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COMMISSION
CLERK

January 28, 2011

090539-GU

Ms. Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 090539-GU
In re: Petition of Miami-Dade County through The Miami-Dade
Water and Sewer Department for Approval of Special Gas
Transportation Service Agreement with Florida City Gas

Dear Ms. Cole:

Pursuant to the Order Establishing Procedure in the above referenced docket,
enclosed please find fifteen (15) copies of rebuttal testimony and one (1) copy of
the Certificate of Service for the following witnesses: (1) Brian P. Armstrong; (2)
Joseph A. Ruiz, Jr.; (3) Jack Langer; and (4) Fred Saffer. DN: 00705-11
00706-11 00707-11 00708-11

If you have any questions, please do not hesitate to contact me.

Sincerely,

Henry N. Gillman
Assistant County Attorney

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____ cc: All Parties of Record
- SSC _____
- ADM _____
- OPC _____
- CLK _____

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of Miami-Dade County through
The Miami-Dade Water and Sewer Department Docket No. 090539-GU
for Approval of Special Gas Transportation
Service Agreement with Florida City Gas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the Rebuttal
Testimony of Joseph A. Ruiz, Jr., Jack Langer, Fred Saffer and Brian
Armstrong on behalf of Miami-Dade County, have been furnished by hand
delivery or overnight mail this 28th day of January, 2011 to the following:

Anna Williams, Esq. – Via hand delivery
Martha Brown, Esq. – Via hand delivery
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Mr. Melvin Williams – Via overnight mail
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Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney

By: _____



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Miami-Dade County through
The Miami-Dade Water and Sewer Department
for Approval of Special Gas Transportation
Service Agreement with Florida City Gas

Docket No. 090539-GU

REBUTTAL TESTIMONY

OF

BRIAN P. ARMSTRONG

**ON BEHALF OF MIAMI-DADE COUNTY WATER AND SEWER
DEPARTMENT**

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**REBUTTAL TESTIMONY OF BRIAN P. ARMSTRONG ON BEHALF OF
MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 Q: ARE YOU THE SAME BRIAN P. ARMSTRONG WHO SUBMITTED DIRECT
2 TESTIMONY ON BEHALF OF MIAMI-DADE COUNTY IN THIS
3 PROCEEDING?

4 A. Yes, I am.

5 Q. DO YOU WISH TO REBUT ANY PART OF THE DIRECT TESTIMONY
6 OF FCG WITNESSES BERMUDEZ AND WILLIAMS?

7 A. Yes, I will focus on three issues. The first point, while Mr. Williams and Ms.
8 Bermudez repeatedly suggest that their interest in forcing Miami-Dade to pay
9 higher rates under the GS1250K rate schedule than the rates FCG agreed to
10 accept in the 2008 Agreement is premised on the best interests of FCG's other
11 customers, they say nothing about the inequity of FCG forcing those same other
12 customers to pay hundreds of thousands of dollars annually to FCG, an amount
13 nearly twice the highest cost of service which FCG has been able to
14 manufacture, relating to its service to Miami-Dade.

15 Second, FCG's witness Williams proclaims that this Commission must allow
16 FCG to collect the CRA, retroactively, from other customers if it approves the
17 2008 Agreement. According to Mr. Williams at page 16 of his direct testimony,
18 "[f]or the Commission to enforce the [terms of the [2008 Agreement]], it must
19 find that the rate and its below cost discount is reasonable and in the public
20 interest and that the difference between the rate and the applicable tariff rate is
21 recoverable through the CRA Rider. These are not separate and distinct
22 findings, but inextricably intertwined."

23 This is a theory of Commission rate-setting responsibility which neither I nor
24 Miami-Dade's other rate-making and cost of service expert, Fred Saffer, have
25 ever heard of in the more than 65 years of combined service and involvement in

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1 utility rate-making.

2 The Commission is not required to allow FCG to recover from other FCG
3 customers the difference, if any, between the 2008 Agreement rates and its true
4 incremental cost of service if the 2008 Agreement is approved. I would ask Mr.
5 Williams to consider whether the Commission can order FCG to refund,
6 retroactively, revenue received over the past few years from the FCG customers
7 through the CRA mechanism if such revenues were above FCG's costs and/or
8 the receipt of such funds was not justified.

