

**Marguerite McLean**

090539-GU

**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Thursday, April 14, 2011 4:47 PM  
**To:** Filings Electronic <Filings@PSC.STATE.FL.US  
**Cc:** Carolyn Bermudez; Melvin Williams; Shannon Pierce; David Heintz; Floyd Self; David Hope; Henry Gillman; Anna Williams; Martha Brown  
**Subject:** Docket No. 090539-GU  
**Attachments:** 2011-04-14, 090539, FCG Prehearing Statement.pdf; 2011-04-14c, 090539, FCG Draft Prehearing Statement.doc

The person responsible for this electronic filing is:

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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

Florida City Gas' Prehearing Statement

Total Number of Pages is 15

Also attached is the MS Word document for Staff.

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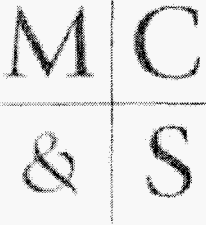
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DOCUMENT NUMBER-DATE

02510 APR 14 =

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4/14/2011



MESSER CAPARELLO & SELF, P.A.

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April 14, 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 an electronic version of Florida City Gas' Prehearing Statement 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 ) Docket No. 090539-GU  
City Gas by Miami-Dade County through ) Filed: April 14, 2011  
Miami-Dade Water and Sewer Department )  
\_\_\_\_\_ )

**FLORIDA CITY GAS' PREHEARING STATEMENT**

Florida City Gas (hereinafter "FCG") pursuant to Order No. PSC-10-0714-PCO-GU, Order Establishing Procedure dated December 7, 2010, Order No. PSC-10-0715-PCO-GU, Revised Order Establishing Procedure dated December 8, 2010, and Order No. PSC-10-0729-PCO-GU, First Order Revising Order Establishing Procedure dated December 13, 2010, and Order No. PSC-11-0110-PCO-GU, Second Revised Order Establishing Procedure dated February 9, 2011 in Docket No. 090539-GU, submits the following Prehearing Statement in the above-captioned docket.

**A. WITNESSES**

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
Melvin Williams	All issues except Cost of Service	4, 5, 6, 7, 9
Carolyn Bermudez	Cost of service, tariff, CRA	1, 2, 3, 5, 6, 7, 8, 10
David Heintz	Cost of service issues	2, 3

**B. EXHIBITS**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<b><u>Direct Testimony</u></b>			
Carolyn Bermudez	FCG	_____ CB-1	1999 Rate Design – November 2008 Surveillance Report

DOCUMENT NUMBER-DATE  
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FPSC-COMMISSION CLERK

			Rate Design Comparison
Carolyn Bermudez	FCG	<u>CB-1</u>	1999 Rate Design – November 2008 Surveillance Report Rate Design Comparison (Attachment 1 to Staff Data Request Response No. 1)
Carolyn Bermudez	FCG	<u>CB-2*</u> (Original & Supplemental)	1999 Rate Design – Back-up to Attachment 1
Carolyn Bermudez	FCG	<u>CB-3*</u> (Original & Supplemental)	December 2009 Incremental Analysis
Carolyn Bermudez	FCG	<u>CB-4 (Revised)*</u>	November 2010 Incremental Analysis
Carolyn Bermudez	FCG	<u>CB-5</u>	MDWASD Unpaid Amounts
Melvin Williams	FCG	<u>MW-1</u>	1999 TSA
Melvin Williams	FCG	<u>MW-2</u>	2008 TSA
Melvin Williams	FCG	<u>MW-3</u>	2008 Amendment
Melvin Williams	FCG	<u>MW-4</u>	MDWASD Billing Letters
<b><u>Rebuttal Testimony</u></b>			
Carolyn Bermudez	FCG	<u>CB-6 (Revised)*</u>	Orr Plant Original Costs

David A. Heintz	FCG	<u>        </u> DAH-1	David A. Heintz Summary of Education and Experience
David A. Heintz	FCG	<u>        </u> DAH-2 (Revised)*	Incremental Cost Analysis
Melvin Williams	FCG	<u>        </u> MW-5	Letter to MDWASD regarding need for bypass information

\* Note, FCG anticipates filing updated/supplemental/revised exhibits to those indicated by an asterisk by April 22, 2011.

