas Company of Florida Division (NUI), filed timely protests to the prior notice requests in Docket Nos CP98-191-000 and CP98-193-000. Subsequently, Staff filed notices of withdrawal of its protests in Docket Nos. CP98-191-000 and CP98-193-000 within the reconciliation period on March 12, 1998. Because NUI's protests were not withdrawn within the reconciliation period, the prior notice requests were converted automatically to a traditional NGA section 7 application on March 17, 1998, pursuant to section 157.205(g) of the Regulations.

In Docket No. CP98-191-000, FGT proposed to construct,
Page 1

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operate and own (1) the Hialeah-Preston Meter Station, (2) electronic flow measurement (EFM) facilities, and (3) a 2-inch diameter, 50-foot lateral in Metropolitan Dade County, Florida. The proposed facilities, which would be located at Mile Post 3.3 on FGT's existing 12-inch Miami Lateral, would be used to provide

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and CP98-193-000

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direct natural gas transportation service to the County's Hialeah-Preston Water Treatment Plant (Hialeah Plant) in Dade County. The facilities will deliver up to 817 MMBtu per day and up to 298,205 MMBtu per year to the County at the water treatment plant. FGT estimates that the cost of the facilities will be \$151,000 and states that the County has elected to reimburse FGT for the costs and expenses directly and indirectly incurred by FGT relating to the proposed construction.

In Docket No. CP98-193-000, FGT seeks authorization to construct and operate the Miami Dade-South Meter Station, EFM facilities, and a 2-inch diameter, 5000-foot lateral in Dade County. The proposed facilities would provide direct natural gas transportation service to the County's Miami Dade South Water Treatment Plant (Dade Plant). The facilities would be located near Mile Post 12.4 on FGT's existing 24-inch Turkey Point Lateral. The proposed facilities would deliver up to 550 MMBtu per day and up to 200,750 MMBtu per year to the County at the water treatment plant. FGT estimates that the facilities would cost \$586,000 and states that the County has elected to reimburse FGT for the costs and expenses directly and indirectly incurred by FGT relating to the proposed construction.

FGT will transport for, and deliver to the County, at the proposed meter stations, the indicated volumes of 817 MMBtu and 550 MMBtu respectively under FGT's blanket transportation certificate issued in Docket No. CP89-555-000. 1/ FGT states that the proposed activities are not prohibited by its existing tariff and that it has sufficient capacity to continue all services without detriment or disadvantage to FGT's other customers.

Notice and Responsive Pleadings

Notice of the prior notice request in Docket No. CP98-191-000 was issued on January 29, 1998, and published in the Federal Register on February 4, 1998, (63 Fed. Reg. 5,794). Notice of the prior notice request in Docket No. CP98-193-000 was also issued on January 29, 1998, and published in the Federal Register on February 4, 1998, (63 Fed. Reg. 5,795). In addition to the protests filed by NUI in Docket Nos. CP98-191-000 and CP98-193-000, timely, uncontested motions to intervene were filed by NUI and Public Service Commission of the State of Florida (FPSC). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. D 385.214 (1995).

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- 1/ See Florida Gas Transmission Company, 51 FERC 61,309 (1990).

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In its protests, NUI alleges that the proposed construction of facilities will result in an illegal bypass. NUI also claims that FGT's applications are patently defective and should be summarily rejected or, in the alternative, requests that the Commission compel FGT to respond to NUI's data requests and establish an evidentiary hearing. NUI also asks that the Commission hold the application in abeyance until a proper party requests a traditional NGA section 7(c) certificate of public convenience and necessity to transport gas in interstate commerce. Further, NUI contends that FGT has illegally waived certain tariff requirements to construct facilities for the County in a discriminatory manner.

Discussion

A. Jurisdiction, defective filing and procedural motions

The metering facilities proposed to be constructed and operated in Docket Nos. CP98-191-000 and CP98-193-000 will be used by FGT to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission. As such, their construction and operation are subject to the requirements of section 7(c) of the NGA.

NUI alleges that FGT's applications are patently defective, because they do not provide any information regarding the construction and operation of the facilities necessary to link FGT's proposed facilities to the Dade County Plants to be served. NUI states that the lack of adequate information in both proceedings raises questions about the adequacy, safety, and routing of the connecting transportation links. NUI alleges that the party that undertakes the construction and operation of the connecting facilities in both proceedings will be engaged in the transportation of gas in interstate commerce, and will become a natural gas company, subject to the Commission's jurisdiction under Section 1(b) of the NGA. 2/

- 2/ NUI cites Volkswagen of America, Inc., 42 FERC 61,397 (1988). In that case, it states, the Commission issued an order, declaring that a pipeline transporting gas solely within the Commonwealth of Pennsylvania for delivery to an end user was nonetheless involved in the transportation of gas in interstate commerce, because the gas to be transported would be delivered from outside Pennsylvania. NUI also cites (without elaboration) Midwest Ventures I,

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61 FERC g 61,029 (1992) and 66 FERC a 61,295 (1994).

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For these reasons, NUI urges the Commission to reject summarily FGT's applications, or, in the alternative, to establish discovery procedures and an evidentiary hearing to identify and address the material factual issues related to these essential links. NUI request that the Commission compel FGT and Dade County to respond to its data request and hold FGT's application in abeyance pending the filing of a certificate application by the appropriate party under section 7 of the NGA.

We reject NUI's requests for summary disposition. 3/ Only the metering facilities that will be constructed on the Miami and Turkey Point Laterals are the subject of our review in these proceedings. It is at these meter stations that Dade County will receive and take title to the gas as an end user. To the extent the connecting facilities (1) will be constructed by Dade County and used solely to provide fuel for its water treatment plants for use and consumption entirely within the water treatment plants, (2) will be located wholly in the State of Florida, and (3) not be used by FGT or Dade County to transport natural gas for, or sell natural gas to, any third party, the connecting facilities will be nonjurisdictional. 4/

Since the connecting facilities will be nonjurisdictional, we will deny NUI's motion to hold FGT's applications in abeyance pending the filing of a certificate application for these facilities. 5/ we will also deny NUI s requests for an

3/ According to Rule 217 of the Rules of Practice and Procedures (18 C.F.R. a 385.217), summary disposition is appropriate where "there is no genuine issue of fact material to the decision of the proceeding or part of a proceeding."