9 In any evidentiary proceeding, the Commission considers the facts and
10 circumstances presented to it -- for instance, facts regarding the utility's entry
11 into contracts for construction, emergency services, maintenance, materials and
12 supplies, or any host of goods or services -- and addresses these facts and
13 circumstances based on whether the utility has acted reasonably and prudently,
14 in addition to determining whether the costs identified in such agreements are
15 just and reasonable. A Commission finding of mismanagement, lack of
16 prudence, or unreasonable acts associated with one customer is not "inextricably
17 intertwined" with the utility's ability to recover associated costs or investments
18 from the utility's other customers.

19 Contrary to the testimony of Mr. Williams, the Commission is not required to
20 make FCG whole despite the utility's mismanagement. In fact, it is not even
21 necessary to establish utility mismanagement, which FCG admits exists in this
22 proceeding, for the Commission to require FCG to absorb the difference, if any,
23 between the revenue generated under the 2008 Agreement and FCG's true
24 incremental cost to serve Miami-Dade.

25 I call the Commission's attention to the Commission's order in FCG's last rate

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1 proceeding in Docket No. 030569 where the Commission imputed nearly
2 \$300,000 of revenue to FCG after finding that

3 "unmaterialized projections represent a business risk of the
4 Company that is more appropriately borne by its
5 stockholders, rather than by its ratepayers."

6 Of further note, the amount of the revenue which the Commission imputed was
7 equal to the amount by which FCG's cost to build and operate a new pipeline
8 exceeded the revenue generated by the pipeline. The Commission ordered that
9 FCG's shareholders absorb these costs and that they should not be passed on to
10 FCG's other customers. Miami-Dade believes that it would be appropriate for
11 the Commission to apply the same reasoning and remedy in this proceeding.

12 The Commission also has required Gulf Power Company to refund \$2.2 million
13 to customers after finding that the utility's management acted imprudently when
14 it renewed a coal supply contract that required the utility to pay high prices.
15 The Commission did not relieve the utility of its obligations under the coal
16 supply contract or reduce the contract rate which Gulf Power had to pay for coal
17 under the contract. The Commission's finding of imprudent utility decision-
18 making and the resulting refund order were upheld on appeal.

19 As another example, this Commission found, at the urging of Commission Staff,
20 that the management of Aloha Utilities, Inc. failed to meet the burden of proving
21 prudent utility decision-making in relation to the utility's purchase of an
22 administrative building. Commission Staff testified that it was incumbent on
23 the utility's management to "submit documentation to show that the steps the
24 utility undertook and its final actions were prudent." Also, the Commission has
25 penalized West Florida Natural Gas Corporation for mismanagement and

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1 misrepresentation regarding a take-or-pay contract with the utility's largest
2 customer. Neither Mr. Saffer nor I are aware of any precedent where a utility
3 has admitted that it failed to comply with its own tariff requirements and
4 admitted that it failed to engage in prudent and reasonable management
5 practices, and was then rewarded by the regulator with higher rates.

6 My third point. Both of FCG's witnesses admit to FCG's faulty management
7 practices and unreasonable actions in regard to this proceeding and the 2008
8 Agreement. In stark contrast to these admissions of FCG mistakes, FCG admits
9 in its original petition supporting Commission approval of the 2008 Agreement
10 that "Miami-Dade negotiated the agreement at arm's length with FCG and
11 Miami-Dade County approved the agreement as being in the best interest [of]
12 Miami-Dade County and its citizenry." Miami-Dade has done nothing wrong
13 and is entitled to receive the benefit of its bargain with FCG as contained in the
14 2008 Agreement. The Commission can approve the 2008 Agreement but deny
15 FCG the ability to recover from other customers any difference between FCG's
16 true incremental cost of service and the revenue generated under the 2008
17 Agreement.

18 The Commission's choice is not limited, as Mr. Williams suggests, to either (1)
19 approving the 2008 Agreement and allowing CRA recovery from other FCG
20 customers or (2) rejecting the Agreement. As I demonstrated in my direct
21 testimony, FCG already appears to have treated its other customers miserably by
22 recovering enormous amounts from those customers through the CRA
23 mechanism above FCG's cost of serving Miami-Dade.

