

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: August 15, 2013

TO: Office of Commission Clerk (Cole)

FROM: Division of Economics (Rome, McNulty) *APR*
Office of the General Counsel (Brownless) *EJD JWD LUBM JSC*

RE: Docket No. 130089-GU – Joint petition for approval of natural gas transportation service agreement between Florida City Gas and Miami-Dade County, through Miami-Dade Water and Sewer Department.

AGENDA: 08/27/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECO\WP\130089.RCM.DOC

RECEIVED 11:00
13 AUG 15 AM 8:59
COMMISSION
CLERK

Case Background

On April 23, 2013, Florida City Gas (FCG) and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department (MDWASD) filed a joint petition for approval of the 2014 Natural Gas Transportation Service Agreement (2014 TSA) between FCG and MDWASD effective January 1, 2014. The 2014 TSA provides for rates, terms, and conditions of natural gas transportation service to MDWASD's Alexander Orr (Orr) and Hialeah-Preston (Hialeah) water treatment plants pursuant to FCG's Load Enhancement Service Rate Schedule (LES tariff), which sets forth the requirements for preconditions for negotiated contracts that are subject to Commission approval. On July 19, 2013, FCG and MDWASD

submitted a minor modification to the 2014 TSA. The redacted version of the amended 2014 TSA is shown in Exhibit A.

FCG is a public utility as defined by Section 366.02(1), Florida Statutes (F.S.). MDWASD is a water and sewer utility operating in Miami-Dade County, Florida, serving more than two million customers. MDWASD utilizes natural gas at its Orr and Hialeah plants to heat lime kilns that produce lime for the water treatment process. The natural gas is also used to power high service pumps that pump water through MDWASD's water distribution system to customers.

FCG has provided natural gas transportation service to MDWASD's Orr plant since the mid-1980s and to the Hialeah plant since the early 1990s. Currently, FCG is providing natural gas transportation service to MDWASD's Orr and Hialeah plants pursuant to a 2011 Transportation Service Agreement (2011 TSA) that was approved by the Commission.¹ The 2011 TSA expires on December 31, 2013; there is no provision for an extension or continuation.

Contract rate transportation service is available to certain large volume customers like MDWASD subject to Rule 25-9.034, Florida Administrative Code, and to the terms and conditions of FCG's Commission-approved LES tariff.² Under the terms of the LES tariff, FCG can negotiate individual service agreements provided the following preconditions to service are met:

(a) The customer must be a commercial customer that currently receives service under contract or otherwise would take service pursuant to the Flexible Gas Service (FGS), Contract Demand Service (KDS), Transportation Supply Service (TSS), Off-System Sales Service (OSS), or GS-1250k rate schedules in FCG's tariff.

(b) The customer must have an alternative energy source or an economic natural gas bypass alternative, the availability of which shall be documented by the customer and verifiable by FCG.

(c) FCG must demonstrate to the Commission that service under the proposed contract will not impose any additional costs on FCG's other rate classes, including at a minimum, that the rate shall not be set lower than the incremental cost of service plus some additional amount as a reasonable return on investment.

(d) FCG is not compelled to offer service under contract, but if offered it shall be pursuant to mutually agreeable terms and conditions.

(e) In developing rates for a contract under the LES tariff, FCG is required to evaluate competitive and overall economic market conditions.

¹ See Order No. PSC-12-0171-AS-GU, issued April 2, 2012, in Docket No. 090539-GU, In re: Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department.

² Id.

(f) The agreed-upon contract must be approved by the Commission prior to execution by the parties.

During its evaluation of the joint petition, staff issued four data requests to FCG and two data requests to MDWASD. The majority of the questions posed by staff were intended to obtain additional information to ensure that: (a) MDWASD was able to demonstrate the availability of an economic natural gas bypass alternative and (b) the proposed contract would not impose any additional costs on FCG's other rate classes. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the joint petition for the natural gas transportation service agreement between Florida City Gas and Miami-Dade County, through the Miami-Dade Water and Sewer Department be approved?