4/ See, e.g., Canal Electric Company and Montaup Electric Company, 71 FERC 61,073 at 61,251 (1995)(finding nonjurisdictional approximately 4600 feet of 18-inch-diameter natural gas pipeline, constructed for the sole purpose of receiving supplies of natural gas solely for use as fuel, that (1) is located wholly within the state of Massachusetts, (2) will not be used to transport natural gas for -- or sell natural gas to -- any third parties, and (3) will not be used to perform service in interstate commerce). See also Jersey Central Power & Light Company, 9 FPC 717, 718 (1950); Transcontinental Gas Pipe Line Corporation, 33 FPC 818, 819 (1965); and Natural Gas Pipeline Company of America, 40 FERC 61,119 at 61,325 (1987).

5/ In this regard, we note that reliance on the cases cited in (continued...)

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evidentiary hearing for the same reason. An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record. 6/ There are no material issues of fact in this proceeding that cannot be resolved on the basis of the existing record. Moreover, where the Commission's policy requirements are met, the Commission will approve a bypass without an evidentiary hearing. 7/ We also deny NUI's request for consolidation of the above referenced proceedings. The record, as it presently stands, is complete so that we are able to decide all substantive issues raised in these proceedings.

8. Unauthorized waiver of tariff

NUI alleges that FGT has, without authority, waived the requirements of its tariff and is proposing to construct the proposed metering facilities on behalf of Dade County in a discriminatory manner. According to NUI, the tariff requires that:

(1) "the Shipper [shall] contribute an aid-to-construction amount to Transporter (FGT), which is equal to the cost of the additional

5/ (...continued)

NUI's motion is misplaced. Volkswagen, supra, involved a pipeline subsidiary of an end user which the Commission found would be transporting gas in interstate commerce, although at no fee, on behalf of the end user. In that case, the Commission had been asked to find that the subsidiary was a "intrastate" pipeline. The Commission declined to do so, finding that the pipeline never provided any intrastate service. As in the Volkswagen case, the Commission in Midcoast Ventures, supra, also held that the petitioning company could not qualify as an "intrastate pipeline" within the meaning of section 2(16) of the NGPA without doing any intrastate business in the state where it claims intrastate status. Neither of those cases involved an end user constructing and operating a pipeline solely for its own benefit.

6/ See, e.g., Southern Union Gas Co. v. FERC, 840 F.2d 964, 970 (D.C. Cir. 1988); Cerro Wire & Cable Co. v. FERC, 677 F.2d 124 (D.C. Cir. 1982); Citizens for Allegan County, Inc. v. FPC, 414 F.2d 1125, 1128 (D.C. Cir. 1969); Destin Pipeline Company, L.L.C., 83 FERC 61,308, mimeo, at pp. 3-4 (1998).

7/ See, e.g., Northern Natural Gas Company, 74 FERC 3 61,172 at 61,605 (1996).

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facilities, including all costs involved in filing applications, pursuing said approvals and in obtaining all licenses and permits required for the services or construction [8/]," and

(2) "Shippers, whether new or existing, shall bear all costs and expenses attributable to the construction of any lateral pipelines or expansions of existing lateral pipelines." 9/ (Emphasis supplied in NUI's comments.)

NUI contends that FGT has not exacted the necessary commitment for cost reimbursement from Dade County. Nor, it maintains, has FGT provided notice on its electronic bulletin board (EBB) of any construction subsidy associated with the proposed metering facilities given to Dade County as required by its tariff. 10/ NUI contends that by failing to obtain commitment from Dade County for full reimbursement of all costs associated with the facilities and further failing to post requisite notice on its EBB, FGT has unilaterally waived the terms of its tariff on a discriminatory basis in violation of Commission regulations. NUI states that at a minimum, the Commission should reject FGT's bypass applications and conduct further investigation and an evidentiary hearing to insure that FGT's other customers are protected from any shortfall in reimbursement by the County to FGT and direct FGT to comply with its tariff requirements.

We do not agree that FGT has waived the requirements of its tariff and is proposing to construct facilities for the County in a discriminatory manner. NUI cites the FGT Tariff General Terms and Conditions as requiring the shipper to contribute an aid-to-construction amount equal to the cost of the facilities and further points to pages 2 and 3 of the construction contract between FGT and Dade County as evidence of no obligation on the part of the County to pay the entire cost of the facilities. However, contrary to NUI's allegations, the referenced section of the construction contract relate to reimbursement of the cost incurred in project planning and not the construction costs. Page 4 of FGT's construction contract with Dade County provides that the Dade County will reimburse FGT a total of \$922,000 for the construction of the metering facilities with an additional

8/ FGT Tariff, General Terms and Conditions, Section 21 D1.

9/ FGT Tariff, General Terms and Conditions, Section 21 D2.

10/ FGT Tariff, General Terms and Conditions, Section 21 D3.

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contingency fund of \$100,000 established to be used to cover any additional contingencies which may arise with respect to the construction of the facilities. This shows compliance with the tariff. Accordingly, we reject NUI's arguments.

C. Bypass

NUI believes that FGT's proposal in Docket No. CP98-191-000 to bypass NUI should be rejected because it will have an adverse impact on consumers in the State of Florida. 11/ NUI contends that the State of Florida may lose tax revenues as a result of the bypass. NUI also states that since the revenues generated from Dade County and other large customers are included within the NUI's base rates, the shortfall in revenues resulting from the proposed bypass will have a substantial impact on NUI's ability to earn its authorized rate of return and could accelerate its need to file a petition seeking rate relief with the FPSC.

NUI indicates that to the extent that it is able to recover the revenue shortfall resulting from the proposed bypass, the rates to NUI's other customers would increase and may seriously impact the competitive position of natural gas vis-a-vis alternate fuels. NUI states that such a result would undermine public policy of the State of Florida, which fosters natural gas usage.

NUI states that with regard to the PGA rate (which is designed to recover both variable and fixed costs from its sales customers), consumers in its territory could be further harmed by the potential bypass since there will be fewer customers absorbing the same amount of fixed costs and since the bypass may extinguish any available state remedies which could allow for the recovery of such costs from Dade County. This result, NUI states, is neither required nor permitted by the public convenience and necessity, and is completely inconsistent with the Commission's responsibility to provide consumers with a complete and effective bond of protection from excessive rates and charges. 12/

NUI states that in other cases the Commission has rejected claims that bypass will increase costs to LDC customers based on its finding that state utility authorities may mitigate the

11/ NUI does not allege that the proposed metering facilities in Docket No. CP98-193-000 will result in a bypass.

12/ Citing Atlantic Refining Co. v. Public Service Commission of the State of New York, 360 U.S. 378 (1959).

