

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial Number
(850) 425-2359

March 11, 2005

BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050082-GU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida City Gas, a division of NUI Utilities, Inc., are the original and seven copies of its Amended Application for Authority to Issue Debt Security Pursuant to Section 366.04, Florida Statutes, and Chapter 25-8, Florida Administrative Code, along with a diskette containing the pleading in WORD format.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,

HOPPING GREEN & SAMS, P.A.

By:


Gary V. Perko

Attorneys for NUI Utilities, Inc.,
d/b/a Florida City Gas

GVP/mee
Enclosures

cc: Katherine Fleming (PSC)
Suzanne Thigpen

DOCUMENT NUMBER-DATE

Post Office Box 6526

Tallahassee, Florida 32314

123 South Calhoun Street (32301)

850.222.7500

850.224.8591 fax

www.hgsllaw.com

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Florida City Gas, a division of NUI Utilities, Inc., for Authority to Issue Debt Security Pursuant to Section 366.04, Florida Statutes, and Chapter 25-8, Florida Administrative Code, and Request for Expedited Consideration.

Docket No. 050082-GU

Filed: March 11, 2005

AMENDED APPLICATION BY FLORIDA CITY GAS, A DIVISION OF NUI UTILITIES, INC., FOR AUTHORITY TO ISSUE DEBT SECURITY AND REQUEST FOR EXPEDITED CONSIDERATION

Florida City Gas, a division of NUI Utilities, Inc., (the "Applicant"), by and through undersigned counsel, pursuant to Section 366.04, Florida Statutes, and Chapter 25-8, Florida Administrative Code, hereby files this amended application for authority to enter into certain loan agreements to refinance certain existing indebtedness, under which the payment of principal and interest is insured, and to make short-term borrowings as more fully described herein. Applicant respectfully requests expedited consideration of this application. In support, the Applicant states:

1. **Applicant Information:** The name and principal business address of the Applicant are NUI Utilities, Inc.,¹ One Elizabethtown Plaza, Union, New Jersey 07083. The Applicant is the indirect wholly owned subsidiary of AGL Resources Inc. ("AGLR") an energy services holding company headquartered in Atlanta, Georgia. The Applicant is engaged in the business of distributing natural gas in service territories located in portions of the states of New Jersey, Florida and Maryland. Through its Florida City Gas division, the Applicant supplies natural gas to customers in Miami-Dade, Broward, Palm Beach, St. Lucie, Indian River, Martin,

¹ NUI Utilities, Inc., is in the process of changing its corporate name to Pivotal Utility Holdings, Inc. However, the names of its operating divisions, including Florida City Gas, will remain the same. The Applicant will inform the Commission when the name change becomes effective.

and Brevard Counties, Florida. Accordingly, Applicant is regulated as a “public utility” by the Florida Public Service Commission (“Commission”) under Chapter 366, Florida Statutes. In accordance with Rule 25-8.003(1)(a), Florida Administrative Code, Exhibit A to the original application filed on February 1, 2005 (“Original Application”) provides the Applicant’s most recent audited financial statements.

2. Incorporation and Domestication: The Applicant was incorporated under the laws of the New Jersey in 1969. As noted above, the Applicant does business in the states of New Jersey, Florida and Maryland.

3. Persons Authorized To Receive Notices and Communications: The names and addresses of the persons authorized to receive notices and communications with respect to this application are as follows:

Gary V. Perko
Hopping Green & Sams, P.A.
123 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314

Suzanne R. Thigpen
Sr. Corporate Counsel
AGL Resources Inc.
Ten Peachtree Place, NW, 15th Floor
Atlanta, GA 30309

4. Capital Stock and Funded Debt: The following additional information regarding the financial condition of the Applicant at December 31, 2004, is submitted for the Commission's consideration:

- a. Total authorized common stock of the Applicant's ultimate corporate parent, AGLR, is 750,000,000 shares, of which 76,750,512 were issued and outstanding at December 31, 2004;
- b. Neither AGLR nor the Applicant has any issued or outstanding preferred stock;
- c. The amount of capital stock held as reacquired securities: none
- d. The amount of capital stock pledged by the Applicant: none
- e. The amount of Applicant’s capital stock held by affiliated corporations: 100%, held by NUI Corporation

f. The amount of capital stock held in any fund: none

The table below summarizes the Applicant's outstanding loan agreements with various public financing entities, namely the New Jersey Economic Development Association (NJEDA) and Brevard County, Florida, pursuant to which the Applicant has borrowed the proceeds of the offerings of industrial development revenue bonds by each of these public financing entities. The terms and payments under the Applicant's loan agreements with the public financing entities mirrors those of the revenue bonds.

| <u>Description</u> | <u>Date</u> | <u>Principal amount</u> | <u>Interest</u> |
|---|-------------|-------------------------|---------------------|
| Loan Agreement between New Jersey Economic Development Authority and NUI Corporation (post reorganization, NUI Utilities) | 15-Jul-94 | \$46.5 million | 6.35% |
| Loan Agreement between Brevard County, Florida and NUI Corporation (post reorganization, NUI Utilities) | 15-Jul-94 | \$20 million | 6.40% |
| Loan Agreement between New Jersey Economic Development Authority and NUI Corporation (post reorganization, NUI Utilities) | 1-Jun-96 | \$39 million | variable rate bonds |
| Loan Agreement between New Jersey Economic Development Authority and NUI Corporation (post reorganization, NUI Utilities) | 1-Jun-97 | \$54.6 million | 5.70% |
| Loan Agreement between New Jersey Economic Development Authority and NUI Corporation (post reorganization, NUI Utilities) | 1-Dec-98 | \$40 million | 5.25% |

The indebtedness pursuant to these arrangements totals approximately \$200.1 million and has recently been reviewed by the Applicant and AGLR.

5. Proposed Transactions:

(a) Kind and Nature of Security:

(1) Currently, two series of the indebtedness described above are redeemable.

Applicant seeks the Commission's authorization to redeem and refinance the following outstanding series of debt:

- \$46.5 million 6.35% NJEDA Notes, due October 1, 2022, redeemable at 102% of the outstanding principal amount; and

- \$20 million 6.40% Brevard County Notes, due October 1, 2024, redeemable at 102% of the outstanding principal amount (the "Existing Indebtedness").

Applicant will repay the principal amount of the Existing Indebtedness, with the proceeds received by Applicant from the issuance of two new series of exempt facility revenue bonds of equal principal amount as the series of Existing Indebtedness (the "New Indebtedness"). The Applicant intends to issue the New Indebtedness through the NJEDA and Brevard County, Florida. Applicant has provided a draft summary term sheet for these proposed refinance transactions as Exhibit B to the Original Application. If necessary, Applicant will file additional information on the proposed terms of the loan agreements as that information becomes available.

(2) The Applicant also requests authorization to finance on-going cash requirements through its participation and borrowings from and investments in AGL Resources' Utility Money Pool. Pursuant to AGLR's financing authorization under the Public Utility Holding Company Act of 1935, the Applicant will make short-term borrowings not to exceed \$600,000,000 annually from the Utility Money Pool according to limits that are consistent, given the seasonal nature of the Company's business and its fluctuating cash demands, with the Company's capitalization. See AGL Resources Inc., Holding Co. Act Release No.27828 (April 1, 2004).

(b) **Maximum Principal Amount:** The maximum aggregate amount of the New Indebtedness under the refinance transactions described above will be \$66.5 million (\$46.5 million with the NJEDA and \$20 million with Brevard County). Applicant is borrowing only up to the amount that will be necessary to repay the outstanding principal

under the Existing Indebtedness. As stated above, the amount of short-term borrowings from the Utility Money Pool will not exceed \$600,000,000.