Recommendation: Yes. The 2014 TSA is based on the LES tariff, which provides clear specifications for contractual rates, terms, and conditions such as those negotiated by the joint petitioners. Based on its review of the materials filed in support of the joint petition and the additional information provided by FCG and MDWASD through responses to data requests, staff believes that the 2014 TSA complies with the LES tariff for the following reasons: (a) MDWASD is a large commercial customer currently under contract that otherwise would be subject to the GS-1250k rate schedule, (b) there is a verifiable and documented bypass alternative for the Orr and Hialeah plants, (c) continued service to MDWASD at the Orr and Hialeah plants under the 2014 TSA will not adversely impact FCG's other customers, (d) on balance, staff believes the 2014 TSA rates are set above the incremental cost of service, (e) FCG has evaluated the competitive conditions and the other terms of the LES tariff regarding interruption and curtailment and the 2014 TSA is consistent with FCG's service terms. (Rome, McNulty)

Staff Analysis:

Overview

The 2014 TSA continues the plant-specific volumetric rate structure first established in the 2011 TSA but with updated volumes and rates for each plant which joint petitioners indicate over the life of the contract will provide for cost-based rates that recover the incremental costs of service plus some additional amount to recover some of FCG's common costs. This overall rate structure and schedule affords MDWASD the opportunity to increase the volume of FCG's transportation services and receive a lower rate based upon the total volume delivered and the incremental cost applicable to MDWASD at each location.

MDWASD has kilns at the Orr and Hialeah treatment plants that utilize the natural gas transported by FCG to recycle calcium carbonate to produce the lime used to soften water as part of the water treatment process. According to MDWASD, any lime not produced on-site in the natural gas power kilns must be purchased and transported at a significantly higher cost than MDWASD's cost to produce lime. MDWASD recently made a significant capital investment to rebuild the main lime kiln at the Orr plant. MDWASD has expressed its desire for more gas to produce more lime, thus reducing its purchased lime and reducing its costs. Now that the enhancements to the Orr plant kiln have been completed, MDWASD will have a greater and more reliable ability to produce more lime at the Orr plant that should enable it to utilize natural gas more consistently and in amounts that exceed historical levels.

The volumetric rate structure included in the 2014 TSA will facilitate MDWASD's overall cost of treatment to the ultimate benefit of MDWASD's water customers, some of whom are also FCG customers. As for FCG, the company indicates that the lower natural gas transportation rate associated with the increased volumes of gas transported in the successive rate

structure tiers reflects FCG's lower cost to provide its transportation service as the volumes increase while still recovering its costs plus some contribution to its common costs. The LES tariff indicates the Competitive Rate Adjustment tariff may apply in this instance.

One new provision in the 2014 TSA (in comparison to the 2011 TSA) is a designated minimum volume of gas to be transported each year by FCG. This "take or pay" provision in Article V, Section 3 was an integral part of the overall negotiation of the 2014 TSA and reflects MDWASD's commitment to continue to utilize the transportation services provided by FCG. The minimum volumes are subject to a suspension or "out" provision for extraordinary circumstances in the event that service was to be interrupted for more than 90 days. The joint petitioners believe that MDWASD can still meet the take or pay minimum volumes during service interruptions of 90 days or less, but the petitioners recognize that an interruption in service greater than 90 days reflects a significant issue that warrants a suspension of the take or pay minimum during such extended outage.

The proposed term of the 2014 TSA is for ten years beginning January 1, 2014, which would ensure a seamless transition from the current 2011 TSA that expires on December 31, 2013. Beginning in Year 5 (2018), the plant-specific rates for each rate tier are subject to an annual increase equal to the annual United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) as reported in January for the prior twelve calendar months (January 1 through December 31). For any year that is subject to a price increase under the agreement (2018 through 2023), if the CPI-U for the prior year is equal to or less than zero, then the transportation rates for each tier for each plant shall continue for that year unchanged from the rates of the prior year. FCG believes that adjusting the rates each year beginning in 2018 based upon the CPI-U will provide an effective mechanism for ensuring that FCG's rates continue to recover its cost plus an additional increment throughout the entire term of the agreement.