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adverse customer impacts associated with bypass by assigning financial responsibility to LDC shareholders or requiring end users that bypass an LDC to pay a fee if they return to the LDC's system. NUI asserts that the Commission's suggested remedies are insufficient in this case for both legal and factual reasons. Specifically, NUI states that as to the Commission's suggestion of a "buyback" charge, there is no evidence which suggests that Dade County will ever return to the NUI Gas system once FGT is permitted to carry out its proposed bypass. Further, it states, the Commission's suggestion that LDC shareholders are required to bear a portion of the revenue loss associated with bypass is contrary to well-established case law. 13/ According to NUI, the case law holds that state regulatory authorities may not require LDC shareholders to absorb costs passed through to the LDC as a consequence of the Commission's decisions.

We find unpersuasive NUI's contention that the State of Florida may lose tax revenues as a result of the bypass. NUI provides no evidence to substantiate that argument. Secondly, even if true, NUI does not quantify the amount of lost tax revenues, nor indicate how much (if any) additional tax revenues will be collected (and counterbalanced by the State of Florida) from FGT's servicing other end users or water treatment plant customers.

We also reject NUI's cost-shifting argument, consistent with our position in other cases in which the Commission has approved bypass applications. 14/ The Commission's bypass policy is to allow competition between LDCs and interstate pipelines where there is no reasonable indication that the proposed service is the result of any anticompetitive or unduly discriminatory behavior. This policy is based on a belief that on a national level, natural gas consumers are better served by a competitive natural gas market which encourages improved services at lower costs. 15/ The Commission strives to honor the end-user's decision as to whether it is economical to undertake direct

13/ Citing *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953 (1986); and *Mississippi Power and Light Company v. Mississippi*, 108 S.Ct. 2428 (1988).

14/ See, e.g., *Williams Natural Gas Company*, 81 FERC m 61,301 at 62,412 (1998); *Northern Natural Gas Company*, supra, 74 FERC at 61,604; *Texas Gas Transmission Corporation*, 68 FERC 6 61,063 at 61,216 (1994); *Paiute Pipeline Company*, 68 FERC 0 61,064 at 61,220 (1994).

15/ See, e.g., *Paiute*, supra; and *Northern Natural Gas Company*, 46 FERC h 61,270 (1989).

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service from a pipeline supplier. This allows all participants in the natural gas market greater access to the market. The Commission has stated that it is not willing to shield LDCs from the effects of competitive forces because it believes that, in the final analysis, all consumers will benefit from the Commission's pro-competitive policies. 16/ The Commission has stated previously that "our ultimate task in authorizing construction or transportation with bypass implications is to assure that the competitive processes operate fairly." 17/ Also, the Commission has said it will not second guess an end-user's cost benefit analysis about its decision to achieve a more economical price for its gas from new suppliers or other third-party sources. 18/

NUI also contends that the proposed bypass would lead to the wasteful duplication of facilities. 19/ It states that while the Commission and the Courts have rejected this argument in cases where the costs of the new facilities are to be paid by the new pipeline customers, 20/ these decisions improperly focus on the proposed new facilities and lose sight of the fact that LDC facilities and firm service obligations may be needlessly stranded as a consequence. NUI concludes that the proposed bypass would result in the stranding of facilities and service obligations that are currently employed by NUI to serve Dade County.

We do not agree. We reiterate that in a competitive environment there simply is no guarantee that any customer will always remain a customer. The Commission's bypass policy, which has received judicial approval, 21/ recognizes that the NGA does

16/ See, e.g., Northwest Pipeline Corporation, 52 FERC C 61,053 at 61,226 - 61,227 (1990), reh'g denied, 54 FERC 61,191 (1991).

17/ Id. at 61,227.

18/ See Northern, supra, 74 FERC b 61,172 (1996).

19/ Citing Kansas Power and Light Co. v. FERC, 891 F.2d 939, 943 (D.C. Cir. 1989), wherein the court recognized that one of the purposes of Section 7 of the Natural Gas Act is to prevent wasteful duplication.

20/ See, e.g., Cascade Natural Gas Corp. v. FERC, 955 F.2d 1412, 1425 (10th Cir. 1992).

21/ See, e.g., Cascade Natural Gas Corporation v. FERC, 955 F.2d (continued...)

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not guarantee that current service relationships will remain unchanged. Further, we find speculative the argument that the proposed bypass would result in the stranding of facilities and service obligations that are currently employed by NUI to serve Dade County.

In any event, concern about "duplicative" pipeline facilities where their costs would be passed on to consumers is not as acute where the end-use customer has agreed to pay for the construction of the bypass facilities. 22/ In this proceeding, Dade County has agreed to reimburse FGT for costs FGT will incur in constructing the proposed facilities.

NUI additionally states that if the Commission approves FGT's bypass application, it should condition the approval in a manner that would partially offset the adverse financial impact on Florida consumers. NUI notes that the Commission, in approving certain bypasses, has exercised its authority under Section 5 of the Natural Gas Act and has required the pipeline, as a condition, to reduce the contract demand volumes of the distribution company that is bypassed. 23/ According to NUI, FGT and Dade County acknowledge that NUI should be entitled to such relief since Dade County has already agreed to contract with FGT for the capacity turned back by NUI.

NUI states that it is seeking only to reduce its FTS-2 capacity entitlements by 860 dth/day, which is equal to the maximum daily transportation entitlement of Dade County at the Hialeah Plant under the service agreement between Dade County and NUI. NUI thus maintains that the contract demand reduction rights accorded bypassed LDCs in other proceedings are equally appropriate here. Further, NUI states that any Commission order issued in these proceedings should require FGT to accept seasonal reductions of 860 dth/day in NUI's FTS-2 firm transportation capacity.

21/ (...continued)

1412, 1425 (10th Cir. 1992); and Michigan Consolidated Gas Company v. FERC, 883 F.2d 117 (D.C. Cir. 1989), cert. denied, 494 U.S. 1079 (1990).

22/ See, e.g., Texas Gas Transmission Corporation, supra, 65 FERC at p. 62,264; Northwest Pipeline Corporation, 54 FERC at 61,191, at 61,576 (1991); and Cascade Natural Gas Corporation v. FERC, 955 F.2d 1412, 1425 (10th Cir. 1992).

23/ See, e.g., Texas Gas Transmission Corp., 65 FERC I 61,275 (1993).

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In instances where a pipeline bypasses an LDC to provide service directly to an end-user, the Commission has stated that

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under appropriate circumstances it may require the pipeline to reduce the contract demand volumes of the LDC that is being bypassed, to avoid inequity. To qualify for the CD reduction, the LDC must make a showing that: (1) a nexus exists between the LDC's contract demand on the bypassing pipeline and the LDC's service to the end-user; and (2) there is a connection between the LDC's level of requested reduction in firm CD on the pipeline and the level of service that the pipeline provides the departing end-user. 24/ The CD reduction requirement is necessary to avoid the inequity of allowing a pipeline, in effect, to bill twice for the same contract demand.

