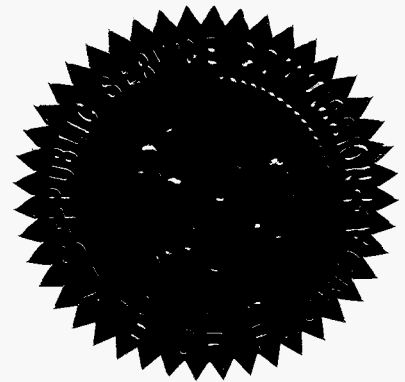


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100315-GU

COMPLAINT BY MIAMI-DADE COUNTY FOR
ORDER REQUIRING FLORIDA CITY GAS
TO SHOW CAUSE WHY TARIFF RATE
SHOULD NOT BE REDUCED AND FOR THE
COMMISSION TO CONDUCT A RATE
PROCEEDING, OVERTURNING PROCEEDING,
OR OTHER APPROPRIATE PROCEEDING
REGARDING FLORIDA CITY GAS'
ACQUISITION ADJUSTMENT.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, September 28, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER CASE

U8289 UCT-42

FPSC-COMMISSION CLERK

P R O C E E D I N G S

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2
3 **COMMISSIONER SKOP:** And with that, that
4 will take us to Item 2. If staff would please
5 introduce Item 2.

6 **MS. WILLIAMS:** Good morning,
7 Commissioners. Anna Williams on behalf of
8 Commission staff. Item 2 is a complaint by
9 Miami-Dade County for an order requiring Florida
10 City Gas to show cause why its tariffed rates should
11 not be reduced and for the Commission to conduct a
12 rate proceeding, overearnings proceeding, or other
13 appropriate proceeding regarding Florida City Gas'
14 acquisition adjustment.

15 Staff's recommendation addresses Florida
16 City Gas' motion to dismiss the county's complaint
17 and Florida City Gas' request for oral argument.
18 Staff recommends that the Commission grant Florida
19 City Gas' request for oral argument and allow each
20 side ten minutes. Staff further recommends that the
21 Commission grant Florida City Gas' motion to dismiss
22 without prejudice because the county has failed to
23 state a cause of action upon which relief can be
24 granted.

25 Staff would also like to remind the

1 Commission that Item 2 only addresses the county's
2 request for a tariff reduction and/or overearnings
3 investigation, and does not address the issues in
4 Docket 090539 which the Commission will consider at
5 the October 26th agenda conference.

6 Representatives from Florida City Gas and
7 Miami-Dade County are available, should the
8 Commission grant oral argument, and staff is also
9 available for any questions. Thank you.

10 **COMMISSIONER SKOP:** Thank you, Ms.
11 Williams.

12 Commissioners, with respect to Issue 1, we
13 have had a request for oral argument and if the
14 Commission would like to entertain such oral
15 argument.

16 **COMMISSIONER EDGAR:** I'd move staff on
17 Issue 1.

18 **COMMISSIONER SKOP:** All right. Very well.

19 **COMMISSIONER BRISÉ:** Second.

20 **COMMISSIONER SKOP:** So on Issue 1 we will
21 have oral argument, and the parties are to be
22 limited to ten minutes per side. So you may
23 proceed.

24 **MR. SELF:** Mr. Chairman, if I may, Floyd
25 Self, Messer, Caparello, and Self law firm on behalf

1 of Florida City Gas. With me is Shannon Pierce, who
2 is the senior counsel from AGL Resources, the parent
3 company of Florida City Gas.

4 Commissioners, the staff recommendation
5 does a very good job in outlining the positions of
6 the parties and why the motion to dismiss should be
7 granted. I just want to take a very brief moment
8 and simply talk about two things. First, if the
9 utility was in a position where they were
10 experiencing overearnings, you would already know
11 it. The company files quarterly surveillance
12 reports with the Commission and those reports do not
13 indicate that the company is, in fact, in an
14 overearnings situation.

15 Second, if you cut through Miami-Dade's
16 original complaint and their response to our motion,
17 the fundamental issue that Miami-Dade has is with
18 respect to whether they should be paying a tariff
19 rate, which is what they are currently being
20 charged, or what's known as the 2008 contract rate
21 or something else.

