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July 22, 2016

**BY PSC E-FILE SYSTEM**

Ms. Callotta Stauffer, Director  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: New Docket, Florida City Gas Petition for Review and Determination

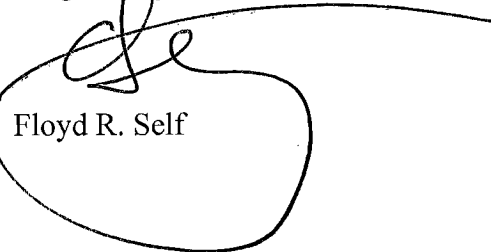
Dear Ms. Stauffer:

Attached for filing as a new docket on behalf of Florida City Gas ("FCG") is the redacted version of the Petition for Review and Determination on the *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001* and Approval of an Interim Service Arrangement (the "Petition"). The confidential version of this Petition and the confidential supporting exhibits to the Petition shall be separately hand delivered and filed with the Commission later today pursuant to a Request for Confidential Classification.

If you have any questions regarding this filing, please let me know. Thank you for your assistance.

Sincerely,

Berger Singerman LLP



Floyd R. Self

FRS:AM  
Attachment

cc: Blake O'Farrow  
Florida Crystals Representative

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Review and )  
Determination on the Project Construction )  
and Gas Transportation Agreement By and )  
Between NUI Utilities, Inc. d/b/a City Gas )  
Company of Florida and Florida Crystals )  
Corporation dated April 24, 2001 and )  
Approval of an Interim Service Arrangement )  
\_\_\_\_\_ )

Docket No.:

Filed: July 22, 2016

**PETITION FOR REVIEW AND DETERMINATION AND  
APPROVAL OF AN INTERIM SERVICE ARRANGEMENT**

Florida City Gas (“FCG” or “Company”), formerly known as City Gas of Florida, pursuant to Sections 366.04, 366.05, 366.06, and 366.093, Florida Statutes, and Rules 25-9.034, 25-22.006, and 25-22.036, Florida Administrative Code, hereby files with the Florida Public Service Commission (“PSC” or “Commission”) this Petition for Review and Determination on the *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001* and Approval of an Interim Service Arrangement (the “Petition”). In support of this Petition, FCG states as follows:

**I. Introduction**

1. Petitioner’s name and address are:

Florida City Gas  
4045 NW 97<sup>th</sup> Street  
Doral, Florida 33178

2. All notices, orders, or documents regarding this Petition should be directed to the following persons on behalf of FCG:

Mr. Blake O’Farrow  
Director of Regulatory Affairs  
Southern Company Gas  
Ten Peachtree Place NE  
Atlanta, GA 30309  
Direct Telephone: (404) 584-3694  
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Tallahassee, Florida 32301  
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3. FCG is a natural gas public utility subject to this Commission’s jurisdiction under Section 366.02(1), Florida Statutes. FCG is a subsidiary of NUI Utilities, Inc., (“NUI”) and was formerly known as City Gas Company of Florida (“City Gas”). NUI was acquired by AGL Resources, Inc. (“AGL”) on November 30, 2004, and on December 6, 2004, the name of City Gas was changed to Florida City Gas.<sup>1</sup> AGL’s name was changed to Southern Company Gas on July 11, 2016, after AGL’s acquisition by the Southern Company on July 1, 2016. Today, FCG serves approximately 107,000 residential and commercial natural gas customers in Florida’s Miami-Dade, Broward, Palm Beach, Hendry, Martin, St. Lucie, Indian River, and Brevard counties.

4. On information and belief, Florida Crystals Corporation (“Florida Crystals”) is a Delaware corporation, with an office in Palm Beach, Florida. It is a national provider of organic sugar that is grown and harvested in the United States, including operations in Florida. Florida Crystals is a customer of FCG for natural gas transportation services since approximately 2002.

## II. Executive Summary

5. FCG is seeking a determination by this Commission that the *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company*

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<sup>1</sup> See Docket No. 606057-GU, Order No. PSC-07-09 13-PAA-GU (Nov. 13, 2007).

*of Florida and Florida Crystals Corporation dated April 24, 2001* (hereinafter the “GTA” and attached as Confidential Exhibit 1) is not a legally effective or enforceable special contract under Florida law.