Since NUI's contract with Dade County is for interruptible service and its contract with FGT is for firm service, NUI can not show that a nexus exist between its contract demand with FGT and its level of service to Dade County. 25/ Accordingly, NUI's request for contract demand reductions is denied.

D. Environmental Concerns

Our environmental staff reviewed FGT's applications to construct the proposed metering facilities. We find that neither an environmental assessment nor an environmental impact statement is required because the proposed facilities qualify as a categorical exclusion under 18 C.F.R. . 380.4(a)(24).

E. Public Convenience and Necessity

We find that FGT's proposal is required by the public convenience and necessity. FGT's proposal for the construction and operation of the proposed facilities will enhance the economics of Dade County's operations, as well as diversify the County's gas procurement alternatives. FGT's proposal, as well as Dade County's move to replace NUI as a supplier, is consistent with the Commission's goal to foster competition. Upon approval of the subject proposals, NUI will continue to have facilities enabling it to serve Dade County and compete for the County's business.

24/ Paiute Pipeline Company, 69 FERC r 61,247 at 61,946 (1994). See also Texas Gas Transmission Corporation, 68 FERC C 61,063 (1994), Order Requiring Additional Information and Deferring Consideration of Rehearing Issues, 69 FERC D 61,245 (1994).

25/ See Texas Gas Transmission Corporation, 76 FERC r 61,316 at 62,537 (1996).

Docket Nos. CP98-191-000
and CP98-193-000

- 12 -

As noted previously, because NUI's protests were not withdrawn within the reconciliation period, FGT's prior notice request was automatically converted to a traditional case-specific NGA section 7(c) application. However, it is the

19981030-3192(1408051)[1]

Commission's policy not to grant section 7(c) case-specific authority to construct and operate facilities when the applicant can do so under its blanket certificate. 26/ The Commission, therefore, will authorize FGT to construct and operate the subject facilities under its Subpart F, Part 157 blanket certificate.

At a hearing held on October 28, 1998, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, supplements, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) FGT is authorized to construct and operate the proposed facilities under its Part 157 blanket certificate, as more fully set forth in the applications filed in Docket Nos. CP98-191-000 and CP98-193-000, as supplemented, and this order.

(B) FGT shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies FGT. FGT shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(C) NUI's protests, and its various motions (including its motions for abeyance, consolidation, summary rejection and establishment of an evidentiary hearing filed in Docket Nos. CP98-191-000 and CP98-193-000) are denied.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

26/ See Texas Gas Transmission Corporation, 65 FERC at 62,266; and Tennessee Gas Pipeline Company, 55 FERC ¶ 61,437 at 62,307 (1991).

Docket No. 090539-GU
Letter Confirming Renewal of 1998 Agreement
Exhibit _____ (JL-5)



Carlos Alvarez, Mayor

Water & Sewer
P. O. Box 330316 • 3071 SW 38th Avenue
Miami, Florida 33233-0316
T 305-665-7471

miamidade.gov

March 6, 2008

Docket No. 090539-GU
Letter Confirming Renewal of
1998 Agreement
Exhibit JL-5, page 1 of 2

Mr. Ed C. Delgado, RCGC
Major Accounts Representative
Florida City Gas
955 East 25th Street
Hialeah, Florida 33013

RE: Renewal of Natural Gas Transportation Service Agreement

Dear Mr. Delgado,

On October 29th, 1999, Miami-Dade County and NUI Corporation entered into a Natural Gas Transportation Service Agreement (TSA). This agreement provides for Florida City Gas (FCG successor to NUI) to transport natural gas from its various Miami gate stations to three Miami-Dade County Water & Sewer (MDWASD) locations.

Pursuant to Article 1, Term of Agreement, the subject TSA was to become effective as of July 1st, 1998, remain in full force and effect for ten (10) years, and expire June 30th, 2008. The agreement also provided for renewal of a like term upon the Company (FCG) receiving a written request from the Customer (MDWASD) not less than ninety (90) days prior to the expiration of the agreement. The renewal is contingent upon the Company (FCG) and Customer (MDWASD) mutually agreeing in writing to the terms and conditions for the renewal term.

Several discussions have taken place between FCG and MDWASD representatives in an effort to facilitate having this agreement renewed for a similar period with like terms and conditions. Recently a meeting was held in Coral Gables with Messrs. Eddie Delgado and Ramiro Sicre of FCG and our Natural Gas Consultant, Jack Langer of Langer Energy Consulting, Inc.

It is our understanding that after a lengthy discussion of natural gas issues, FCG, through its personal representatives in attendance, agreed to renew this present agreement for an additional ten (10) year period with the same terms and conditions. Following and subject to approval by the Miami-Dade County Board of County Commissioners and the Mayor, this renewal agreement shall commence on July 1st, 2008 and run through June 30th, 2018.

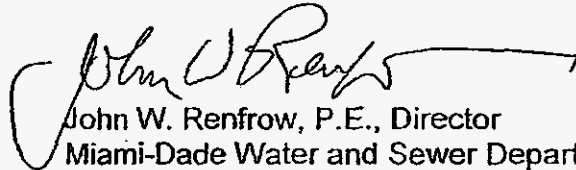
Delivering Excellence Every Day

- ADA Coordination
- Agenda Coordination
- Animal Services
- Art in Public Places
- Audit and Management Services
- Aviation
- Building
- Building Code Compliance
- Business Development
- Capital Improvements
- Citizens' Independent Transportation Trust
- Commission on Ethics and Public Trust
- Communications
- Community Action Agency
- Community & Economic Development
- Community Relations
- Consumer Services
- Corrections & Rehabilitation
- Cultural Affairs
- Elections
- Emergency Management
- Employee Relations
- Empowerment Trust
- Enterprise Technology Services
- Environmental Resources Management
- Fair Employment Practices
- Finance
- Fire Rescue
- General Services Administration
- Government Information Center
- Historic Preservation
- Homeless Trust
- Housing Agency
- Housing Finance Authority
- Human Services
- Independent Review Panel
- International Trade Consortium
- Juvenile Services
- Medical Examiner
- Metro-Miami Action Plan
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement Management
- Property Appraisal
- Public Library System
- Public Works
- Safe Neighborhood Parks
- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Force on Urban Economic Revitalization
- Vizcaya Museum And Gardens
- Water & Sewer

Mr. Ed C. Delgado, RCGC
Page 2

Please have this letter serve as official notification that MDWASD agrees to the renewal and terms thereof, and looks forward to another decade of service with Florida City Gas. Please indicate FCG's agreement to the renewal upon the same terms and conditions by having FCG's authorized official sign below.