(c) **Present Estimate of Interest Rate:** Each series of the New Indebtedness will have a floating rate of interest (which reflects the interest rates on the notes issued by each of the NJEDA and Brevard County). The interest rate on each series will be re-set every fifth Tuesday (every 35 days). The floating interest rate will be determined by the rate of interest per annum that results from the implementation of the Auction Procedures described in detail on Exhibit B to the Original Application. Under the terms of the New Indebtedness, the Applicant has the ability to convert the manner and method of determining the interest rate on the New Indebtedness from the auction rate to a short term variable interest or long term fixed rate, should market conditions make such conversion feasible.

(d) **Maturity Date(s):** We anticipate that each series of the New Indebtedness will mature on the later of (1) the original maturity date for the Existing Indebtedness or (2) a maturity date that reflects the useful life of the assets financed by the Existing Indebtedness.

(e) **Additional Provisions:** The payment of principal and interest on the New Indebtedness will not be secured, but instead will be insured pursuant to an insurance policy between Applicant and a third party insurer; such insurance provides that the interest charged on the New Indebtedness is lower than would otherwise be available without such insurance.

6. **Purpose For Which the Debt Will Be Incurred:** The proceeds from borrowings under the New Indebtedness will be used to repay amounts currently outstanding under the Existing Indebtedness with these same public financing entities. In accordance with Rule 25-

8.002(6)(c), Florida Administrative Code, the obligations to be refunded are described in paragraph 5(a) above.

7. **Lawful Object and Purpose:** The Applicant is authorized to enter into the Loan Agreements by its Articles of Incorporation and applicable law. The Loan Agreements are consistent with the proper performance by the Applicant of service as a public utility and reasonably necessary and appropriate for such purposes. The refinances are in the public interest because it refinances the outstanding indebtedness on terms and expenses that are more favorable to Applicant.

8. **Counsel Passing On Legality of the Issue:** Counsel who will be passing legality of the debt is:

Hank Morgan
Holland & Knight LLP
92 Lake Wire Drive
Post Office Box 32092 (33802-2092)
Lakeland, Florida 33815
863-499-5360
Email: hank.morgan@hklaw.com

9. **Filings With Other State or Federal Regulatory Bodies:** Applicant must file an application with each of Brevard County and the NJEDA in order to obtain authorization for each of these proposed transactions involved in the New Indebtedness. Additionally, approval is required from the New Jersey Board of Public Utilities, whose address is Two Gateway Center, Newark, New Jersey 07102. The refinance of the Existing Indebtedness has been authorized under the Public Utility Holding Company Act of 1935, as amended.

10. **Control or Ownership:** There is no measure of control or ownership exercised by or over the Applicant as to any other public utility. The Applicant is a wholly owned subsidiary of its parent holding company, NUI Corporation, which is a wholly owned subsidiary

of AGL Resources Inc., a registered holding company under the Public Utility Holding Company Act of 1935, as amended.

11. Request for Expedited Disposition: The NJEDA and Brevard County require that each review and authorize this refinancing. Brevard County and the NJEDA meet only once per month and neither will act until such time as the Commission has authorized the transactions described herein. This requirement has the potential to cause significant delay in completion of the refinancing. Therefore, Petitioner respectfully requests that the Commission review this matter expeditiously.

WHEREFORE, Florida City Gas, a division of NUI Utilities, Inc., doing business in Florida respectfully requests that the Commission:

- (a) consider this application on an expedited basis;
- (b) publish notice of intent to grant the application pursuant to Section 366.04(1), Florida Statutes, as soon as possible;
- (c) schedule this matter for agenda as early as possible;
- (d) authorize NUI Utilities, Inc., to enter into the loan agreements on the terms and circumstances described in this application and to make short-term borrowings not to exceed \$600,000,000 annually from AGL Resource Inc.'s Utility Money Pool; and
- (e) grant such other relief as the Commission deems appropriate.

Respectfully submitted this 11th day of March, 2005.

HOPPING GREEN & SAMS, P.A.

By: 

Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314

Attorneys for NUI UTILITIES, INC., d/b/a
FLORIDA CITY GAS