Analysis of Bypass Alternatives Available to MDWASD

The Commission has historically approved various load retention tariff schedules similar to FCG's LES tariff for gas transportation utilities which are designed to allow utilities to retain customers who have demonstrated the ability to bypass utility facilities at costs below the normal tariff rates.³ In instances of demonstrated bypass, load retention tariffs typically encourage negotiated rates that allow the utility to cover its cost of providing service to the customer plus provide some amount of contribution to the common costs of the utility. FCG's LES Rate Schedule's section titled "Applicability" includes the requirement that "the Customer must provide the Company verifiable documentation of either a viable alternative fuel or of a Customer's opportunity to economically bypass the Company's system." MDWASD's bypass

³ See Order No. PSC-00-1592-TRF-GU, issued September 5, 2000, in Docket No. 000717-GU, In re: Petition for authority to implement contract transportation service by City Gas Company of Florida; Order No. PSC-96-1218-FOF-GU, issued September 24, 1996, in Docket No. 960920-GU, In re: Petition for approval of flexible service tariff by City Gas Company of Florida; Order No. PSC-98-1485-FOF-GU, issued November 5, 1998, in Docket No. 980895-GU, In re: Petition by Florida Division of Chesapeake Utilities Corporation for authority to implement proposed flexible gas service tariff and to revise certain tariff sheets.

opportunities in this case reflect its potential ability to tie directly into nearby Florida Gas Transmission lines rather than purchase gas from FCG.

FCG and MDWASD provided detailed documentation in Exhibit C of the joint petition that included presentations of MDWASD's costs to bypass FCG's system at both the Orr and Hialeah plants. Substantial additional information was provided by the joint petitioners in response to data requests from staff. FCG has indicated its concurrence with MDWASD that the bypass options available to MDWASD are viable.

To demonstrate the viability of bypass options, it is necessary to show that MDWASD's estimated cost per therm to bypass FCG's system would be less than the cost per therm that MDWASD would be charged under the normal GS-1250k tariff rate. For purposes of comparing the cost per therm rates, staff used the joint petitioners' projected volumes of 3,469,000 therms per year and 2,727,911 therms per year (total of 6,196,911 therms per year) for the Orr and Hialeah plants, respectively.⁴ The applicable GS-1250k tariff rate is approximately \$0.1369 per therm. Exhibit C to the joint petition indicates that MDWASD's estimated costs to bypass FCG's system for the Orr and Hialeah plants are \$0.0233 per therm and \$0.0455 per therm, respectively. These bypass cost estimates are well below the GS-1250k rate of \$0.1369. Based on review of materials submitted in support of the joint petition and additional information provided in response to staff data requests, staff believes that the joint petitioners' demonstration that MDWASD has verifiable and documented bypass alternatives to the FCG gas transportation facilities at the Orr and Hialeah plants is reasonable.

Cost Recovery under the Proposed 2014 TSA

Under the terms of the LES tariff, FCG must demonstrate to the Commission that service under the proposed contract will not impose any additional costs on FCG's other rate classes, including at a minimum, that the rate shall not be set lower than the incremental cost of service plus some additional amount as a reasonable return on investment. Staff reviewed the cost support data for the 2014 TSA provided in the joint petition in comparison to the cost support that was provided for the 2011 TSA in Docket No. 090539-GU. Staff reviewed the cost support data for reasonableness of the estimates of depreciation expense, operations and maintenance expense, taxes, return on investment, and other expenses. Since the term of the 2014 TSA (10 years) is substantially longer than the term of the 2011 TSA (2 years), staff reviewed several areas of cost risk, including the impacts of inflation and volumetric shortfalls among other risks. Staff issued a series of data requests to gather additional information regarding the subject of cost support.