Respectfully,


John W. Renfrow, P.E., Director
Miami-Dade Water and Sewer Department

Agreed and Accepted on behalf of Florida City Gas



Date MARCH 13TH, 2008

ED C. DELGADO, RCGC
Print Name

MAJOR ACCOUNTS REP
Title

Docket No. 090539-GU
FCG Errol West, May 8, 2008 Letter to Jack Langer Authorizing
Signing of the 2008 Agreement
Exhibit _____ (JL-6)



Florida City Gas

955 East 25th Street
Hialeah, FL 33013
www.floridacitygas.com

Docket No. 090539-GU
FCG Errol West, May 8, 2008 Letter to
Jack Langer Authorizing Signing of the
2008 Agreement
Exhibit JL-6, page 1 of 1

May 8th, 2008

Jack Langer
Langer Energy Consulting, Inc.
913 Andalusia Avenue
Coral Gables, FL 33134

Re: MDWASD, account Nos. 211-0756225-011, 211-0756239-001
211-0754412-011, 211-0786676-001

To All Parties Concerned:

This letter is to inform all interested parties that Florida City Gas Company has granted Ed C. Delgado, our Major Accounts Executive, permission to sign the STA for the above referenced accounts.

Respectfully,



Errol West
Manager, Market Development
Florida City Gas
955 East 25th Street
Hialeah, FL 33013

Docket No. 090539-GU
2008 Agreement
Exhibit _____ (JL-7)

NATURAL GAS TRANSPORTATION SERVICE AGREEMENT
BETWEEN
FLORIDA CITY GAS
AND
MIAMI-DADE COUNTY

Account Nos. 211-0756225-011, 211-0756239-011,
211-0754412-011, 211-0786676-001

THIS AGREEMENT made and entered into as of this 28th day of Aug, 2008, by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG"), a New Jersey corporation, hereinafter referred to as "Company", and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "Customer" (collectively, with FCG, the "Parties").

WITNESSETH:

WHEREAS, Company's Natural Gas Tariff ("Tariff") establishes transportation service to be provided pursuant to the Contract Demand Service Rate Schedule having certain specific terms of applicability;

WHEREAS, Customer has requested that Company render natural gas transportation service to Customer in accordance with the terms and conditions of this Agreement and Company has agreed to transport Customer's gas;

WHEREAS, this Agreement is subject to the approval of the Florida Public Service Commission ("Commission"); and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1

TERM OF AGREEMENT

1. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall become effective as of the date that the Commission approves and makes this Agreement effective (the "Effective Date"), and shall continue in full force and effect until ten years from the Effective Date, at which time the Agreement shall terminate (hereinafter, the "Term"). Company agrees, upon written request from Customer received by Company not less than ninety (90) days prior to the termination date of this Agreement, to review the terms and conditions of the Agreement for the purpose of renewal for a like term. The renewal is contingent upon the Company and Customer mutually agreeing in writing to the terms and conditions for the renewal term. If this Agreement is not approved and made effective by the Commission subject to terms and conditions satisfactory to the Parties within one hundred eighty (180) days from the date this Agreement is entered into by the Parties, this Agreement shall not become effective, and the parties will continue to negotiate a new agreement, pursuant to the First Amendment to Natural Gas Transportation Service Agreement Between Florida City Gas and Miami-Dade County (the "Amendment"), unless one of the parties elects to terminate the Amendment, as provided in the Amendment, through written notice.

ARTICLE II

APPLICABILITY OF TARIFF

1. Based upon governing applicability provisions, the Parties hereby confirm that Customer qualifies for the Contract Demand Service Rate Schedule.
2. Except to the extent expressly modified by the terms of this Agreement, all service rendered by Company under this Agreement shall be provided pursuant to the terms and

conditions of Company's Tariff, which is incorporated fully herein by reference, as filed with and approved by the Florida Public Service Commission from time to time.

3. The rates for transportation of natural gas to Customer's listed facilities shall be as set forth in Article VII of this Agreement.

ARTICLE III

POINTS OF RECEIPT AND DELIVERY

1. Customer shall arrange for the delivery of all gas to be transported by Company hereunder to take place at those interconnections between Company and Florida Gas Transmission Company ("FGT") heretofore determined [Point(s) of Receipt] in Miami, FL and Hialeah, FL. All such gas received by Company shall be redelivered to Customer at those interconnections between the distribution system of Company and the facilities of Customer heretofore determined [Point(s) of Delivery].

ARTICLE IV

OBLIGATIONS AND REPRESENTATIONS OF CUSTOMER

1. Customer represents that it meets all qualifications for Contract Demand Service.

2. Customer agrees to comply with all terms and conditions of this Agreement and the Company's Tariff, as approved by the Florida Public Service Commission, which terms and conditions are incorporated fully herein by reference and the applicable Rate Schedule as the same may be amended or modified from time to time.

3. Customer warrants that it will, at the time of delivery of gas to Company for transportation hereunder, have good and merchantable title to the gas free and clear of all liens, encumbrances, and adverse claims. Customer agrees to provide Company with any documentation which may be requested in writing by Company to evidence Customer's title to the gas transported. Company reserves the right, without penalty or liability, to refuse

transportation of any gas in the event Customer fails to provide such documentation upon Company's written request.

4. Customer warrants that all gas delivered to Company for transportation hereunder shall be of a merchantable quality and shall conform to the quality requirements set forth in the tariff of FGT as filed with and approved by the Federal Energy Regulatory Commission.

ARTICLE V

QUANTITY

1. Customer and Company agree that as of the Effective Date of this Agreement, the initial maximum annual contract quantity of gas ("MACQ") that Company is obligated to deliver to Customer under this Agreement in any contract year is:

Alexander Orr- Water Treatment Plant
6800 S.W. 87th Avenue
Miami, FL 33173
Account # 211-0756225-011
Account # 211-0756239-011
4,200,000 therms

Hialeah Lime Recalcination Facility
700 W. 2nd Avenue
Hialeah, FL 33010
Account # 211-0754412-011
3,300,000 therms

South District Wastewater Treatment Plant
8950 S.W. 232nd Street
Miami, FL 33170
Account # 211-0786676-001
400,000 therms

2. Company may, from time to time, make deliveries to Customer in excess of the above stated MACQs. However, if Customer desires to increase the MACQ for any facility, Customer will provide Company with a written request. Within ninety (90) days of the date of such request, Company shall provide Customer with proposed terms and conditions under which Company will be willing to increase MACQ. Such terms shall include, but not be limited to,

Customer's willingness to pay, if necessary, an appropriate contribution to the cost of construction of additional facilities.