6. The purpose of the GTA was for City Gas to construct, own, and operate a lateral pipeline from its transmission network to the Okeelanta Plant of Florida Crystals south of South Bay, Florida, and to thereafter provide natural gas transportation service. Such transportation service began approximately in January 2002, and FCG has provided such service pursuant to the rates and terms of the GTA.

7. FCG’s service under the GTA in the last few years has exceeded FCG’s revenue requirements, which has not been true for most years of service. New terms of the GTA to become effective in January 2017, known as the “Extended Term” under the GTA, will materially and adversely impact FCG due to the large volumes of natural gas that can be transported at a rate that is substantially below FCG’s cost to serve. No matter what may be said about FCG’s past service under the GTA, service to Florida Crystals pursuant to the terms of the “Extended Term” is not possible. First, the GTA has never been previously filed or approved by this Commission, so it is not a legally binding or effective special contract. Second, going forward, the rates, terms, and conditions of the “Extended Term” are not legally enforceable because they do not recover FCG’s cost to serve in violation of this Commission’s rules and statutes and FCG’s tariff requirements.

8. In the absence of an approved special contract, FCG is required by Florida law to charge Florida Crystals FCG’s applicable tariff rates. Given the unique service conditions for Florida Crystals, in lieu of the otherwise applicable tariff rate, FCG is requesting that the Commission approve as an interim service arrangement the rates, terms, and conditions set forth

herein. This interim service arrangement should remain in effect until this Commission approves a successor transportation service special contract that complies with Florida law or issues such other final order regarding the interim service arrangement.

### **III. Background**

9. The GTA that is the subject of this Petition was negotiated and signed prior to City Gas being acquired by AGL. After a thorough investigation, key elements of the development and implementation of the GTA remain unknown. The individuals who were involved in this transaction are no longer with the company, and current company employees who were employed during that time have no personal knowledge regarding the GTA. There is no rate development information or other supporting workpapers. Further, FCG has no information as to why the GTA was never filed with the PSC for its review and approval as is clearly required by Rule 25-9.034, Florida Administrative Code.

10. Notwithstanding the lack of approval, FCG and Florida Crystals have followed the terms of the GTA for nearly 15 years as if the GTA had been approved by the PSC. Such good faith actions do not excuse the failure of City Gas to file the GTA and obtain the PSC's approval. In filing this Petition, FCG is not seeking any action from this Commission or Florida Crystals with respect to FCG's past service under the GTA.

11. While the GTA has never been filed or approved, FCG's service to Florida Crystals was discussed in the 2003 City Gas rate case within the context of the investments made for FCG's Clewiston pipeline extension.<sup>2</sup> The 2003 rate case order imputed certain revenues to

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<sup>2</sup> Docket No. 030569-GU, Direct Testimony of Jeff Householder on Behalf of City Gas Company of Florida, pages 34-37, 43-49, 76-77.

City Gas due to the lack of customers on the line,<sup>3</sup> but that decision did not impact FCG's service to Florida Crystals. After the sale of City Gas/NUI to AGL, the GTA existed outside the knowledge of management.

12. Present FCG management first became aware of the GTA in 2010-2011 during the Miami-Dade docket, which involved another unfiled transportation service agreement that was negotiated and signed during the NUI ownership era prior to AGL.<sup>4</sup> The Miami-Dade case involved significant issues that had potential precedential impacts on the GTA, so FCG needed to focus its limited resources on first resolving the Miami-Dade docket. When the Miami-Dade case was finally concluded in May of 2012,<sup>5</sup> FCG was immediately thrust into negotiating a successor transportation agreement with Miami-Dade County that was filed in April 2013 and finally approved in September 2013.<sup>6</sup>

13. As FCG sought to understand the full effect of the GTA, the Company first sought a business solution. As it played out, over the 2012-2014 period, FCG and Florida Crystals met to discuss an expansion of service to the Florida Crystals Osceola Farms facility near Pahokee, Florida. As FCG began this process, FCG hoped that an expansion of service to a second facility would provide an opportunity to negotiate a completely new agreement for both the Osceola mill and the Okeelanta mill that would moot the issues with the GTA. Unfortunately, the parties eventually concluded their discussion without any new service agreement let alone one that would resolve the legal and operational issues with the GTA.

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<sup>3</sup> Order No. PSC-04-0128-PAA-GU, at 29-30 (February 9, 2004), consummated by, Order No. PSC-04-0240-CO-GU (March 3, 2004).

<sup>4</sup> Docket No. 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*.