While the specific details are confidential, the cost support provided by the joint petitioners indicates that FCG's operations and maintenance expense estimates account for inflation for all years. In order for contract rates to be set at a level to allow recovery of incremental costs, the parties negotiated inflationary adjustments to the 2014 TSA rates for Years 5-10 of the contract term.

⁴ FCG response to Staff's First Data Request, Question No. 1-3.1

Staff compared the incremental cost of service to the Orr and Hialeah plants to each plant's proposed 2014 TSA rates. Staff notes that the proposed 2014 TSA rates are set higher than incremental costs for all tier levels (1-3) and all years in the contract term (2014-2023) for both the Orr and the Hialeah plants. The total marginal revenue for the contract term (total revenue less inflation-adjusted costs for the 10 year term) is relatively small, especially for volumes based on proposed Tier 3 volumes and rates. In order to help assess whether rates under the 2014 TSA provide sufficient headroom to cover specified cost risks, staff evaluated the cost impact of volumetric shortfalls.

The risk of volumetric shortfalls has been addressed, at least in part, by the take or pay provision of the 2014 TSA noted earlier. Under the take or pay provision, if actual volumes are less than the take or pay volumes, the 2014 TSA rates are set sufficiently high to recover the incremental costs of service and provide some level of contribution.

However, the 2014 TSA also contains terms for take or pay temporary suspensions. A suspension becomes effective when MDWASD provides notice to FCG of a volume shortfall associated with a service outage of more than 90 days. The associated loss of revenue can result in FCG not recovering its incremental cost during the year in question if the outage is of sufficient duration. MDWASD has indicated that the prospect of unanticipated shutdowns remains, despite the rebuild of the Orr plant kiln in 2012-2013 and the major overhaul of the Hialeah plant kiln in 2008-2009, due to stress and fatigue on the lime kilns from constant operation and high operating temperatures.

MDWASD reports the vast majority of unanticipated shutdowns are of long duration due to the difficulty in obtaining replacement materials and finding qualified craftsman installers. However, MDWASD states, "Based on its long history of operation, [MD]WASD does not expect many emergency shutdowns after both kilns are fully repaired and operating (note recent history of Hialeah kiln)."⁵ Since its four-month rebuild in 2008 and 2009, the Hialeah plant kiln has operated continuously except for a minor shutdown occurring in October 2010. Also, MDWASD has great incentive to keep any outages as short as possible since MDWASD must pay for expensive lime for each day the kilns do not operate. In addition, the parties have clarified that prorated take or pay volumes apply to the first 90 days of a shutdown wherein MDWASD has requested a take or pay suspension. Thus, the take or pay suspension begins on Day 91 of any such shutdown, so that MDWASD will be working to effect a repair of the kiln during the first 90 days of the outage during which MDWASD would be subject to take or pay minimum volumes.

Clearly, the number and the duration of unanticipated outages of the lime kilns will be a major factor in determining whether the total marginal revenue of the 2014 TSA in the aggregate over the contract term is positive or negative. However, staff believes it is unlikely that total marginal revenue will be negative over the term of the contract given the recent kiln rebuilds, strong incentives for minimizing outage times, and the 90 day delay in the suspension of the take or pay provision during a prolonged outage. On balance, staff believes the 2014 TSA rates are set above the incremental cost of service.

⁵ Joint Petition, Exhibit E, page 5 of 10

Conclusion

Based upon review of the materials submitted in support of the joint petition and the additional information provided in response to staff data requests, staff recommends that the joint petition for approval of the 2014 TSA between FCG and MDWASD be approved. The joint petitioners have reasonably demonstrated the existence of economically viable options for MDWASD to bypass FCG's system at both the Orr and Hialeah plants. On balance, staff believes that the rates in the 2014 TSA will recover FCG's costs plus an additional increment throughout the entire term of the agreement. Continued service to MDWASD at the Orr and Hialeah plants under the 2014 TSA will not adversely impact FCG's other customers.