22 Well, that's the issue that is teed up for
23 you in the other docket that staff counsel
24 referenced to you. And, you are going to be dealing
25 with those issues, in fact, there is a legal

1 argument coming up that's scheduled for next month
2 before you to discuss kind of the threshold issue,
3 your jurisdiction over the utility's rates, and to
4 relitigate those issues in this case would be
5 extremely duplicative and wasteful of the
6 Commission's resources, not to mention the
7 ratepayers' money, since these cases would have to
8 be litigated simultaneously.

9 So, again, as is demonstrated by the staff
10 recommendation, Miami-Dade has failed to
11 substantiate, make a prima facie case for why there
12 should be a rate proceeding of any kind as well as
13 why the other issues that they have raised should
14 not be conducted in this proceeding, so we would
15 urge you to grant the motion to dismiss. I am happy
16 to answer questions, and I would like to just
17 reserve the rest of my time for any response to the
18 argument that Miami-Dade may make.

19 **COMMISSIONER SKOP:** All right. Very well.

20 **MR. SELF:** Thank you.

21 **COMMISSIONER SKOP:** Thank you. You're
22 recognized.

23 **MR. GILLMAN:** Good morning, Madam Chair
24 and Commissioners. My name is Henry Gillman, I'm
25 Assistant County attorney on behalf of Miami-Dade

1 County, and the Miami-Dade Water and Sewer
2 Department. I have with me Joseph Ruiz, who is the
3 Deputy Director of the Miami-Dade Water and Sewer
4 Department. I also have Brian Armstrong, who is a
5 consultant in this matter.

6 Thank you for allowing us to appear before
7 you today and to bring to your attention what can
8 only be described as unprofessional and, quite
9 frankly, unconscionable conduct on the part of one
10 of your regulated utilities. Imagine after a year
11 of negotiations a utility agrees to charge a
12 customer \$100,000 for gas transportation services,
13 signs a contract, then ignores the contract and
14 instead charges the customer one million dollars
15 more for the exact same service. That's exactly
16 what has happened here.

17 Based on the allegations in the county's
18 complaint, we believe it is appropriate for the
19 Commission to initiate limited proceedings in this
20 case pursuant to Sections 366.07 and 366.076 of the
21 Florida Statutes, because the rates being charged to
22 the county and its two million residents, which
23 includes over 400,000 direct customers by Florida
24 City Gas are excessive, unjust, and unreasonable.

25 To be clear, the county requests this

1 Commission to fix the fair and reasonable rate which
2 City Gas voluntarily agreed to and committed to over
3 two years ago in a transportation service agreement
4 with the county. What the county is requesting is
5 no different from what I understand this Commission
6 does in a rate proceeding. For example, City Gas
7 could file a rate case and present a contract to the
8 Commission where City Gas has agreed to pay
9 \$1.1 million to a third party. If this Commission
10 finds that the contract should only have required
11 City Gas to pay \$100,000, this Commission would deny
12 City Gas' recovery of the million dollars from its
13 customer and, instead, require City Gas'
14 shareholders to absorb it. In other words, City
15 Gas' customers are not required to pay for City Gas'
16 business decision.

17 The county has presented this Commission
18 with facts showing that the county entered into an
19 agreement with City Gas to provide gas
20 transportation services. However, City Gas wants to
21 ignore the contract with the county and instead
22 wants to charge the county a tariff that would
23 require Miami-Dade and its two million residents to
24 pay \$1.1 million a year, which is a substantial
25 increase over the contract amount. If this

1 Commission asserts jurisdiction and approves the
2 agreement, you can require City Gas' shareholders to
3 absorb any differences in cost and not require the
4 other customers to pay for it.

5 The county is a unique customer as it is
6 City Gas' largest transportation customer using over
7 7 million therms annually. Additionally, the county
8 uses the gas on a 24 hour, 7 days a week, 365 days a
9 year basis for its line facility at its water
10 treatment plants. It is also a governmental entity
11 with two million residents relying on its water,
12 which makes City Gas treatment of the county even
13 more egregious.

14 City Gas' treatment of the county is at
15 best extremely poor customer relations, and at worst
16 rises to the level of bad fact. For example,
17 although City Gas and its parent, AGL Resources, a
18 \$2-1/2-billion company, had experienced,
19 professional, managerial, financial and legal
20 reviews of the contract terms, not once did anyone
21 mention any requirement of collecting City Gas'
22 incremental costs to serve the county. Yet, City
23 Gas withdrew its petition for approval of the
24 agreement prior to this Commission even having an
25 opportunity to consider it.