3. Customer hereby agrees to tender for transportation on Company's systems, during each annual period, a volume of gas equal to or greater than the minimum annual volume of 1,250,000 therms per year.

4. The maximum daily contract quantity of gas ("MDCQ") Customer may have delivered to Company at the Points of Receipt, in the aggregate, for transportation by Company hereunder shall be 24,500 therms. During the Term of this Agreement, Customer may increase the MDCQ and/or the maximum deliveries designated herein for each Point of Receipt only with the prior consent of Company, and only upon such prior notice as Company may require under the circumstances.

**ARTICLE VI
PARAMETERS OF SERVICE**

1. Company does not warrant that transportation service will be available hereunder at all times and under all conditions.

**ARTICLE VII
RATES AND CHARGES FOR SERVICE**

1. For the Term of this Agreement, Customer shall pay Company each month the following transportation charges for services rendered under this Agreement. The rates set forth below are subject to the tax and other adjustment terms of Company's Tariff, as applicable to the Customer.

<u>Facility</u>	<u>Rate per Therm</u>	<u>MACQ</u>
Alexander Orr Water Treatment Plant	\$ 0.010	4,200,000

Hialeah Water Treatment	\$ 0.030	3,300,000
South District Wastewater Treatment Plant	\$0.030	400,000

2. There shall be no charge for each therm transported to each facility in excess of MACQ as set forth in Paragraph 1 of this Article in any contract year, provided that any transportation service in excess of the MACQ figures set forth above in any contract year do not require Company to construct additional facilities to provide such service to Customer. The terms and conditions with respect to any increase in the initial MACQ and construction of associated additional facilities are subject to the terms of Paragraph 2 of Article V of this Agreement.

ARTICLE VIII

MEASUREMENT

1. Company agrees to install and maintain facilities necessary to deliver and accurately measure the gas to Customer at the Points of Delivery.

2. Quantities of gas delivered to Company's distribution system at the Points of Receipt for the account of Customer shall be measured by FGT. All charges billed to Customer hereunder shall be based on the measurements made at the Points of Delivery. Measurement shall include temperature-correcting devices installed and maintained by Company to ensure proper billing of gas, corrected to 60 degrees Fahrenheit, at no cost to Customer.

3. Customer may, with the prior written consent of Company, which shall not be unreasonably withheld, and at no cost to Company, install check-measuring devices at the Points of Delivery.

ARTICLE IX

FULL REQUIREMENTS

1. It is understood and agreed that Company's rendering of gas transportation service under the terms and conditions of this Agreement is in consideration of Customer's agreement to utilize exclusively such services for all pipeline-transported natural gas consumed at Customer's facilities as listed in Article V herein, from the Effective Date hereof and during the Term of this Agreement and any renewals thereof. Accordingly, Customer agrees that Customer will not, for the Term of this Agreement, and any renewals thereof, displace any service provided under this Agreement with service from any third party. However, nothing herein shall prohibit Customer from extracting and consuming landfill gas at Customer's facilities.

ARTICLE X

FACILITIES

1. All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company.

ARTICLE XI

NOMINATIONS AND NOTICE

1. Customer, or its agent supplier, shall make all nominations of service (advice regarding the next month's anticipated consumption) on Company's system hereunder on the appropriate form provided by Company. Customer, or its agent, shall submit any new nomination for service a minimum of ten (10) working days prior to the commencement of the transportation service and shall submit a request for a change to an existing nomination a minimum of three (3) working days prior to the date the change is to become effective.

2. Customer or its agent, not Company, shall be responsible for making all transportation agreements and nominations to all third parties upstream of Company's Points of

Receipt. Customer may use a broker for this purpose. If Customer utilizes a broker to make such transportation arrangements and nominations on the interstate system upstream of Company's system, Customer shall identify the broker initially and upon a change.

3. All nominations and adjustments to nominations shall be directed to:

Mr. Ernie Brake
Manager of Gas Operations
AGL Resources
10 Peachtree Place NE, Suite 800
Atlanta, GA 30309
Office: 404-584-4161
Cell: 404-379-3929

Any service inquiries or correspondence regarding the administration of nominations shall be directed to:

Mr. Ed C. Delgado, RCGC
Major Accounts Executive
Florida City Gas
955 E. 25th Street
Hialeah, FL 33013
Cell: 786-218-0861
Fax: 305-691-7335

OR

Mr. Joe Hoyt
Senior Accounts Executive
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309
Office: 404-584-3118
Cell: 404-217-8928

4. All payments shall be directed to:

Florida City Gas
Location 1190
P.O. Box 5720
Atlanta, GA 31107-0720

5. To the extent any form of notice, other than notice related to nominations or administration of nominations, must be provided to either Party, notice should be sent to the following persons:

For Miami-Dade Water and Sewer Department:

Mr. Tom Segars, Superintendent
Water Production Division
P. O. Box 110006
Hialeah, FL 33011
Phone: (305) 520-4721
Fax: (305) 889-0156

For Florida City Gas:

Mr. Ed C. Delgado, RCGC
Major Accounts Executive
Florida City Gas
955 E. 25th Street
Hialeah, FL 33013
Cell: 786-218-0861
Fax: 305-691-7335

With a copy to:

General Counsel
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309

ARTICLE XII

FORCE MAJEURE

1. Neither Company, nor Customer or its agents, shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God; strikes; lockouts; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of rules and people; civil disturbances; explosions; temporary failure of gas supply; temporary failure of

firm transportation arrangements; the binding order of any court or governmental authority, which has been resisted in good faith by all reasonable legal means; acts of third parties; or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the Party, and which by the exercise of due diligence such Party is unable to prevent or overcome.

2. Such cause or contingencies affecting the performance by Company, Third Party Supplier, or Customer, however, shall not relieve Company or Customer of liability in the event of its concurrent negligence, or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered. In any event, the liability of Customer for damages shall be limited as provided in Section 768.28, Florida Statutes.

ARTICLE XIII

MISCELLANEOUS

1. The captions in this Agreement are for the convenience of the Parties in identification of the provisions hereof and shall not constitute a part of the Agreement, nor be considered interpretive thereof.

2. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; provided, however, neither Party may make an assignment hereunder without having first obtained the prior written consent of the other Party. Such consent shall not be unreasonably withheld. If either Party does not provide such consent within sixty (60) days after receipt of the other Party's notification of assignment, failure to reply shall be deemed as consent. Any notification of assignment or consent to assignment shall be made by registered mail and provided to the individuals identified in Paragraph 5 of Article XI of this Agreement.

3. The interpretation and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for any civil action arising out of this Agreement shall be Miami-Dade County, Florida, unless otherwise provided by the Tariff.

