

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 090539-GU
ORDER NO. PSC-11-0229-PCO-GU
ISSUED: May 23, 2011

ORDER ON MIAMI-DADE COUNTY'S MOTION TO COMPEL DISCOVERY
AND REQUEST TO IMPOSE SANCTIONS

Florida City Gas (FCG) is an investor-owned natural gas utility company subject to the Commission's regulatory jurisdiction as prescribed in Chapter 366, Florida Statutes (F.S.). Miami-Dade County (Miami-Dade) is a political subdivision of the State of Florida, and Miami-Dade Water and Sewer Department (MDWASD) is a department of the County. MDWASD owns and operates several water and wastewater treatment plants in Miami-Dade County, Florida. As part of its water treatment operations, MDWASD operates lime kilns at the Alexander Orr Plant in South Miami and at the Hialeah-Preston Plant in Hialeah, as well as a cogeneration facility at the South Dade Wastewater Treatment Plant. MDWASD uses natural gas to heat the lime kilns for the water treatment process that produces and distributes water to MDWASD's customers.

On August 28, 2008, Miami-Dade and FCG entered into a Special Gas Service Transportation Agreement (2008 Agreement). On December 14, 2009, MDWASD filed a petition for approval of the 2008 Agreement that initiated the instant docket. On March 5, 2010, FCG filed a petition for leave to intervene, which was granted by Order No. PSC-10-0261-PCO-GU, issued on April 26, 2010. The Commission will hold an administrative hearing in the docket on June 1-3, 2011.

On March 17, 2001, MDWASD filed a Motion to Compel Discovery and to Impose Sanctions on FCG. MDWASD asked the Commission to compel responses to MDWASD's Interrogatories Nos. 1, 2, 18, 19, 21, 23, 30, 31, 32, 34, 35, 37, 44, 45, 46, 48, 50, 58, 59, 62, 63, 64, 66, and 67, and its Requests for Production of Documents Nos. 1, 2, 5, 7, 8, 9, 13, 20, 21, 23, 25, 26 and 27. MDWASD asserted that FCG provided vague and evasive answers to its discovery requests which did not meet the discovery standards under Section 1.280 of the Florida Rules of Civil Procedure (Fla. R. Civ. P.). MDWASD asked the Commission to enter an order compelling immediate production of the information and documents responsive to its discovery requests. MDWASD also asked for an award of fees and costs to file its motion, imposition of penalties for failure to comply with recordkeeping requirements, and additional sanctions for "misleading" the Commission staff in its discovery responses regarding incremental costs.

FCG responded that it had appropriately answered MDWASD's discovery requests either by providing the requested information and documents by reference to

DOCUMENT NUMBER-DATE
03590 MAY 23 =
FPSC-COMMISSION CLERK

responses to other discovery or by supplemental responses to the requests. FCG also claimed that some of the information and documents requested are unduly burdensome, privileged, not reasonably likely to lead to the discovery of admissible evidence, or not kept in the form requested in FCG's normal course of business. With respect to MDWASD's request for fees and penalties and sanctions, FCG argued that they are not appropriate here because MDWASD's Motion to Compel did not include "a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make discovery in an effort to secure the information or material without court action," as Rule 1.380(2), Fla. R. Civ. P., requires.

In discussions held with Commission staff on May 5, 2011, the parties agreed that they had resolved their disagreements regarding all Interrogatories except Nos. 2, 23, 45, 64 and 67, and FCG agreed to provide supplements to its responses to those interrogatories. The parties also agreed that they had resolved their disagreements regarding all Requests for Production of Documents except Nos. 1, 2, 5, 7, 8, and 20, and FCG agreed to provide supplements to its responses to those requests as well. FCG provided its supplemental responses to MDWASD on May 19, 2011, and MDWASD has confirmed that the additional information has resolved the remaining discovery disputes.

Since the parties have now resolved all outstanding disagreements regarding discovery, I find that MDWASD's Motion to Compel and Request to Impose Sanctions is moot at this time.

Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing officer, that MDWASD's Motion to Compel and Request to Impose Sanctions is moot.

By ORDER of Chairman Art Graham, as Presiding Officer, this 23rd day of
May _____, 2011_____.



ART GRAHAM
Chairman and Presiding Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.