1 Based on Commission staff's regulators
2 advising City Gas that the agreed upon contract rate
3 does not meet City Gas' incremental cost of serving
4 the county, you should be aware that the county was
5 not privy to any communications between PSC staff
6 and City Gas or any of the information or documents
7 that City Gas provides to the PSC staff in response
8 to staff questions.

9 I would like to give you one of those
10 documents which is marked by City Gas as
11 confidential.

12 **MR. GILLMAN:** May I approach?

13 **COMMISSIONER SKOP:** Yes. If you could
14 just give copies to our staff. Thank you.

15 You may proceed.

16 **MR. GILLMAN:** Commissioners, this document
17 was provided to staff in December 2008. It was
18 created by City Gas, and specifically includes
19 amounts for alleged total incremental cost of
20 service to the Alexander Orr Water Treatment Plant
21 and the Hialeah Water Plant, and you can see I have
22 highlighted the amounts.

23 According to City Gas' November 2008
24 surveillance report, which is filed with the
25 Commission, the incremental cost to serve the

1 Alexander Orr Plant is \$190,672. You should know
2 that the City Gas pipe that delivers gas to the Orr
3 plant is less than 4,000 feet and only serves the
4 Orr plant. City Gas' alleged incremental cost of
5 \$190,000 for the water plant certainly raised
6 questions, and interestingly, the county recently
7 learned through discovery that City Gas has never
8 performed an incremental cost study.

9 Now I'd like to give you another document.
10 This is City Gas' answers to interrogatories, and
11 I'm providing you just a portion of those answers
12 which City Gas had also marked as confidential.

13 As you can see in City Gas' answers to
14 Interrogatories Numbers 1, 11, 12, and 13, City Gas
15 admits that it has never performed a cost-of-service
16 study to determine the incremental costs to serve
17 any of the county's plants. Doesn't this throw the
18 veracity of City Gas' numbers into doubt?

19 In what universe can any party to a
20 contract agree to accept \$100,000 to provide a
21 service, present that contract to a regulator, and
22 then have the regulator say that \$100,000 is too
23 little? That the contract is no good unless the
24 other party to it pays another million dollars above
25 the contract amount. Unfortunately, that is what is

1 occurring here. In fact, the \$1.1 million that the
2 county is being charged under City Gas' tariff is
3 substantially more than the \$414,000 City Gas' own
4 document states is the incremental cost to serve the
5 county.

6 Staff suggests that the county must show
7 now, prior to discovery in this docket, that City
8 Gas is exceeding the rate of return this Commission
9 has authorized or face dismissal of the complaint.
10 But what if the county can show at hearing that City
11 Gas' largest transportation customer is being forced
12 to pay \$700,000 over City Gas' untested and alleged
13 incremental cost to serve the county?

14 We ask should the county be deprived of
15 its, quote, day in court. Staff focused solely on
16 the county's use of two words, "show cause." To
17 ignore the statute cited by the county in support of
18 our complaint, which permits this Commission to
19 conduct a limited proceeding to investigate City
20 Gas' rates upon a filing of a complaint, the county
21 believes it has alleged sufficiently detailed facts
22 to warrant the Commission to review -- to warrant
23 the Commission's review of the rates being charged
24 to the county.

25 Is the county to understand that we can be

1 charged rates that require us to pay approximately
2 \$1 million more to City Gas every year, and our
3 complaint that such rates are too high cannot and
4 will not be heard by this Commission. To have no
5 recourse is inconceivable to the county and to its
6 two million residents and its 400,000 direct
7 customers upon whom you would place this additional
8 million dollar burden.

9 The county requests that this Commission
10 deny City Gas' motion to dismiss and permit
11 discovery and a hearing to progress in this docket.
12 In the alternative, the county requests that the
13 Commission defer the motion or hold the complaint in
14 abeyance pending further proceedings in the 090539
15 docket, but allow discovery to continue in this
16 docket. Thank you.

17 **COMMISSIONER SKOP:** Thank you, Mr.
18 Gillman.

19 Mr. Floyd (sic), you're recognized.

20 **MR. SELF:** Thank you, Mr. Chairman.