4. This Agreement shall be subject to all of the rules and regulations of any duly constituted federal or state regulatory authorities having jurisdiction hereof. Company and Customer shall comply at all times with applicable federal, state, municipal, and other laws, ordinances, and regulations.

5. This Agreement contains the entire understanding of the Parties with respect to the matters contained herein and may be modified only in writing duly executed by authorized representatives of the Parties.

6. UNLESS EXPRESSLY SET FORTH HEREIN OR IN THE TARIFF, EXCEPT FOR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMANCES SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS (INCLUDING, WITHOUT LIMITATION, COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

7. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

In witness whereof, MIAMI-DADE COUNTY and PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, by and through their duly authorized officers, have executed this Agreement as of the date first written above.

(SEAL)

PIVOTAL UTILITY HOLDINGS, INC.
D/B/A FLORIDA CITY GAS

By: _____

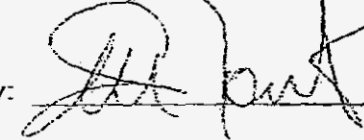
By: _____
Deputy Clerk


ATTEST:

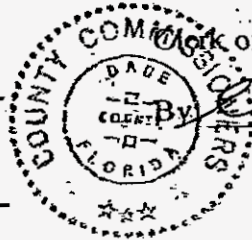
MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

Harvey Ruvin

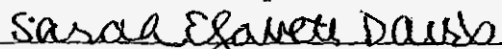
By its Board of County Commissioners

By:  _____

Clerk of the Board:

Deputy Clerk 8/28/08



Approved as to form and
Legal sufficiency.

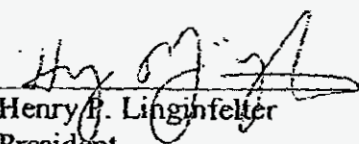
By: 
Assistant County Attorney

In witness whereof, MIAMI-DADE COUNTY and PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, by and through their duly authorized officers, have executed this Agreement as of the date first written above.

(SEAL)

PIVOTAL UTILITY HOLDINGS, INC.
D/B/A FLORIDA CITY GAS

By: _____
Deputy Clerk

By: 
Henry P. Linginfeller
President

ATTEST:

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

Harvey Ruvin

By its Board of County Commissioners

Clerk of the Board:

By: _____
Deputy Clerk

By: _____

Approved as to form and
Legal sufficiency.

By: _____
Assistant County Attorney

Docket No. 090539-GU
First Amendment to 1998 Agreement
Exhibit _____ (JL-8)

First Amendment to
Natural Gas Transportation Service Agreement
Between
Florida City Gas
And Miami-Dade County

This First Amendment ("Amendment") is effective as of this 30th day of June, 2008 by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG") and Miami-Dade County ("Customer").

WHEREAS, FCG (formerly known as NUI Corporation, represented by City Gas Company of Florida) and Customer entered into the Natural Gas Transportation Service Agreement on October 29, 1998 (the "Agreement");

WHEREAS, the Effective Date of the Agreement is July 1, 1998;

WHEREAS, the Term, as defined in the Agreement, was initially set to expire on June 30, 2008; and

WHEREAS, the parties desire to extend the Term as set forth below.

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements herein, FCG and Customer agree as follows:

1. The parties are currently negotiating a renewal of the Agreement (the "New Contract"). Pursuant to the terms of the New Contract, such contract shall not become effective until the date that the Florida Public Service Commission ("Commission") approves and makes the New Contract effective (the "Effective Date"). Further, if the New Contract is not approved and made effective by the Commission subject to terms and conditions satisfactory to the parties within one hundred eighty (180) days from the date the New Contract is entered into by the parties, the New Contract shall not become effective.
2. To avoid a gap in service between the expiration of the Agreement and the Effective Date of the New Contract and, if necessary, to allow the parties additional time to negotiate a new agreement in the event the New Contract does not become effective, the parties hereby agree to extend the Term of the Agreement on a month-to-month basis effective as of July 1, 2008, until the earlier of: (a) the Effective Date of the New Contract; or (b) thirty (30) days following written notice from either Party of its election to terminate the Agreement.

EXECUTION COPY

- 3. If the New Contract does not become effective and negotiations are terminated, the Parties will agree to terminate the Agreement.
- 4. All other provisions of the Agreement shall remain in full force and effect.
- 5. This Amendment may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

The parties have executed this Amendment by the signatures of their respective authorized representatives on the date set forth below.

**PIVOTAL UTILITY HOLDINGS,
INC. D/B/A FLORIDA CITY GAS:**

**MIAMI-DADE COUNTY:
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: _____

By: *[Signature]*

Print Name:

Print Name:

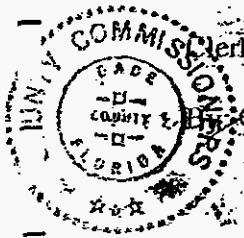
Title:

Title:

ATTEST:

Harvey Ruvin

Clerk of the Board:



[Signature]
Deputy Clerk 8/28/08

Approved as to form and
Legal sufficiency.

By: *Sandra Egan-Davis*
Assistant County Attorney

EXECUTION COPY

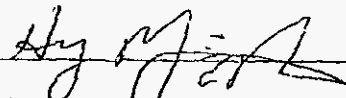
3. If the New Contract does not become effective and negotiations are terminated, the Parties will agree to terminate the Agreement.
4. All other provisions of the Agreement shall remain in full force and effect.
5. This Amendment may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

The parties have executed this Amendment by the signatures of their respective authorized representatives on the date set forth below.

**PIVOTAL UTILITY HOLDINGS,
INC. D/B/A FLORIDA CITY GAS:**

MIAMI-DADE COUNTY:

**BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: 
Print Name: Henry P. Linginfelter

By: _____
Print Name:

Title: President

Title:

ATTEST:

Harvey Ruvin

Clerk of the Board:

By: _____
Deputy Clerk

Approved as to form and
Legal sufficiency.