FCG reserves the right to introduce such cross examination exhibits as may be necessary.

**C. BASIC POSITION**

The 2008 Natural Gas Transportation Agreement (“2008 Agreement” or “2008 TSA”) should not be approved by this Commission because the agreement is not in compliance with the Company’s tariff or this Commission’s rules and statutes.

The process leading up to the 2008 Agreement was flawed as executed by both parties. None of the prerequisites for a non-tariff rate have been met. To correctly initiate the process, MDWASD never demonstrated a valid economic bypass with verifiable documentation. While FCG updated the tariff reference from the 1999 TSA to its KDS schedule, MDWASD warranted that it complied with that tariff when it did not. In particular, MDWASD did not meet the minimum threshold requirements for the KDS schedule because it is not bringing new incremental load of 250,000 therms to one location. Moreover, using actual original costs and under any of the methodologies presented, the rates in the 2008 Agreement do not recover the cost of service, a mandatory requirement for any non-tariff rate. None of these applicability

prerequisites were waived or expressly modified by the 2008 Agreement, and it is FCG's position that neither applicability prerequisite should or may be waived under any special contract unless expressly stated and approved by the Commission. Finally, the parties signed the document before it was approved by the Commission, contrary to the clear language in the rule that requires Commission approval before execution.

The Commission is subject to the exclusive statutory authority granted by the Legislature. Pursuant to that authority, FCG is required to charge all customers its lawfully approved tariff rates except in those instances where the tariff enumerated requirements for a non-tariff rate are met. Once the parties negotiate such a document, it must be approved by the Commission before it is executed. That review and approval process by the Commission is not perfunctory – it is a substantive review to determine whether the agreement fully and completely complies with the law. When FCG submitted the 2008 TSA to the Commission for its approval and it was subjected to the Commission's scrutiny, FCG determined that the agreement failed not one but several minimal requirements and that it could not, in good faith and in compliance with the law and its duty as a regulated public utility, proceed with the approval process.

MDWASD is one of the largest utilities in the United States. It a very large and sophisticated customer that utilized the former president of FCG as an experienced consultant to negotiate an agreement with FCG. Despite the experience and best intentions of the two parties, the negotiation process and resulting document it produced were defective. FCG has repeatedly met with MDWASD and requested that the parties work together to develop an agreement that corrects the 2008 TSA problems, including a cost-base rate based upon a verifiable economic bypass option, and a willingness to amend its tariff and create new rate schedules commensurate with any new agreement, but MDWASD has refused. FCG has successfully transitioned its

other contract rate customers to tariff rates and otherwise instituted new management, processes, and procedures to correct for these past oversights. Only MDWASD remains.

MDWASD would have this Commission believe that it bears no responsibility in this process. But both parties share in the mistakes and led up to this document. MDWASD would also have this Commission ignore its clear statutory duty and approve the document regardless of its many failings on the basis of some equitable relief theory. But the Commission does not have the discretion to ignore the clear requirements of its rules and FCG's tariff. Given the fatal flaws, the only legal remedy is to not approve the 2008 Agreement. The Agreement should be denied and MDWASD ordered to pay FCG the difference between the tariff rate and agreement rate that it has been withholding.

#### **D. ISSUES**

**Issue 1:** Did FCG perform an incremental cost of service study prior to entering into the 2008 Agreement with MDWASD?

**FCG's Position:** No. MDWASD's request to extend the 1999 TSA failed several important requirements, including MDWASD failed to provide any verifiable documentation regarding viable economic bypass, MDWASD was not proposing any new incremental load, MDWASD did not provide any bypass information, FCG did not perform an incremental cost study, and the parties signed the 2008 Agreement before it was approved by the Commission.