24 **Q. ARE THERE ANY OTHER FACTS WHICH THE COMMISSION**
25 **SHOULD CONSIDER REGARDING FCG'S SUGGESTION THAT THE**

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1 **COMMISSION HAS NO AUTHORITY TO REJECT THE 2008**
2 **AGREEMENT UNLESS IT ALSO ALLOWS FCG TO CONTINUE TO**
3 **APPLY A CRA RIDER TO THE BILLS OF OTHER CUSTOMERS?**

4 A. Yes. It appears that CRA recovery may not have been available to FCG when it
5 first entered the 1998 Agreement. FCG's management made a reasonable and
6 prudent decision to enter the 1998 Agreement without a CRA in place. This
7 leads Miami-Dade to wonder why the Commission initiated a CRA recovery
8 mechanism for FCG thereafter which apparently includes the service rendered
9 to Miami-Dade under the 1998 Agreement? It is readily apparent that FCG was
10 recovering from other customers under the CRA Rider far in excess of the
11 revenue generated under the 1998 Agreement and far in excess of even FCG's
12 inflated cost of service.

13 Q. **MS. BERMUDEZ SUGGESTS AT PAGES 19-20 OF HER DIRECT**
14 **TESTIMONY THAT "PURSUANT TO [FCG'S] TARIFF AND**
15 **COMMISSION RULES, [FCG IS] PROHIBITED FROM OFFERING**
16 **SERVICE BELOW [FCG'S] COST OF SERVICE. IT IS NOT**
17 **APPROPRIATE FOR ALL OF THE REST OF [FCG'S] CUSTOMERS,**
18 **TO SUBSIDIZE SERVICE TO [MIAMI-DADE]." DO YOU AGREE**
19 **WITH MS BERMUDEZ?**

20 A. I agree that it is not appropriate for the rest of FCG's customers to pay for FCG's
21 mismanagement. However, that is all I agree with in Ms. Bermudez' statement.
22 The KDS rate schedule imposes obligations on FCG management to conduct an
23 incremental cost of service study, to insure that capital requirements associated
24 with service to customers are addressed, and finally the basic principles of
25 utility regulation impose on FCG an obligation to act reasonably, prudently and

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1 in the exercise of best management practices when providing services to
2 customers pursuant to its tariff.

3 Miami-Dade agrees that FCG's other customers should not have been paying
4 hundreds of thousands of dollars to FCG for years through the CRA mechanism
5 when such charges never were supported by FCG's cost of transporting Miami-
6 Dade's gas over two miles of incremental FCG pipe.

7 In this regard, Mr. Williams' suggestion at page 7 of his direct testimony that
8 FCG attempted to terminate the Amendment to the 1998 Agreement as quickly
9 as it could "rather than making a bad situation any worse on our general body of
10 ratepayers" also defies belief. In my opinion, FCG's recovery of hundreds of
11 thousands of dollars a year from other FCG customers through the CRA
12 mechanism constituted an abuse of those customers, which includes the
13 customers of the Miami-Dade Water and Sewer Department. This abuse should
14 be considered by this Commission when evaluating how to respond to FCG's
15 numerous admissions of bad management, mistakes, flawed analyses, and
16 omissions with regard to Miami-Dade and the 2008 Agreement.

17 **Q. CAN YOU SUMMARIZE YOUR REBUTTAL TO FCG'S WITNESSES?**

18 **A.** Yes. My rebuttal to FCG's testimony can be summarized as follows: (1) FCG's
19 President signed a contract with Miami-Dade; (2) FCG acknowledges that it
20 failed to comply with its tariff requirements by not conducting an incremental
21 cost of service study before signing the contract; (3) FCG admits that it
22 exercised poor management -- in negotiating the 2008 Agreement, in evaluating
23 the impact of the 2008 Agreement on FCG and its other customers, in not
24 having proper management procedures in place to evaluate the 2008
25 Agreement's rates and other terms, and other acknowledged instances of poor

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1 utility practice; (4) for nearly 3 years FCG has refused to conduct a true
2 incremental cost analysis as required by its tariff and as any professional utility
3 management would conduct prior to entering a long-term agreement with its
4 largest transportation customer; (5) FCG presents testimony from witnesses who
5 do everything possible to deny substantial knowledge of or involvement in the
6 negotiation of the 2008 Agreement while the Commission apparently will hear
7 nothing from any FCG managers and employees with more substantive
8 knowledge about the circumstances pertinent to the negotiation and terms of the
9 2008 Agreement; (6) FCG's cost of service witness apparently never conducted
10 a true incremental cost of service study before; and (7) FCG inexplicably
11 interprets its tariff and Commission rules as providing absolution for FCG
12 mismanagement and violations of its tariff as well as the means for enabling
13 FCG to escape its contractual obligations rather than traditional utility
14 regulation which holds the utility accountable for the utility's tariff non-
15 compliance and rule violations.