<sup>5</sup> Order No. PSC-12-0171-AS-GU (April 2, 2012).

<sup>6</sup> Order No. PSC-13-0402-PAA-GU (August 30, 2013), consummated by, Order No. PSC-13-0436-CO-GU (September 24, 2013).

14. The GTA reemerged as an issue later in 2015 when Florida Crystals exceeded its transportation volume cap. In dealing with this situation, FCG was confronted with the realization that Florida Crystals likely intended to more than double its transportation volumes because of the substantially lower rates under the Extended Term. Further, while it had not been previously clear as to when the Extended Term would begin due to the language in the GTA, FCG learned that Florida Crystals apparently believed that the Extended Term would begin more sooner than later.

15. With this understanding, early in 2016 FCG undertook an extensive legal, regulatory, and financial analysis in order to more thoroughly understand the GTA and to determine what action FCG may need from this Commission in order to address the GTA's legal status and Company's future service obligations to Florida Crystals. This investigation led FCG to reach several important conclusions. First, the Extended Term of the GTA will commence in January 2017. Second, the rates of the Extended Term do not recover FCG's cost to serve, let alone the "cost plus" standards set forth in the applicable statutes, rules, and tariff requirements. Third, the combination of below cost rates with the potential increased volumes of gas to be transported could impose significant service constraints on FCG's ability to serve other existing or potential customers.

16. The results of this analysis combined with the lack of PSC approval for the GTA compel FCG to petition the Commission to determine that the GTA is not a legally effective or enforceable special contract. In addition, FCG is also seeking authority for special interim rates, terms, and conditions that would be effective in lieu of the Extended Term provisions until changed by a final order of the Commission or until the parties negotiate an appropriate special contract that can be filed, reviewed, and approved by this Commission. In terminating future

service to Florida Crystals under the Extended Term provisions of the GTA, the law is clear that FCG's tariff should apply to Florida Crystals in the absence of a PSC-approved special contract. However, FCG recognizes that application of the tariff to Florida Crystals would impose a significant hardship on Florida Crystals since the tariff does not adequately address a customer like Florida Crystals. In order to balance the interests of Florida Crystals and FCG's other customers, FCG believes that the interim service arrangement detailed herein provides a reasonable solution that is in the public interest. The results of FCG's analysis and proposed a path forward are presented in the following sections of this Petition.

#### **IV. GTA Terms and Analysis**

17. The GTA presents a number of problems and challenges. At the outset, FCG's analysis was hampered by the fact that FCG did not have a complete copy of the GTA until June 21, 2016.<sup>7</sup> Previous searches of FCG's files did not locate a paper copy of the GTA. FCG originally located two electronic copies of the GTA that were largely the same but not identical. By consolidating the two electronic copies FCG had an almost complete document that appeared to be missing at least three pages. These missing pages were confirmed by the copy received from Florida Crystals. The copy of the GTA attached to this Petition as Confidential Exhibit 1 is the copy provided to FCG by Florida Crystals.<sup>8</sup>

18. The facts and circumstances regarding how FCG came to provide service to Florida Crystals is less of a mystery. The records available indicate that in the late 1990s City

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<sup>7</sup> FCG obtained a complete copy of the GTA from Florida Crystals when the parties met on July 21, 2016, to discuss this Petition and future service arrangements.

<sup>8</sup> As it turns out, the three missing pages from FCG's consolidated copy were title pages indicating simply "Exhibit B" and "Exhibit C" and the certificate of insurance that constitutes Exhibit D. These missing pages do not affect FCG's prior substantive analysis and conclusions regarding the GTA.



Gas sought to expand its natural gas service from its Palm Beach operations into western Palm Beach County and further into Hendry County via a new pipeline that would serve large industrial providers, including large citrus and sugar cane processors. This extension was known as the Clewiston Pipeline Extension Project (the “Clewiston Project”). City Gas envisioned this east-west pipeline to ultimately run approximately 150 miles from Palm Beach to the Ft. Myers area.<sup>9</sup>

19. One of the first customers to be served by the Clewiston Project was Florida Crystals at its Okeelanta plant on U.S. Highway 27, south of South Bay, Florida. As is set forth in the GTA, City Gas would construct approximately a 7 mile lateral pipeline from the Clewiston Project pipeline south to the Florida Crystals Okeelanta Plant. The GTA provides an estimated construction cost for the Okeelanta lateral, and the requirement that if the actual cost of the lateral was less, then the rates would be adjusted lower as set forth in the GTA.<sup>10</sup>

20. FCG has not been able to identify any current employees who have personal knowledge of the negotiation process that led to the GTA. A search of the records indicates that the City Gas and NUI regulatory and rates group did not develop the rates or any of the other terms in the GTA. There are no FCG records indicating any input into the negotiation process or the final document that was signed by the parties. In this regard, there are no contemporaneous FCG documents pertaining to the GTA except for the GTA.