**Issue 2:** What are FCG's incremental costs to serve MDWASD's gas transportation requirements for the Alexander Orr, Hialeah-Preston, and South Dade Wastewater Treatment plants, respectively?

**FCG's Position:** FCG's incremental cost to serve the Orr plant is \$0.11918 and the incremental cost to serve the Hialeah plant is \$0.08575. This incremental cost analysis is based upon the actual original FCG investment for these two plants and the class of service analysis

performed by Ms. Bermudez and reflected in her updated CB-4 Exhibit, which is based upon November 2010 data. No incremental cost study has been developed for the Blackpoint/South Dade plant because the volume of gas transported is very low since this plant uses natural gas only as a backup fuel source.

**Issue 3:** Does the contract rate in the 2008 Agreement allow FCG to recover FCG's incremental cost to serve MDWASD?

**FCG's Position:** No. None of the incremental cost analyses performed by Ms. Bermudez or Mr. Heintz for the Orr and Hialeah demonstrate that the rates in the 2008 Agreement recover the cost of service. While Mr. Saffer for MDWASD has proposed an analysis he characterizes as a "true" incremental cost study, his singular proposal is incomplete and does not capture the actual costs associated with MDWASD. If Mr. Saffer's approach is corrected for its various errors, as Mr. Heintz has done, this methodology produces an incremental cost rate which is still above the contract rates for each MDWASD plant. Finally, the Blackpoint plant's volumes do not justify any contract rate.

**Issue 4:** Does MDWASD have a viable by-pass option?

**FCG's Position:** No. The threshold requirement for requesting a non-tariff or below tariff rate is for the customer to provide a viable economic energy alternative including verifiable documentation of Customer alternative. MDWASD did not provide any bypass information at the time of the negotiation of the 2008 Agreement. In November 2009, MDWASD obtained an "Executive Summary" of a bypass proposal which Mr. Langer included with his rebuttal testimony as Exhibit JL-12 for the Orr and Hialeah plants. This Executive Summary by T&T Pipeline, Inc. does not include complete information or verifiable documentation that would enable a third party to determine whether the proposed bypass service to either the Orr or



Hialeah plants is a viable economic energy alternative. As for the Blackpoint plant, MDWASD has not offered any bypass information for Blackpoint, and MDWASD has admitted that there is no viable economic bypass potential for the Blackpoint plant.

**Issue 5:** What, if any, FCG tariff schedule applies to the 2008 Agreement for gas transportation services to MDWASD?

**FCG's Position:** As FCG's tariff is currently structured, the only rate schedule that would apply to MDWASD is the GS-1,250k rate schedule for service to the Orr and Hialeah plants, and the GS-25k rate schedule for service to Blackpoint. The 2008 Agreement expressly incorporates the Contract Demand Service ("KDS") schedule, and while the parties agreed it was the applicable schedule, and MDWASD expressly warranted that it met the terms of the KDS schedule, the 2008 Agreement does not meet the terms of the KDS schedule. First, the KDS tariff requires "a minimum new incremental demand of 250,000 additional therms per year to the Company's system at one location," and the schedule specifically requires for existing customers the following specific obligation: "With respect to existing Customers, an additional load of at least 250,000 therms must be added, and the negotiated KDS rate will only apply to the additional load added to the Company's system." However, MDWASD is not bringing any new incremental demand at any of the three plants, and in fact the volumes transported over the last 6 years have been declining. Second, the KDS schedule requires that the rates in the contract "shall not be set lower than the incremental cost the Company incurs to serve the Customer," and as has been discussed at Issues 2 and 3, the 2008 Agreement rates do not recover the incremental cost of service.

MDWASD has proposed that the Flexible Gas Service ("FGS") schedule should apply, but service is not available under the FGS schedule unless the customer has produced a viable

economic energy alternative including verifiable documentation of Customer alternative. Further, assuming there is an economic bypass, the negotiated rate must recover, at least, the incremental cost of service. To date, MDWASD has not demonstrated any viable economic energy alternatives and the analysis of the 2008 Agreement shows that the proposed rates do not recover the incremental cost of service.