21 Commissioners, the fundamental issue
22 before you is a legal question based upon what is
23 contained within the four corners of the petition
24 that Miami-Dade has presented to you. Have they, in
25 fact, demonstrated a prima facie case that warrants

1 an investigation into the company's earnings. The
2 answer to that question, as the staff points out in
3 the recommendation, is no, they have not done that.

4 Counsel for Miami-Dade has thrown a lot of
5 numbers at you, most of which goes to the core
6 issues that exist in the other docket and which will
7 be addressed in the other docket in terms of what
8 rate should be paid by Miami-Dade, what's the
9 appropriate rate. Should the contract rate be
10 enforced, should it be a tariffed rate, should it be
11 something different. Those are all issues in the
12 other proceeding. You don't need to litigate those
13 issues here.

14 As Mr. Gillman's final comment kind of
15 demonstrated to you, you really won't know what the
16 consequences of that decision in the other docket is
17 going to be until you have concluded that docket
18 and, whether or not there is an impact on the
19 company's earnings will be addressed in the other
20 docket. The discovery, these sheets, comparison
21 that were presented to you are irrelevant for the
22 legal question that you are being asked today, is
23 there a prima facie case here for an earnings
24 investigation. And the standard by which the
25 Commission has consistently followed has been

1 whether or not the earnings reports of the utility
2 demonstrate that the company is earning or
3 potentially earning in excess of their authorized
4 return. Those surveillance reports, I have copies
5 of the last two years with me, do not indicate that.

6 And so looking just at the pleadings,
7 there simply is no basis for proceeding at this time
8 with a separate earnings investigation. The docket
9 should be closed. Let's deal with the issues
10 regarding the rate relationship between the utility
11 and Miami-Dade in the other case, and then depending
12 upon the outcome of that case, if it's appropriate
13 to investigate the company's earnings and there is
14 then a basis for doing that, then it would be
15 appropriate for Miami-Dade to file a new pleading.
16 Keeping this case open in the interim, the ultimate
17 facts are going to change substantially over time,
18 and there simply is no benefit to maintaining this
19 docket nor to allow them to conduct discovery on
20 these issues because you don't even know what the
21 earnings issues would be at this time.

22 Thank you, sir.

23 **COMMISSIONER SKOP:** Thank you, Mr. Self.

24 At this point are there any questions from
25 the bench?

1 Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you.

3 Mr. Gillman, upon what are you relying to
4 indicate potential overearnings?

5 **MR. GILLMAN:** During the discovery of the
6 other case, the other docket, the county learned of
7 this positive acquisition adjustment order. And in
8 the adjustment order it provided for a five-year
9 stay out period for all of its customers. During
10 the time that this acquisition order was also
11 approved, the county had a contract with City Gas at
12 the contract rates. So City Gas was aware of this,
13 and presumably the Commission was aware of this
14 contract rate.

15 Now, City Gas wants to charge the county
16 or is charging the county a million dollars more
17 than what it had agreed to at the time, and not only
18 agreed to, but what it was receiving at the time
19 that acquisition order was approved. I believe that
20 calls into question the earnings and the
21 representations that City Gas made to this
22 Commission regarding their earnings and their costs.

23 Especially in light of the fact that,
24 again, the county is their largest transportation
25 customer. There is no one close to the county's use

1 of 7 million therms. I believe Baptist Hospital may
2 be the next closest customer, which only take about
3 2-1/2 million therms. The county receiving that
4 many therms, the county, we believe, would be
5 entitled, and I think City Gas acknowledged it and
6 agreed to it, and their president signed the
7 contract to the contract rate. And based on the
8 treatment of the county by City Gas, we believe that
9 this does raise questions regarding their potential
10 overearnings.

11 **COMMISSIONER EDGAR:** Mr. Self.

12 **MR. SELF:** Thank you, Commissioner.

13 The acquisition adjustment order, which is
14 PSC-07-0913, which was adopted November 13th of
15 2007, made certain findings of fact and conclusions
16 of law regarding the appropriateness of granting the
17 acquisition adjustment. There's nothing in
18 Miami-Dade's pleadings that challenges any of those
19 findings of fact or conclusions of law that the
20 Commission made with respect to the appropriateness
21 of the acquisition adjustment. So, you know,
22 complaining, being concerned about the factual
23 basis, how the situation has evolved with respect to
24 the contract and the tariff rate and those sorts of
25 issues, that has nothing to do with the acquisition

1 adjustment. And, again, those issues are being
2 litigated in the other case.