21. Turning to the document, the GTA includes some complex service arrangement terms. There are various contingencies identified and some of the terms are triggered by events outside the GTA, which in turn affects the timing of when service and rates become effective.

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<sup>9</sup> Docket No. 030569-GU, Order No. PSC-04-0128-PAA-GU, at page 29-30 (February 9, 2004).

<sup>10</sup> GTA Section 9.A.

22. As a starting point, the GTA presents two alternative operating situations. There is what could be described as the main provisions on rates and terms and there is a secondary set of rates and terms that are to be applicable in the event the Gulfstream Project is placed into service. While the Gulfstream pipeline was constructed and put into service, FCG never connected to the Gulfstream Project, so the rates and terms in the GTA associated with the Gulfstream Project are inapplicable and have never been acted upon by the parties.

23. With respect to non-Gulfstream rates and terms, the GTA sets forth three time-periods of service. These are identified as the Primary Term, the Make-Up Period, and the Extended Term. Each of these three time periods have their own rates and terms as is more fully described below:

a. **Primary Term/Take-or-Pay Obligation:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>11</sup> GTA Section 3.

<sup>12</sup> This is discussed more fully in paragraphs 24 and 25.

b. **Make-Up Period/Deferred Quantities.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. **Extended Term.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>13</sup> GTA Section 9.C.

<sup>14</sup> [REDACTED]

*See* GTA Section 9.B. Confidential Exhibit 2 reflects the actual quantities of gas transported for each year of service under the GTA.

<sup>15</sup> Again, these dates are FCG's best projections of the timeframe within which the parties have been operating under the GTA, [REDACTED]

[REDACTED]

<sup>16</sup> [REDACTED]

[REDACTED]

24. An additional issue with the GTA is that it does not provide a specific start date. Rather, the triggering event for service is completion of construction of the lateral line to serve the Okeelanta Facility and notice to Florida Crystals of such completion. [REDACTED]

[REDACTED]

25. FCG could not locate any specific correspondence indicating whether the notice to Florida Crystals was provided that triggered the effective date of the GTA. However, in analyzing its billing records, FCG has determined that the first bill rendered to Florida Crystals

[REDACTED]

26. [REDACTED]

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<sup>17</sup> GTA Section 3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

27. In addition to standard contractual language on such issues as confidentiality and indemnification, there are numerous other terms of the GTA. These other sections include rate limitations based upon actual construction costs for the lateral to serve Florida Crystals (Section 9.A.), Call Rights (Section 9.E.) Conversion Costs (Section 10), Damages In The Event of Default (Section 15), and Most Favored Nation (Section 16) terms.

28. Once FCG had a good working knowledge of the GTA's terms, FCG undertook a financial analysis to determine whether the GTA properly recovered its costs and what the economic effects of the GTA would be at the rates and volumes of the Extended Term. This is discussed in the next section

#### **V. Revenue-Cost Requirements Analysis**

29. The revenue-cost analysis is provided in Confidential Exhibit 2 to this Petition. Overall, for the first 15 years, the analysis indicates that the GTA's total revenues exceed its total costs. However, for the projected 15 years of the Extended Term, the analysis indicates that costs substantially exceed revenues, and that the total loss of net revenues is very significant.

30. For the first 15 years of the GTA, the Primary Term and the Make-Up Period, the analysis utilizes the actual gas volumes transported with 2016 using the projected maximum volume permitted, which is consistent with the volumes transported the prior couple of years.

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<sup>18</sup> GTA Section 8.

<sup>19</sup> GTA Sections 9.A.-C.

[REDACTED]

31. However, for the Extended Term, the negative results are significant. [REDACTED]

[REDACTED]

[REDACTED] From this analysis, FCG concluded that providing service on these terms is not appropriate. FCG decided that with the complete picture, it must seek the PSC's review and action on the GTA.

