

**Marguerite McLean**

090539-GU

**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Tuesday, February 01, 2011 4:41 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Melvin Williams; Shannon Pierce; Floyd Self; David Hope; Henry Gillman; Anna Williams; Connie Kummer; Martha Brown  
**Subject:** Docket No. 090539-GU  
**Attachments:** 2011-02-01, 090539, FCG Motion for an Order Requiring Parties to Enter into 3rd Party Escrow Agreement.pdf

The person responsible for this electronic filing is:

Floyd R. Self  
Messer, Caparello & Self, P.A.  
P.O. Box 15579  
Tallahassee, FL 32317  
(850) 222-0720  
[fself@lawfla.com](mailto:fself@lawfla.com)

The Docket No. is 090539-GU - Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department

This is being filed on behalf of Florida City Gas

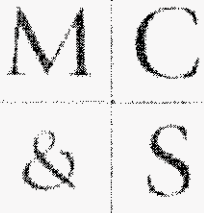
Total Number of Pages is 9

Florida City Gas' Motion for an Order Requiring the Parties to Enter into a Third Party Escrow Agreement

---

Ann Bassett  
Messer, Caparello & Self, P.A.  
2618 Centennial Place (32308)  
P.O. Box 15579  
Tallahassee, FL 32317  
Direct Phone: 850-201-5225  
Fax No. 850-224-4359  
Email Address: <abassett@lawfla.com>  
Web Address: <www.lawfla.com>

DOCUMENT NUMBER-DATE  
0789 FEB-1 =  
FPSC-COMMISSION CLERK



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law  
*www.lawfla.com*

February 1, 2011

**VIA ELECTRONIC FILING**

Ms. Ann Cole, Commission Clerk  
Office of Commission Clerk  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 090539-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida City Gas is Florida City Gas' Motion for an Order Requiring the Parties to Enter into a Third Party Escrow Agreement in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb  
Enclosure

cc: Shannon O. Pierce, Esq.  
Parties of Record

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of Special Gas )  
Transportation Service Agreement with )  
Florida City Gas by Miami-Dade County )  
Through the Miami-Dade Water and )  
Sewer Department )

Docket No.: 090539-GU

Filed: February 1, 2011

**FLORIDA CITY GAS' MOTION FOR AN ORDER REQUIRING THE PARTIES TO ENTER INTO A THIRD PARTY ESCROW AGREEMENT**

Florida City Gas ("FCG"), pursuant to Rule 28-106.24, Florida Administrative Code, respectfully requests that the Commission enter an Order requiring FCG and the Miami-Dade County Water and Sewer Department ("MDWASD"), parties to the above captioned docket, to enter into a third party escrow agreement to capture those disputed amounts that FCG is currently charging MDWASD for natural gas transportation that MDWASD is not paying subject to a resolution of this docket. In further support of this Motion, FCG states:

1. In the instant docket, the Commission is considering whether to approve the 2008 Natural Gas Transportation Services Agreement between FCG and MDWASD ("2008 TSA") and the natural gas transportation rates contained therein. This matter is scheduled for a formal administrative hearing on March 23-24, 2011.

2. Without reciting the entire history of this proceeding, for purposes of this Motion, beginning on August 1, 2009, FCG stopped charging MDWASD the rates in the 2008 TSA and began to charge MDWASD the GS 1,250K tariff rates, FCG's lowest applicable tariff rates for the natural gas transportation services provide by FCG to MDWASD. After paying the tariff rates for two months, by letter dated November 18, 2009, MDWASD informed FCG that it would only pay the 2008 TSA rates and deposit

DOCUMENT NUMBER DATE

00789 FEB-1 =

FPSC-COMMISSION CLERK

the difference between the 2008 TSA rates and the GS 1,250K rates “into an escrow account.” See Exhibit 1 attached to this Motion, the November 18, 2009 dispute letter from MDWASD. Over time, MDWASD has acknowledged that it has not deposited the disputed funds into an escrow account but rather that the disputed funds are being deposited into a “segregated account,” presumably subject to the control of MDWASD. See Exhibit 2 attached to this Motion, the most recent dispute letter from MDWASD.

3. In disputing the payments, MDWASD has cited Section 10(6)(d), Sheet 15, of FCG’s tariff that provides that service may not be discontinued for “Failure to pay for a different class of service.” FCG believes that this provision is inapplicable to the present circumstances and that the present circumstances are otherwise subject to Section 10(2)(g), Sheet 14, of FCG’s Commission approved tariff which provides FCG with the authority to suspend or discontinue service to a customer for “nonpayment of bills.”