16 FCG's admitted mismanagement and tariff violations should be resolved by the
17 Commission approving the 2008 Agreement, including the rates agreed to by
18 the parties, and not the rejection of the 2008 Agreement as desired by FCG. If
19 there is an under-recovery of FCG's costs, which Miami-Dade is of the opinion
20 there is not, FCG and its shareholders, not FCG's other customers, should pay
21 for it. Any payments made by Miami-Dade to FCG above the 2008 Agreement
22 rates should be refunded to Miami-Dade.

23 It also must be noted that the sincerity of Mr. Williams' concern for the general
24 body of FCG's ratepayers is belied by his demand that if the 2008 Agreement
25 rates are approved, this Commission must authorize FCG to retroactively

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1 recover money from such other customers and must allow FCG to do so through
2 the CRA mechanism.

3 Miami-Dade's witnesses have demonstrated the abuse which was inflicted upon
4 FCG's other customers through this CRA mechanism in past years, in addition
5 to the abuse inflicted upon Miami-Dade by FCG's unilateral imposition of its
6 GS1250K tariff on Miami-Dade. Mr. Williams wishes to continue such abuse.
7 FCG chose the path it has taken. I can think of no reasonable explanation for
8 such path and the corresponding mismanagement, admitted by FCG, which
9 would permit FCG to retroactively recover from other customers phantom costs
10 in such a manner as would violate the prohibition against retroactive
11 ratemaking.

12 **Q. IN YOUR OPINION, WOULD IT BE PROPER FOR THE**
13 **COMMISSION TO ACCEPT INTO EVIDENCE ANY TRUE**
14 **INCREMENTAL COST OF SERVICE INFORMATION OR STUDY**
15 **WHICH FCG MAY PRODUCE SUBSEQUENT TO FILING ITS PRE-**
16 **FILED DIRECT TESTIMONY IN THIS DOCKET?**

17 **A.** No. FCG's direct testimony reveals that FCG has long been aware of the
18 difference between an incremental cost of service analysis and an allocation of
19 costs and investments from a utility's total company embedded cost of service
20 study. This issue has been one of the primary sources of contention between the
21 parties for a long time, and long before FCG submitted its pre-filed direct
22 testimony.

23 The testimony of FCG's witnesses makes clear that FCG has made a conscious
24 decision not to perform an incremental cost of service analysis. Miami-Dade
25 notes that subsequent to the filing of FCG's direct testimony, Commission Staff

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1 has served FCG with interrogatories and document requests which appear to
2 specifically address the information necessary to calculate a true incremental
3 cost of service. FCG has refused to provide this information to Miami-Dade
4 despite Miami-Dade's requests since FCG initially notified Miami-Dade of
5 Commission Staff's alleged opposition to approval of the 2008 Agreement. I
6 note that Commission Staff repeatedly has made clear that its initial opinions
7 were conditioned on the assumption that the information provided by FCG was
8 correct -- which it is not. It would be absolutely prejudicial to allow FCG to lay
9 in wait until its rebuttal testimony, or until providing responses to Commission
10 Staff requests for the information necessary to calculate the utility's true
11 incremental cost of service to Miami-Dade, before presenting such information
12 for the consideration and analysis of the Commission or Miami-Dade. The
13 information necessary to calculate FCG's true incremental cost of service was
14 available to FCG, and only FCG, throughout the period of this dispute and until
15 FCG filed its direct testimony. It is my opinion and experience in utility
16 regulatory matters, generally, and before this Commission specifically, that
17 Commission precedent and notions of procedural due process and fairness
18 requires that FCG be foreclosed from attempting to provide such information at
19 the hearing to be held in this proceeding.

20 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

21 **A.** Yes, it does.