3 The fact that they are claiming that they
4 are paying too much if they are subject to the
5 tariff, you know, I just want to note for the record
6 that at the current time they are not paying the
7 tariffed rate, they are only paying the contract
8 rate. They are withholding the difference between
9 the contract rate and the tariffed rate. But in
10 terms of the earnings reports that the utility has
11 been filing, we have been booking what we have been
12 billing to them. So our reports reflect as if that
13 money was being collected. And, quite frankly, the
14 reason we are not in an overearnings situation, as
15 the staff recommendation points out, the competitive
16 rate adjustment which was being charged to the
17 general body of ratepayers, we stopped charging
18 those customers that CRA when we started billing
19 Miami-Dade the tariffed rate.

20 So from the utility's standpoint, the
21 company is essentially revenue neutral through all
22 of this stuff. And, again, the appropriate rate
23 that Miami-Dade should pay we are going to litigate
24 that in the other case. Clearly we are going to
25 litigate that in the other case. We don't need to

1 be doing that again in this case. And given the
2 variables as to how that case may fall out looking
3 at earnings, looking at the acquisition adjustment,
4 it's simply not appropriate because they haven't
5 demonstrated that your order is now somehow wrong or
6 that there are changed facts and circumstances that
7 warrant a review of that. And, in fact, your order
8 said in the company's next rate case. It doesn't
9 create an independent cause of action for someone to
10 initiate a case to review the acquisition
11 adjustment.

12 **MR. GILLMAN:** May I just briefly to
13 respond?

14 **COMMISSIONER SKOP:** You may.

15 **MR. GILLMAN:** Just to make it clear on the
16 record that the county is not challenging the order
17 itself. The county wants to bring to the
18 Commission's attention the treatment by City Gas of
19 the county since that order was approved. And we
20 are seeking discovery in this matter, which there
21 are issues different in this matter than in the
22 other docket.

23 **COMMISSIONER SKOP:** Thank you.

24 **COMMISSIONER EDGAR:** Commissioner, I have
25 one additional question; and you just led me into

1 it, Mr. Gillman. Can you speak to the point that
2 has been raised that this does appear to be
3 duplicative?

4 **MR. GILLMAN:** Well, we actually had a
5 meeting regarding the issues, an informal meeting on
6 the other docket, on their docket, and in that
7 meeting City Gas objected to various issues which
8 they themselves admitted and acknowledged that can
9 be heard in this docket. So those issues can be
10 addressed here with regard to City Gas'
11 overearnings, overearnings issue.

12 **COMMISSIONER EDGAR:** Can our staff speak
13 to that?

14 **MS. WILLIAMS:** In the other docket,
15 090539, we have had some preliminary issue ID
16 meetings, but I do not believe we have any finalized
17 issue list set in stone. I know that there was some
18 disagreement between the parties about which issues
19 they wanted included and which were excluded, but as
20 you know, those will be taken to the prehearing
21 officer if it does go to hearing where a final
22 determination will be made about the issues.

23 **COMMISSIONER EDGAR:** I understand. All
24 right. Thank you.

25 **COMMISSIONER SKOP:** Thank you,

1 Commissioner Edgar. All right.

2 Any other questions from the bench?

3 Commissioner Brisé, you're recognized.

4 **COMMISSIONER BRISÉ:** Thank you.

5 With regards to the assertion that there
6 was an original contract, and whatever the
7 circumstance were, maybe a new entrant into the area
8 and certain concessions might have been made by the
9 company in order for the contract to come into play,
10 and now the assertion that the county is making that
11 the incremental costs are being added after the fact
12 with respect to the contract, is there any validity
13 to that particular argument?

14 **MS. KUMMER:** Commissioner, Connie Kummer
15 with staff.

16 There was a contract initiated in 1999, I
17 believe. When that expired, they came in with a new
18 contract to essentially extend the other contract.
19 But as Mr. Self has said, all of these issues will
20 be fully litigated in the 090539 case. We'll talk
21 about the appropriateness of the contract and the
22 costs and the rates. Those will all be -- parties
23 will be allowed to present testimony and the
24 Commissioners will have the opportunity to ask their
25 questions, it's just that that is the docket that

1 has been established to look at the rates and the
2 contract.