### VI. Regulatory Analysis

32. FCG has determined from a diligent review of its records and the PSC's docket files that the GTA was never submitted to or approved by the PSC. Florida law requires that the PSC approve all rates for natural gas public utilities before they may be effective. Specifically, Section 366.06(1), Florida Statutes, provides:

Rates; procedure for fixing and changing.—  
(1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any

public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

33. Natural gas utilities may offer below tariff, special contact rates to customers.

But those special service arrangements must not only be approved by the PSC before they may take effect, but such approval is *required* before the contract document may be signed. Rule 25-9.034, Florida Administrative Code, states in pertinent part:

(1) Wherever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution. Accompanying each contract shall be completed and detailed justification for the deviation from the utility's filed regulations and standard approved rate schedules. If such special contracts are approved by the Commission, a conformed copy of the contract shall be placed on file with the Commission before its effective date.

34. The Contract Transportation Service ("KTS") Schedule,<sup>20</sup> which was cited in the GTA as the authority for the parties to enter into the GTA, did not state that PSC approval was necessary prior to a special contract becoming effective. However, the absence of preapproval language in the underlying tariff does not excuse the failure to file and obtain approval before execution pursuant to the rules. The PSC's Rule 25-9.034 was first promulgated in 1973 and it was last amended in 1975, long before the GTA was signed in 2001. Ignorance of a PSC rule

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<sup>20</sup> The KTS Schedule was superseded in the 2003 rate case by the Contract Demand Service (KDS) Schedule. Order No. PSC-04-0128-PAA-GU, at 72-73 (February 9, 2004).

that had been in effect for more than 25 years is not a defense to the failure of City Gas to obtain approval prior to execution.

35. These legal requirements are unequivocal. Indeed, in the Miami-Dade case there was a threshold legal challenge to this Commission's authority to review and approve special contracts, especially when signed by the parties. In rejecting that challenge, this Commission found: "we have exclusive, superior authority over the rates and charges of FCG, a regulated public utility. Pursuant to Rule 25-9.034(1), F.A.C., all special contracts and agreements entered into by a public utility that are not specifically covered by its filed tariff must be approved by this Commission."<sup>21</sup> There are no exceptions in the Rule as to which agreements must be approved – they "all" must be approved.

36. The GTA does not include specific language regarding the PSC review and approval process, but the GTA does not control or determine the PSC's authority. Moreover, the GTA does contain several provisions that recognize governmental supervision and oversight of the relationship. This is an important acknowledgement because another fundamental tenant of Florida law establishes that utility contracts remain subject to PSC oversight throughout their tenure and that the PSC has the authority to later terminate or amend a contract that is no longer compliant with the law.<sup>22</sup> This Commission specifically addressed the scope of this authority in the Miami-Dade jurisdiction order. In that Order, the Commission found:

The Florida Supreme Court has recognized our exclusive jurisdiction over rates. As FCG points out, the Court in *Miller & Sons* held that contracts with public utilities are made 'subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in

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<sup>21</sup> Order No. PSC-10-0671-PCO-GU, at 19 (November 5, 2010).

<sup>22</sup> *Miller & Sons v. Hawkins*, 373 So. 2d 913, 914 (Fla. 1979). In this case the PSC ordered the utility to increase the service availability charges to a developer notwithstanding the prior contract between the utility and developer.



the interest of the public welfare without unconstitutional impairment of contracts.’ In *Miller & Sons*, the Court concluded that we have authority to change rates in a private contract between a utility and a developer independent of the parties' contracting authority.<sup>23</sup>

The Commission expands upon the effect of this obligation on the next page of this Order:

We have authority, indeed an obligation, to set rates for a public utility that are fair, just, and reasonable. . . . If the contract rates at issue here are so low that they unfairly require FCG's customers to subsidize those of the County, we can and should exercise our legitimate authority to ensure that the rates charged by FCG are fair, just and reasonable.<sup>24</sup>

37. These two passages confirm that the PSC’s authority over FCG’s rates is absolute. In the future if something happens that would have the effect of putting a customer’s rates below cost, the PSC has the authority, indeed the duty, to step in and change the contractual rates, *even if the PSC has previously approved the rates*. Thus, regardless of the situation in 2001 when the Florida Crystals contract was drafted, and regardless of what the situation may have been over the last fourteen-and-a-half years, if under the Extended Term the rates will not recover their costs, the PSC has not only the authority but the responsibility to step in and stop those rates from going into effect.