MDWASD has argued that language in the Special Conditions section of KDS schedule (“Service under this Rate Schedule shall be subject to the Rules and Regulations set forth in the tariff, except to the extent modified under this Rate Schedule and / or in a service agreement.”) renders tariff terms such as the new incremental load of 250,000 therms at one location or that the rate be above incremental cost irrelevant if in conflict transportation agreement language. What this argument ignores is that viable, documented economic bypass, 250,000 therms of new incremental load, and the incremental cost requirements in the tariff are threshold requirements that must be met before the parties can negotiate a special service agreement. Under MDWASD’s interpretation, the parties could negotiate any terms they wanted, regardless of the tariff and this Commission’s regulations. The effect of this construction would be to effectively deregulate that customer’s service and remove the rates from any Commission oversight to the detriment of the rest of the utility’s customers. The modification language in the tariff must be read in context – it permits the negotiation of a rate that is different than the otherwise applicable rate class provided MDWASD has first otherwise met the minimum threshold requirements for economic bypass information and a rate above the cost of service. Here, MDWASD has not met any of the prerequisites.

**Issue 6:** In the absence of a special agreement, what existing FCG tariff schedule applies to the natural gas transportation service provided to MDWASD?

**FCG's Position:** The Orr and Hialeah plants fall within the GS-1250k rate class, which is the class used in the 2003 rate case; the volumes for these two plants meet the minimum volume thresholds for this tariff, especially if the two meters at the Orr plant are combined. The low volumes transported for the Blackpoint plant qualifies for service under the GS-25k class.

**Issue 7:** Should the 2008 Agreement between MDWASD and FCG be approved as a special contract?

**FCG's Position:**

The 2008 Natural Gas Transportation Agreement ("2008 Agreement" or "2008 TSA") should not be approved by this Commission because the agreement is not in compliance with the Company's tariff or this Commission's rules and statutes.

The process leading up to the 2008 Agreement was flawed as executed by both parties. None of the prerequisites for a non-tariff rate have been met. To correctly initiate the process, MDWASD never demonstrated a valid economic bypass with verifiable documentation. While FCG updated the tariff reference from the 1999 TSA to its KDS schedule, MDWASD warranted that it complied with that tariff when it did not. In particular, MDWASD did not meet the minimum threshold requirements for the KDS schedule because it is not bringing new incremental load of 250,000 therms to one location. Moreover, using actual original costs and under any of the methodologies presented, the rates in the 2008 Agreement do not recover the cost of service, a mandatory requirement for any non-tariff rate. None of these applicability prerequisites were waived or expressly modified by the 2008 Agreement, and it is FCG's position that neither applicability prerequisite should or may be waived under any special contract unless expressly stated and approved by the Commission. Finally, the parties signed the

document before it was approved by the Commission, contrary to the clear language in the rule that requires Commission approval before execution.

The Commission is subject to the exclusive statutory authority granted by the Legislature. Pursuant to that authority, FCG is required to charge all customers its lawfully approved tariff rates except in those instances where the tariff enumerated requirements for a non-tariff rate are met. Once the parties negotiate such a document, it must be approved by the Commission before it is executed. That review and approval process by the Commission is not perfunctory – it is a substantive review to determine whether the agreement fully and completely complies with the law. When FCG submitted the 2008 TSA to the Commission for its approval and it was subjected to the Commission’s scrutiny, FCG determined that the agreement failed not one but several minimal requirements and that it could not, in good faith and in compliance with the law and its duty as a regulated public utility, proceed with the approval process.

MDWASD is one of the largest utilities in the United States. It a very large and sophisticated customer that utilized the former president of FCG as an experienced consultant to negotiate an agreement with FCG. Despite the experience and best intentions of the two parties, the negotiation process and resulting document it produced were defective. FCG has repeatedly met with MDWASD and requested that the parties work together to develop an agreement that corrects the 2008 TSA problems, including a cost-base rate based upon a verifiable economic bypass option, and a willingness to amend its tariff and create new rate schedules commensurate with any new agreement, but MDWASD has refused. FCG has successfully transitioned its other contract rate customers to tariff rates and otherwise instituted new management, processes, and procedures to correct for these past oversights. Only MDWASD remains.