3 This docket, at least to my estimation, is
4 at best premature. It assumes Commission decisions
5 that have not yet been made.

6 **COMMISSIONER SKOP:** Thank you.

7 I have a few questions, Ms. Kummer, with
8 respect to the other docket that you just mentioned
9 that will address the issues, the 090539 docket.
10 Does staff intend or will staff look at the
11 possibility of addressing a show cause within the
12 context of that docket?

13 **MS. KUMMER:** That's really a legal issue.
14 I'm not sure that -- the other docket was designed
15 and opened to look at the rates that Miami-Dade
16 should be paying, and that's the focus of that
17 docket. I mean, I suppose if we could find that
18 Miami-Dade or that City Gas somehow violated a
19 tariff or Commission rule there might be a show
20 cause, but at this point I really can't speculate.

21 **COMMISSIONER SKOP:** All right. Just some
22 follow-up questions so I can be clear of what is
23 being requested versus the procedural posture that
24 the Commission is in.

25 It is my understanding that Florida City

1 Gas signed a contract, as you mentioned, in 1998,
2 which was a ten-year contract with the county, is
3 that correct?

4 **MS. KUMMER:** That's my understanding, yes,
5 sir.

6 **COMMISSIONER SKOP:** All right. Then at
7 the expiration of contract in -- on or about 2008
8 they entered into a month-to-month extension of the
9 contract for two months?

10 **MS. KUMMER:** They came in and requested
11 approval of a ten-year extension, and when I
12 responded with questions on the contract, they
13 entered into a month-to-month extension pending the
14 resolution of staff's concerns.

15 **COMMISSIONER SKOP:** But they did not seek
16 Commission approval of that extension, is that
17 correct?

18 **MS. KUMMER:** Of the extension, no, sir.

19 **COMMISSIONER SKOP:** Okay. And, Ms.
20 Williams, is there a statutory requirement to do so?

21 **MS. WILLIAMS:** The Commission does have a
22 rule which governs special agreements and requires
23 that they be approved by the Commission, yes.

24 **COMMISSIONER SKOP:** All right. Thank you.
25 And when they came in in 2008, they requested

1 approval of a similar contract for another ten-year
2 term, is that correct?

3 **MS. KUMMER:** Yes, sir.

4 **COMMISSIONER SKOP:** Okay. And this issue
5 arose with respect to the incremental cost or the
6 contract being below incremental cost. Florida City
7 Gas was only aware of that when staff brought that
8 to their attention, is that correct?

9 **MS. KUMMER:** That was my understanding.
10 If I could backtrack a little bit. The original
11 contract, the 1998/1999 contract was never brought
12 to the Commission for approval for whatever reason.
13 It should have been, it was not. That was under
14 prior ownership. I believe that was when NUI owned
15 City Gas. But that contract never came to this
16 Commission for approval. I might have looked at it
17 in a different light had that first contract been
18 officially approved. It was not.

19 **COMMISSIONER SKOP:** Okay. And Mr. Self
20 mentioned previously under the prior contract the
21 customers were charged a competitive rate adjustment
22 which has since been discontinued, and that
23 competitive rate adjustment kind of makes up the
24 difference between the incremental cost and what the
25 utility should be recovering. Is that generally

1 correct?

2 **MS. KUMMER:** That's correct, Commissioner.
3 The Commission has approved a recovery mechanism
4 called a competitive rate adjustment whereby the
5 utility is allowed to charge any difference between
6 the full tariffed rate and the contract rate from
7 its other customers as a load retention issue.

8 **COMMISSIONER SKOP:** And to that point, if
9 the original contract was priced below incremental
10 cost, how was that not detrimental to the interest
11 of Florida City Gas customers?

12 **MS. KUMMER:** I believe it would be, and
13 that was my initial concern was that they were not
14 even covering incremental cost. Again, we will
15 delve into that all completely. That was my initial
16 assessment. I did not at that time have clearly all
17 the evidence that we will have when we go to hearing
18 on this issue.

19 **COMMISSIONER SKOP:** And with respect to
20 that, is there a way to look at when we go to the
21 other docket the summation of the below incremental
22 costs that were accrued during that 11-year period?