The overall term of the 2014 TSA also provides important economic development benefits to the joint petitioners and their respective customers. The future growth and development of Miami-Dade County depends upon a sufficient and adequate supply of clean drinking water. By entering into a ten-year natural gas transportation contract with FCG, MDWASD has an important component of its water treatment costs set, thus helping to ensure the reliability of its water system. For FCG and its ratepayers, the take or pay requirements of the contract provide a reliable minimum revenue stream while the overall term of the agreement, when combined with the various system improvements being made by MDWASD, ensure a long term commitment by MDWASD to continue to receive transportation service from FCG.

Docket No. 130089-GU

Date: August 15, 2013

Issue 2: Should this docket be closed?

Recommendation: Yes. If a protest is filed within 21 days of the issuance of the order, the 2014 TSA should remain in effect subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brownless)

Staff Analysis: If a protest is filed within 21 days of the issuance of the order, the 2014 TSA should remain in effect subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

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

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

THIS AGREEMENT made and entered into as of this ___ day of _____, 2013, by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, 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 Company, the "Parties").

WITNESSETH:

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

WHEREAS, Customer has requested that Company continue to 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, Customer has a verifiable and documented bypass alternative;

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

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

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ARTICLE 1

TERM OF AGREEMENT

1. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall become effective as of billings rendered on or after January 1, 2014, upon the Commission's issuance of a final order making this Agreement effective (the "Effective Date") and the parties' execution pursuant to the terms herein. This Agreement shall continue in full force and effect through December 31, 2023, as set forth herein at which time the Agreement shall terminate (hereinafter, the "Term"). Upon written authorization by Customer, Company shall promptly file this Agreement and any related documentation with the Commission within ten (10) business days of such authorization in order to obtain the necessary Commission approvals. Company shall include Customer in any Commission filings or communications associated with the Commission's review and approval of this Agreement.

2. Company agrees, upon written request from Customer received by Company not less than one hundred eighty days (180) days prior to the termination date of this Agreement, to review the terms and conditions of the Agreement for the purpose of negotiating a successor agreement. Any successor agreement is contingent upon the Company and Customer mutually agreeing in writing to the terms and conditions for a successor term and the Commission approving such successor agreement. If this Agreement is not approved and made effective by the Commission subject to terms and conditions satisfactory to the Parties, this Agreement shall not become effective, and the parties will continue to negotiate a new agreement.

ARTICLE II

APPLICABILITY OF TARIFF

1. Based upon governing applicability provisions, the Parties hereby confirm that

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Customer qualifies for the Load Enhancement 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, Florida and Hialeah, Florida. 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 and Company acknowledges that it meets all qualifications for Load Enhancement 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

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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 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 (or "Orr" 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 (or "Hialeah" Plant)
700 W. 2nd Avenue
Hialeah, FL 33010
Account # 211-0754412-011
3,300,000 therms

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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 on a take or pay basis for transportation on Company's systems, during each annual period, a volume of gas equal to or greater than the minimum annual volume of [REDACTED] therms per year at the Orr plant (combining the volumes for the two meters), and [REDACTED] therms per year at the Hialeah plant. These take or pay minimums for each plant shall be temporarily suspended when Customer advises Company of a service outage at a specific plant of more than 90 days, and the take or pay minimums shall be adjusted accordingly for that plant on a pro rata basis for the period of such outage.

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.