By: _____
Assistant County Attorney

7

Docket No. 090539-GU
Miami-Dade Water Plant – Rate Design Comparison
Exhibit _____ (JL-9)

Responses Attachment 1
 Miami Dade Water Plant - Rate Design Comparison

	Per 1999 Rate Design	Per Nov'08 Surveillance Report
Miami Dade Water and Sewer Water Plant - Alexander Orr Cost of Service and Rate Design		
Description	Total	Total
O&M Expenses	\$3,500	\$87,671
Depreciation	\$11,230	\$45,503
Taxes Other Than Income	\$10,302	\$12,094
State Tax @ 5.5%	\$2,943	\$2,535
Federal Tax @ 34.00%	\$15,674	\$14,367
Sub-total	\$43,649	\$162,171
Required Return on Investment (Rate base x ROR)	\$30,399	\$28,502
Total Incremental Cost of Service	\$74,048	\$190,672
Estimated Average Annual Volume (therms)	4,243,010	3,500,000
Incremental Cost Rate	\$0.01745	\$0.05448
Miami Dade Water and Sewer Water Plant - Hialeah Water Plant and South District Cost of Service and Rate Design		
Description	Total	Total
O&M Expenses	\$6,500	\$87,671
Depreciation	\$24,164	\$45,503
Taxes Other Than Income	\$10,649	\$12,094
State Tax @ 5.5%	\$6,331	\$2,535
Federal Tax @ 34.00%	\$33,726	\$14,367
Sub-total	\$81,370	\$162,171
Required Return on Investment (Rate base x ROR)	\$65,409	\$61,326
Total Incremental Cost of Service	\$146,779	\$223,497
Estimated Average Annual Volume (therms)	3,159,440	2,400,000
Incremental Cost Rate	\$0.04646	\$0.09312

Approved Rate of Return

DOCKET NO. 090539-GU
~~FCG'S CONFIDENTIAL RESPONSE TO MIAMI-DADE~~
 COUNTY'S FIRST POD, ITEM NO. 2
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7.85%

7.35%

*click note
 this handout is not confidential
 please remove Nelson, and
 may be placed behind the transcript - Ann Cole*

Parties/Staff Handout
 Internal Affairs **Agenda**
 on 9/13/10
 Item No. 21
100315-411

08289-10

Docket No. 090539-GU
FCG Confidential Response to Commission Staff Data Request in Docket 080672-GU
Exhibit _____ (JL-10)

Responses to FPSC Staff Second Data Request
Docket No. 080672-GU
January 9, 2009

Privileged and Confidential

Responses to Question 4

Q: What percentage of FCG total load does the Miami/Dade load subject to this contract represent?

A: [REDACTED]

Q: What is the potential new load associated with the six EMD engines?

A: [REDACTED]

Q: What would it cost Miami/Dade to bypass FCG and connect directly to FGT?

A: FCG does not have this information.

Q: What is the dollar amount that of fixed costs would be collected from the other ratepayers if Miami/Dade did bypass FCG?

A: [REDACTED]

Q: Wouldn't the loss of Miami/Dade reduce costs to the remainder of the ratepayers by the amount currently collected through the CRA?

A: [REDACTED]

Attachment 1

Q: How were the numbers in column 2 derived?

A: [REDACTED] 04-

Q: Does the last column represent the system average cost or the average cost to serve commercial industrial customers similar to Miami/Dade?

DOCUMENT NUMBER-DATE
0330 JAN 13 2009

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Responses to FPSC Staff Second Data Request
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A: [REDACTED]

Q: Why is the cost for the Alexander Orr plant less (on a percentage basis of the 'surveillance report' number) than the Hialeah plant?

A: [REDACTED] for [REDACTED]

Q: Provide FCG's total customer count and number of commercial/industrial customers.

A: [REDACTED] total [REDACTED] with [REDACTED]

Q: Of total FCG commercial/industrial customer load, what percentage does Miami-Dade represent?

A: [REDACTED]

Q: Provide FCG's estimate of Miami-Dade's cost to bypass FCG services.

A: [REDACTED]

080672-GU

	Per 1999 Rate Design	Per Nov'08 Surveillance Report	Rate	Nov 2008 12 months expenses	Rate	Customer Cost Alloc Factor	Estimated Split of Taxes
MIAMI DADE WATER AND SEWER WATER PLANT - ALEXANDER ORR COST OF SERVICE AND RATE DESIGN							
Description	Total	Total					
O&M Expenses	\$3,500	\$87,871		[REDACTED]		[REDACTED]	
Depreciation	\$11,230	\$45,503		[REDACTED]		[REDACTED]	
Taxes Other Than Income	\$10,302	\$12,094		[REDACTED]		[REDACTED]	
Rate Tax @ 5.5%	\$2,943	\$2,535		[REDACTED]		[REDACTED]	
Federal Tax @ 34.00%	\$15,674	\$14,367		[REDACTED]		[REDACTED]	
Sub-total	\$43,649	\$182,171		[REDACTED]		[REDACTED]	
Required Return on Investment ** (Rate base x ROR)	\$30,398	\$28,502		[REDACTED]		[REDACTED]	
Total Incremental Cost of Service	\$74,048	\$180,672		[REDACTED]		[REDACTED]	
Estimated Annual Volume (thems)	4,243,010	3,500,000		[REDACTED]		[REDACTED]	
Incremental Cost Rate	\$0.01745	\$0.05448		[REDACTED]		[REDACTED]	
MIAMI DADE WATER AND SEWER WATER PLANT - HALESH WATER PLANT AND BLACK POINT COST OF SERVICE AND RATE DESIGN							
Description	Total	Total					
O&M Expenses	\$6,500	\$87,871		[REDACTED]		[REDACTED]	
Depreciation	\$24,164	\$45,503		[REDACTED]		[REDACTED]	
Taxes Other Than Income	\$10,648	\$12,094		[REDACTED]		[REDACTED]	
Rate Tax @ 5.5%	\$6,331	\$2,535		[REDACTED]		[REDACTED]	
Federal Tax @ 34.00%	\$33,728	\$14,367		[REDACTED]		[REDACTED]	
Sub-total	\$81,370	\$182,171		[REDACTED]		[REDACTED]	
Required Return on Investment *** (Rate base x ROR)	\$65,408	\$61,326		[REDACTED]		[REDACTED]	
Total Incremental Cost of Service	\$146,778	\$223,497		[REDACTED]		[REDACTED]	
Estimated Annual Volume (thems)	3,158,440	2,400,000		[REDACTED]		[REDACTED]	
Incremental Cost Rate	\$0.04646	\$0.09312		[REDACTED]		[REDACTED]	

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DOCKET NO. 090539-GU
 FCG'S CONFIDENTIAL RESPONSE TO MIAMI-DADE COUNTY'S FIRST POD, ITEM NO. 2
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 FCG Confidential Response to Comm.
 Staff Data Request in Docket 080672-GU
 Exhibit JL-10, page 3 of 3

Approved Rate of Return 7.85% 7.38%

November 2008 12 months expenses using the Surveillance Report calculations (See attached document)
 Approved Customer Cost allocation factors from order PSC-04-0126-PAAGU dated 2/9/04 pg 95
 Approved rate of return from order PSC-04-0126-PAAGU dated 2/9/04 pg 84

DOCUMENT NUMBER - DATE

00712 JAN 28 8

FPSC-COMMISSION CLERK