MDWASD would have this Commission believe that it bears no responsibility in this process. But both parties share in the mistakes and led up to this document. MDWASD would also have this Commission ignore its clear statutory duty and approve the document regardless of its many failings on the basis of some equitable relief theory. But the Commission does not have the discretion to ignore the clear requirements of its rules and FCG's tariff. Given the fatal flaws, the only legal remedy is to not approve the 2008 Agreement. The Agreement should be denied and MDWASD ordered to pay FCG the difference between the tariff rate and agreement rate that it has been withholding.

**Issue 8:** If the 2008 Agreement is approved, should FCG be allowed to recover the difference between the contract rate and the otherwise applicable tariff rates through the Competitive Rate Adjustment (CRA) factor for the period August 1, 2009, forward? How should any such recovery occur?

**FCG's Position:** Yes. The 2008 Agreement should not be approved for the reasons previously discussed. The 2008 Agreement and the CRA are inextricably linked. If the 2008 Agreement is approved, then the Commission has made the legal determination that it is in compliance with the KDS tariff and the Commission's rules and statutes. Since the KDS schedule is one of the tariff schedules that permits the recovery of any below tariff rate through the CRA mechanism, then the only appropriate action is for the CRA to be collected pursuant to the terms of that tariff schedule.

**Issue 9:** Should the Commission disallow cost recovery for the differential, if any, between FCG revenue under the 2008 Agreement and FCG's incremental cost to serve MDWASD?

**FCG's Position:** No. If the Commission approves the 2008 Agreement under the terms expressed in the document, it must find the special contract rates recover the incremental cost of service to MDWASD, that the rates are reasonable, and, therefore, the differential is recoverable

under the CRA mechanism. If it finds that the 2008 Agreement fails to recover the incremental cost of service to MDWASD, then it cannot reform the contract to apply a different rate against the expressed agreement of both parties.

Since this question sets up an illegal outcome, this situation should not occur. The only choices for the Commission are to approve or disapprove the document. If the Commission approves it, then it has found as a matter of law that all the prerequisites for service have been met (bypass, rates recover cost, 250,000 therms of new incremental load per location, etc.) in which case the entire difference between the tariff rates and the agreement rates are recovered through the CRA. If the 2008 Agreement is not approved, and it should not because it is contrary to the law, then there is no differential to collect under this issue.

**Issue 10:** Based on the Commission's decisions in this case, what monies, if any, are due MDWASD and/or FCG, and when should such monies be paid?

**FCG's Position:** If the 2008 Agreement is not approved by the Commission, MDWASD owes FCG the difference between the tariff rate and the 2008 Agreement rate beginning with the September 9, 2009 invoice to the date MDWASD begins to make payments plus applicable late charges of 1.5% as authorized by the tariff. As of November 5, 2010 invoice the unpaid amounts totaled \$859,836.91 plus interest.

#### **E. STIPULATED ISSUES**

There are no stipulated issues.

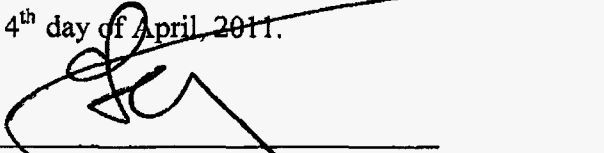
#### **F. PENDING MOTIONS**

FCG's Motion to Disqualify Motion To Disqualify Miami-Dade Water And Sewer Department's Counsel And Witness Brian P. Armstrong And To Exclude This Testimony And, In The Alternative, To Strike Testimony, filed March 18, 2011

**G. OTHER MATTERS**

There are no other matters that FCG has to address at this time.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of April, 2011.



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Attorneys for Florida City Gas

## 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 14<sup>th</sup> day of April, 2011.

Anna Williams, Esq.  
Martha Brown, Esq.  
Office of the General Counsel  
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