23 **MS. KUMMER:** I'm getting a probably from
24 my attorney. I don't know. That may go into
25 retroactive ratemaking. I'm not really sure. That

1 is something that we would have to explore with
2 legal staff.

3 **COMMISSIONER SKOP:** Okay. And just two
4 more questions. It seems as if the per unit cost of
5 transportation to Miami-Dade, compared to the tariff
6 rate is what is at issue in relation to the
7 incremental cost of service. And with knowing what
8 that information actually is provide a basis for the
9 utility company to come to terms or address in the
10 other docket what is the appropriate cost of
11 providing that service?

12 **MS. KUMMER:** That will be one of the many
13 matters addressed in the other docket, yes, sir.

14 **COMMISSIONER SKOP:** Okay. All right.
15 Thank you. Commissioners, are there any additional
16 questions from the bench before we move forward on
17 this? Okay.

18 I guess my perspective -- and I do have
19 one additional question for Mr. Gillman. Mr.
20 Gillman, with respect to the existing contract, the
21 county or Miami-Dade is seeking to enforce the terms
22 of its existing contract with the company, is that
23 correct?

24 **MR. GILLMAN:** That is correct,
25 Commissioner.

1 **COMMISSIONER SKOP:** Even though that may
2 be below incremental cost to service?

3 **MR. GILLMAN:** Yes. And, in fact, there is
4 a tariff schedule, approved tariff schedule that
5 provides for that, which is called the flexible gas
6 service schedule, and it would be City Gas'
7 shareholders that would bear any shortfall in the
8 cost.

9 **COMMISSIONER SKOP:** Okay. All right. I
10 just wanted to clarify that, because at least,
11 Commissioners, from what I see is we have a
12 contractual issue embedded within the Commission's
13 own rules and show cause proceedings, and it seems
14 to me that at least from hearing from staff the
15 majority of the concerns in relation to addressing
16 the tension here will be addressed in the 090539
17 docket. So, you know, I also share the concern that
18 while there may be valid concerns, this would be
19 somewhat duplicative to the other docket. So me, I
20 guess, my direction that I would feel in going would
21 be to approve the staff recommendation on Issues 2
22 and 3. I'll look to the Commission to make an
23 appropriate motion.

24 Commissioner Edgar, you're recognized.

25 **COMMISSIONER EDGAR:** Commissioner Skop, at

1 this time, realizing that I have confidence that the
2 prehearing officer, the staff, and the parties will
3 get the issues right in the other docket, that I
4 move staff recommendation on Issues 2 and 3.

5 **COMMISSIONER GRAHAM:** Second.

6 **COMMISSIONER SKOP:** Okay. We have a
7 motion and a proper second. Is there any
8 discussion? Hearing none, all in favor of the
9 motion signify by saying aye.

10 (Vote taken.)

11 **COMMISSIONER SKOP:** The motion carries.

12 Thank you.

13 **MR. SELF:** Thank you, Commissioners.

14 **MR. GILLMAN:** Thank you, Commissioners.

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

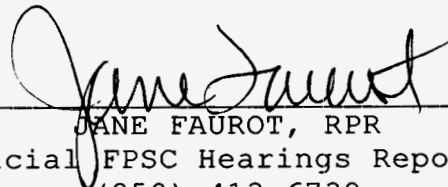
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of October, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

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

	Total	Total
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

7.85%

7.35%

FCG'S CONFIDENTIAL RESPONSE TO MIAMI-DADE COUNTY'S FIRST POD, ITEM NO. 2

PAGE 5 OF 40

*CLK note
This handout is not confidential
per Mary Anne Nelson and
may be placed behind the transcript. - Ann Clark*

Parties/Staff Handout
Internal Affairs/Agenda
on 9/28/10
Item No. 2
100315-MU

08289-10

4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Special Gas) Docket No. 090539-GU
Transportation Service agreement)
with Florida City Gas by Miami-Dade) Date Filed: September 8, 2010
through Miami-Dade Water and Sewer)
Department)
_____)

**FLORIDA CITY GAS' NOTICE OF SERVING ITS
OBJECTIONS AND RESPONSES TO MIAMI-DADE COUNTY'S
FIRST SET OF INTERROGATORIES (NOS. 1-26) AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-6)**

Florida City Gas ("FCG") by and through its undersigned counsel, hereby files and serves Notice that it has served its Objections and Responses to Miami-Dade County's First Set of Interrogatories (Nos. 1-26) and First Request for Production of Documents (Nos. 1-6) by electronic mail on Henry N. Gillman, Esq. at hgill@miamidade.gov and by U. S. Mail at Henry N. Gillman, Esq., Miami-Dade County, 111 NW First Street, Suite 2810, Miami, FL 33128 on this 8th day of September, 2010.