4. Irrespective of MDWASD’s claims or tariff reliance, and because of this dispute, at no time has FCG terminated service to MDWASD and MDWASD has continued to receive uninterrupted service from FCG throughout the pendency of MDWASD’s dispute and the proceedings commenced in this docket.

5. The imperative for the instant Motion arises from the fact that in the unique circumstances presented by the present dispute, FCG’s tariff does not permit a customer to unilaterally escrow disputed payments, nor does the FCG tariff permit a customer to continue to retain disputed billings and deposit such disputed amounts into its own segregated account. To date, the disputed amount is in excess of eight hundred thousand dollars and growing each month. By the time there is a final order in this matter the disputed amounts could be in excess of two million dollars.

6. As the Commission is aware, in its surveillance reports FCG has reported the billed revenues to MDWASD without regard to the disputed amounts. However, from a revenue perspective, as the size of the billings withheld by MDWASD over the last year-plus has grown there has been a substantial decrease in FCG's actual earned revenues. The situation has been exacerbated by the fact that consistent with its tariff FCG has ceased to recover from the general body of ratepayers the difference between the 2008 TSA rates and the tariff rates through the Competitive Rate Adjustment ("CRA") Rider in its tariff. The net effect of these actions has been an effective return on investment that is less than FCG's authorized rate of return.

7. While FCG respects MDWASD's position as a utility utilizing FCG's natural gas transportation services in order to provide water and wastewater services to its own customers, the absence of specific commission authority in FCG's tariff for a customer withholding disputed amounts combined with the ever increasing size of the disputed amount now compels FCG to seek specific Commission authority in advance of the final order to specifically authorize the handling of the disputed amounts until there is a final resolution of this docket. FCG is certainly willing to trust MDWASD's assertions regarding the separate accounting treatment of the disputed funds, but as a Commission-regulated public utility with unique legal obligations to ensure a high quality of service to all of its ratepayers FCG believes it is now appropriate to seek the Commission's specific guidance for accurately capturing, accounting for, and ultimately remitting the disputed amounts by a neutral third party pursuant to a Commission order.

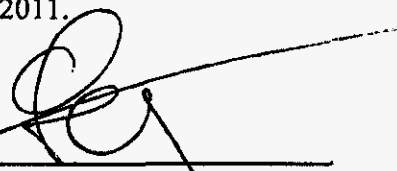
8. Given the present unique circumstances, the nature of the dispute, and the absence of specific tariff authority for the segregation of funds undertaken by

MDWASD, FCG believes that it would be appropriate for the Commission to order the parties to enter into a third party escrow agreement. Such a third party escrow agent would be able to collect the disputed funds, accumulate any interest thereon, and timely report monthly to the parties and the Commission with respect to the keeping and accounting of all such disputed funds. At the conclusion of this proceeding, the Commission could then direct the escrow agent to release funds consistent with any final order in this matter.

9. FCG has consulted with counsel for MDWASD and such counsel has indicated that it objects to this motion and shall respond in due course.

WHEREFORE, Florida City Gas would request that the Commission order the parties to negotiate and enter into a third party escrow agreement within 30 days of the order granting this motion or upon such other reasonable time as the Commission may direct.

Respectfully submitted this 1<sup>st</sup> day of February, 2011.



---

Floyd R. Self, Esq.  
Robert J. Telfer III, Esq.  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308  
Tel. 850-222-0720

Shannon O. Pierce, Esq.  
AGL Resources Inc.  
Ten Peachtree Place, 15<sup>th</sup> Floor  
Atlanta, GA 30309  
Tel. 404-584-3394

Counsel for Florida City Gas



Carlos Alvarez, Mayor

Water & Sewer  
P.O. Box 330316 • 3071 SW 38th Avenue  
Miami, Florida 33233-0316  
T 305-665-7477 F 786-552-8763

miamidade.gov

November 18, 2009

Mr. Henry P. Linginfelter  
President  
AGL Resources  
Ten Peachtree Place  
Atlanta, GA 30309

Re: October 2009 Invoices

<u>Account #</u>	<u>Invoice #</u>	<u>Amount</u>
211-0754412-011	200911-2636-AR531	\$ 8,202.82
211-0756225-011	200910-2559-AR531	\$ 2,221.81
211-0756239-011	200910-4560-AR531	\$ 250.14
211-0786376-001	200910-2562-AR531	\$ 00.00

Dear Mr. Linginfelter,

As you should be aware, Miami-Dade County through the Miami-Dade Water and Sewer Department ("Department") intends to file with the Florida Public Service Commission ("FPSC") a Petition for Approval of Special Gas Transportation Service Agreement ("Agreement") that was executed by you on behalf of Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG") and approved by the Board of County Commissioners and executed by the Mayor of Miami-Dade County. Although the County believes that the Agreement is exempt from FPSC jurisdiction, the County will request FPSC approval as a special contract in accordance with FPSC rules and the terms of the Agreement unless FCG agrees to resubmit the original petition.

