

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 130089-GU  
ORDER NO. PSC-13-0402-PAA-GU  
ISSUED: August 30, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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.

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.<sup>1</sup> 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.<sup>2</sup> 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.

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

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

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

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<sup>1</sup> 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.

<sup>2</sup> Id.

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.

We have 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.<sup>3</sup> 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 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, 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 were used.<sup>4</sup> 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, we find that the joint petitioners have provided reliable documentation that MDWASD has verifiable and documented bypass alternatives to the FCG gas transportation facilities at the Orr and Hialeah plants.

Under the terms of the LES tariff, FCG must demonstrate 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. The cost support data for the 2014 TSA provided in the joint petition was compared to the cost support that was provided for the 2011 TSA in Docket No. 090539-GU. The cost support data for reasonableness of the estimates of depreciation expense, operations and maintenance expense, taxes, return on investment, and

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<sup>3</sup> 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.

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

other expenses was also reviewed. Since the term of the 2014 TSA (10 years) is substantially longer than the term of the 2011 TSA (2 years), several areas of cost risk, including the impacts of inflation and volumetric shortfalls among other risks were reviewed.

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.

The incremental cost of service to the Orr and Hialeah plants to each plant's proposed 2014 TSA rates were compared. We note 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, our 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)."<sup>5</sup> 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

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<sup>5</sup> Joint Petition, Exhibit E, page 5 of 10

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, we find that 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, we find that the 2014 TSA rates are set above the incremental cost of service.

Based upon review of the materials submitted in support of the joint petition and the additional information provided by the parties, we hereby grant the joint petition for approval of the 2014 TSA between FCG and MDWASD. 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, we find 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the 2014 Natural Gas Transportation Service Agreement between Florida City Gas and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department, is hereby approved. It is further

ORDERED that if a timely protest is filed within 21 days of the issuance of this order, the 2014 Natural Gas Transportation Service Agreement between Florida City Gas and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department shall remain in effect subject to refund pending resolution of the protest. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-

0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 30th day of August, 2013.

  
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ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 20, 2013.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.