Respectfully Submitted,



Floyd R. Sell, Esq.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
850-425-5203 (telephone)
850-558-0664 (facsimile)
fself@lawfla.com

Attorneys for Florida City Gas

Parties/Staff Handout
Internal Affairs/Agenda
on 9/28/10
Item No. 2
100315-GU

INTERROGATORY OBJECTIONS AND RESPONSES

1. List the 10 largest natural gas transportation customers served by FCG during the past 5 years and for each customer provide the annual number of therms transported; whether the pipeline(s) is solely dedicated for the customer; the annual incremental cost to serve the customer and how the incremental cost was determined.

FCG'S RESPONSE: FCG incorporates objections 5, 8, 12, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has numerous natural gas transportation customers all of which take service pursuant to an approved tariff service and pay the applicable tariff rate. As is discussed more fully in response to Interrogatory Nos. 11-13, FCG does not perform customer-specific incremental cost studies so the incremental cost to serve each such customer does not exist. Further, as tariff service and rate customers, under the PSC's rules and regulation FCG is not required to calculate the incremental cost to serve such tariff customer. As such, identification of such customers, the number of therms transported annually, the incremental cost to serve each customer, and whether the pipeline is dedicated to serve each such customer is irrelevant.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, Florida City Gas, 955 East 25th Street, Hialeah, Florida, 33013.

FCG is not aware of any specific review of the 1998 Natural Gas Transportation Service Agreement as a part of the acquisition.

Responsible Person: Objections by Counsel. Substantive Response by David Weaver, Director, Regulatory Affairs, AGL Services Company, Ten Peachtree Place, 15th Floor, Atlanta, Georgia, 30309.

11. What was the "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant each year between 1998 and 2008?

FCG'S RESPONSE: FCG incorporates objections 7, 8, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has not done a cost of service study to determine the incremental cost to serve any of the three Miami-Dade plants.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, 955 East 25 Street, Hialeah, Florida, 33013.

12. Explain how FCG defines "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant between 1998 and 2008.

FCG'S RESPONSE: FCG incorporates objections 7, 8, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG would not perform a cost of service study to determine the incremental cost to serve any or each of the three Miami-Dade plants on a plant specific basis as such a process would not be undertaken for any customer or the specific facilities to serve an individual customer.

FCG would define the incremental cost as it would for any other customer, which would be the definition and process utilized in its last rate case.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, 955 East 25 Street, Hialeah, Florida, 33013.

13. Explain how FCG currently defines "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant.

FCG'S RESPONSE: FCG incorporates objections 7, 10, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG does not have an incremental cost definition specific to serve the three Miami-Dade plants. See further the response to Interrogatory No. 12.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, 955 East 25 Street, Hialeah, Florida, 33013.

14. Identify the person(s) who determined the "incremental cost" to serve the Orr Plant, Hialeah Plant, and South District Plant and explain the methodology for determining the "incremental cost"; whether FCG or AGL [Resources] had the incremental costs validated by an independent party and whether FCG or AGL [Resources] submitted to the FPSC an independent study of the incremental cost.

FCG'S RESPONSE: FCG incorporates objections 7, 10, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states:


AFIDAVIT

STATE OF Florida

COUNTY OF Miami-Dade

I hereby certify that on this 9th day of September, 2010, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carolyn Bermudez, Director, Strategic Business and Financial Planning, AGL Services Company, who is personally known to me, and he/she acknowledged before me that she provided the answers to interrogatory numbers 1, 11, 12, 13, 14, 15, 16, 18, 19, 21, 25, and 26 from MIAMI-DADE COUNTY'S FIRST SET OF INTERROGATORIES TO FLORIDA CITY GAS in Docket No. 090539-GU, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the state and County aforesaid as of this 9th day of September, 2010.


Notary Public
State of Florida, at Large



My Commission expires:

12/2/10