Several weeks ago, the County submitted a draft of the petition to counsel for FCG and proposed that FCG join the County in filing the petition with the FPSC. However, to date the County has not received any response.

While you consider our proposal, the County will pay Florida City Gas the charges that the parties agreed to in the executed Agreement and deposit the difference between such charges and the charges recently levied by FCG into an escrow account pending FPSC issuance of an order addressing the Petition.

Please note that FCG is prohibited from terminating transportation service to the County under section 10 subsection (6)(d) of Florida City Gas Tariff (sheet 15) which states that

EXHIBIT 1

DOCUMENT NUMBER-CATE

00789 FEB-1 =

FPSC-COMMISSION CLERK

Mr. Henry P. Linginfelter  
Page 2

**FCG is not authorized to terminate service to a customer for "failure to pay for a different class of service."**

**Please advise by November 30th, 2009 whether FCG will resubmit the original petition to the FPSC or will join the County in filing its petition. In either event, we hope to amicably continue our longstanding business relationship.**

Sincerely,



John W. Renfrow, P.E.  
Director

c: Joseph A. Ruiz, Jr.  
Jack Langer  
Matthew Fall, Esq.

Attachments





**Water & Sewer**  
 P.O. Box 330316 • 3071 SW 38th Avenue  
 Miami, Florida 33233-0316  
 T 305-665-7471

miamidade.gov

January 20, 2011

Mr. Henry P. Linginfelter  
 President  
 AGL Resources  
 Ten Peachtree Place  
 Atlanta, GA 30309

Re: December 2010 Invoices

<u>Account #</u>	<u>Invoice #</u>	<u>Amount Paid</u>	<u>Amount Segregated</u>
211-0754412-011	201101-34767	\$ 7,076.24	\$ 24,551.79
211-0756225-011	201101-34768	\$ 2,158.80	\$ 27,892.21
211-0756239-011	201101-34769	\$ 645.58	\$ 8,548.83
211-0786676-001	201101-34771	\$ 00.00	\$ 1,071.64

Dear Mr. Linginfelter,

Miami-Dade County through the Miami-Dade Water and Sewer Department ("Department") has filed with the Florida Public Service Commission ("FPSC") a Petition for Approval of Special Gas Transportation Service Agreement ("Agreement") that was executed by you on behalf of Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG") and approved by the Board of County Commissioners and executed by the Mayor of Miami-Dade County. The FPSC docket number is 090539-GU.

Pending FPSC issuance of an order addressing the Petition, the County will pay Florida City Gas the charges that the parties agreed to in the executed Agreement and deposit the difference between such charges and the charges recently levied by FCG into a segregated account.

Please note that FCG is prohibited from terminating transportation service to the County under section 10 subsection (6)(d) of Florida City Gas Tariff (sheet 15) which states that FCG is not authorized to terminate service to a customer for "failure to pay for a different class of service."

Sincerely,

  
 John W. Renfrow, P.E.  
 Director

Cc: Joseph A. Ruiz, Jr., Deputy Director of Operations, MDWASD  
 Floyd Seif, Esq.

*William J. Sanderson Energy Dev*  
 EXHIBIT 2

DOCUMENT NUMBER-DATE  
 00789 FEB-11 =  
 FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 1<sup>st</sup> day of February, 2011.

Anna Williams, Esq.  
Martha Brown, Esq.  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Mr. Melvin Williams  
Florida City Gas  
933 East 25<sup>th</sup> Street  
Hialeah, FL 33013

Shannon O. Pierce  
AGL Resources, Inc.  
Ten Peachtree Place, 15<sup>th</sup> Floor  
Atlanta, GA 30309

Henry N. Gillman, Esq.  
David Stephen Hope, Esq.  
Miami-Dade County  
111 NW First Street, Suite 2800  
Miami, FL 33128-1993

  
\_\_\_\_\_  
Floyd R. Self