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ARTICLE VI

PARAMETERS OF SERVICE

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

2. Upon the effective date of any legislative, regulatory, judicial, or other legal action that materially affects any material terms of this Agreement, or the ability of Company or Customer to perform any material terms of this Agreement (hereinafter, the "Regulatory Change"), Company or Customer may, on thirty (30) days' written notice to the other require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required only to address the Regulatory Change. Any such modified terms shall be submitted as an amendment to the Commission for approval prior to execution by the parties, and the amended provisions shall be substituted in place of those previously in effect and shall become effective under this Agreement as of the effective date of the Commission approval unless the parties agree or the Commission orders a different date. In the event a Regulatory Change amendment is not renegotiated within ninety (90) days after such notice, the dispute may be referred to the Commission by either Party for its resolution. This paragraph does not permit a party to unilaterally seek or otherwise petition the Commission for a change in rates. Notwithstanding any Regulatory Change or any increase in rates by the Commission for a large volume customer receiving service under the GS-1250k Rate Schedule or under the Load Enhancement Service Rate Schedule, the rates in Article VII of this Agreement shall not change during the term of this Agreement except for the amount of the CPI-U increases provided in Article VII of this Agreement.

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.

2. The applicable natural gas transportation rates for service to Customer by Company for the period January 1, 2014, through December 31, 2017 under this Agreement shall be as follows (for purposes of this Agreement, the volumes delivered through the two meters at Orr shall be combined cumulatively for the purpose of determining the applicable monthly rate and total annual therms for Orr):

Plant	Orr		Hialeah	
	Volume	Rate	Volume	Rate
Tier 1	█ million therms* to less than █ million therms	\$ █	█ million therms* to less than █ million therms	\$ █
Tier 2	█ million therms to less than █ million therms	\$ █	█ million therms to less than █ million therms	\$ █
Tier 3	█ million therms and higher	\$ █	█ million therms and higher	\$ █

* This is the take or pay minimum billable volume for this plant except as may be adjusted.

3. Annual Price Increase. Beginning January 1, 2018, and continuing through December 31 2023, the rate for natural gas transported to the Customer's Orr and Hialeah plants by Company shall be increased effective January 1 for each year by the annual United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers ("CPI-U") as

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reported in January of each such year for the prior twelve (12) calendar months (i.e., January 1 to December 31). For any year subject to a price increase (2018-2023), if the CPI-U for the prior year is equal to or less than zero, the rate shall not be increased or decreased but shall continue for that year unchanged from the rate of the prior year.

4. For service beginning January 1, 2014, Customer will notify Company of its estimated transport volumes for Orr and Hialeah no later than ten (10) days prior to the beginning of each quarter. Company will bill Customer monthly based on the applicable rate for the estimated volumes at Orr and Hialeah provided by Customer.

5. Company will perform an annual true-up of Customer's monthly billings for Orr and Hialeah within forty-five (45) days following the conclusion of the calendar year so that Customer's final rate per therm matches the corresponding rate per therm at each plant respectively, based upon the total annual volumes at each plant, and which may require a refund to or a supplemental payment from Customer based upon actual volumes or failure to meet the take or pay minimum.

6. There shall be no additional charge over the rates specified in this Article for each therm transported to each facility in excess of MACQ as set forth in Article V 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 MACQ and construction of associated additional facilities are subject to the terms of Paragraph 2 of Article V of this Agreement.

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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.

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

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

Ms. Carolyn Bermudez
Florida City Gas
955 E. 25th Street
Hialeah, FL 33013
Office: (305) 835-3606
Cell: 786-218-0861
Fax: 305-691-7335

OR

Mr. Marc Seagrave
Director New Business Development
Florida City Gas-AGL Resources
955 E. 25th Street
Hialeah, FL 33013
Office: 305-835-3651
Fax: 305-691-7335

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

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With a copy to:

Office of the County Attorney
Stephen P. Clark Center
111 Northwest First Street, Suite 2800
Miami, Florida 33128-1993

For Florida City Gas:

Ms. Carolyn Bermudez
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

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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

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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.

6. UNLESS EXPRESSLY SET FORTH HEREIN OR IN THE TARIFF, EXCEPT FOR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES 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. After Commission approval, 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.

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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

Clerk of the Board:

By: _____
Deputy Clerk

By: _____
COUNTY MAYOR

Approved as to form and
Legal sufficiency.

By: _____
Assistant County Attorney