38. There are several parts of the GTA that recognize this general law. In the first paragraph of the Miscellaneous Section, the GTA states:

This Agreement is subject to all present and future laws, regulations, and lawful orders of regulatory bodies or other duly constituted governmental authority having jurisdiction over the Parties or the subject matter of this Agreement. Both Parties agree that the transactions agreed to herein shall be in compliance with all such laws, orders, rules, and regulations.

39. While this provision of the GTA does not identify the PSC, the PSC certainly falls within the scope of this section and the PSC is elsewhere identified by name. For example, in

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<sup>23</sup> Docket No. 090539-GU, Order No. 10-0671, at 12.

<sup>24</sup> *Id.* At 13.

Section 1 of the GTA, "Definitions," the term "Tariff" is defined to mean "the Company's [FCG's] effective Tariff as filed with, and approved by, the FPSC."

40. The relevance of the tariff is further addressed in Section 7, page 10 of the GTA in "Applicability of Tariff." This Section provides, "The Service provided by Company to Customer hereunder is expressly subject to and governed by the terms and conditions of the Company's Tariff, and specifically the Rules and Regulations and the KTS rate schedule contained therein, *as any or all may be modified and made effective from time-to-time.*" [Emphasis added.] This Section continues by stating that the service being provided is subject to "Section 12 – 'Transportation – Special Conditions' of the Rules and Regulations of the Tariff, *as the same may be modified or superseded.*" [Emphasis added.] This section also establishes a priority order for potential conflicts between documents, establishing first the GTA, then the KTS rate schedule, and finally "other terms of the Tariff." Finally, this Section states that the "KTS rate schedule provides for a negotiated rate structure" and that the parties relied upon the rates and charges in the CI-LVT ("GTA Interruptible – Large Volume Transportation") rate schedule, "*as the same may be modified or superseded*, in accordance with the terms of this Agreement."<sup>25</sup>

41. At the time the GTA was executed, the KTS tariff provided that the Company and customer could negotiate a transportation charge, but that the rate negotiated could not be less than \$0.01 per therm and that the rate "*shall not be set lower than the incremental cost the Company incurs to serve the customer.*" [Emphasis added.] [REDACTED]

[REDACTED]

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<sup>25</sup> Emphasis added. The CI-LVT schedule was completely eliminated in the 2003 rate case. Order No. PSC-04-0128-PAA-GU, at 65-66 (February 9, 2004).

[REDACTED]

42. There is nothing to indicate that the parties utilized the Alternative Fuel Discount to determine any of the rates in the GTA. But even if they did, the CI-LVT schedule required that the customer had to make a quarterly filing reflecting the appropriate alternative fuel price information in order to calculate the appropriate discount. There is no evidence this was ever done.

43. While on their face the rates for the Primary Term and the Make-Up Period have some colorable relationship to the tariff, for the Extended Term rates do not have any connection to the tariff, and FCG has not located any original economic analysis or justification for these rates. There are a number of different things that impact the rates during the Extended Term, but at their most basic level the rates can be summarized as [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. FCG notes that while for many years the GTA did not recover its costs, the

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<sup>26</sup> There are additional provisions regarding annual rate adjustments, rate caps, and call rights that can impact these rates going forward, but the level of rate increases is constrained in future years, meaning the extent to which the service is below cost will likely be greater than what FCG has calculated in Confidential Exhibit 2.

general body of ratepayers have been insulated and not adversely impacted because City Gas and FCG have not had a rate case since 2003 and have not sought Competitive Rate Adjustment recovery or any other regulatory relief in connection with the GTA. In presenting the GTA to the Commission at this time, FCG is not seeking any retroactive relief for any past periods.

45. The bottom line for the legal and regulatory analysis is that the GTA is not a valid special contract since it was never approved by the PSC. Further, the GTA is not enforceable and cannot be approved going forward because the rates during the Extended Term do not recover their costs, let alone meet the “cost plus” standard. The failure to set compensatory rates and obtain PSC approval ultimately rests on the utility. But regardless of how FCG and Florida Crystals got to this point, service to Florida Crystals must hereafter comply with the applicable law. While Florida Crystals may not have been on explicit notice regarding the PSC’s requirement to preapprove any negotiated special contract rate, Florida Crystals is a very large, sophisticated customer purchasing its own natural gas and arranging for its transportation to FCG for final delivery to its plant. Moreover, the GTA on its face is sufficiently tied to the FCG tariff and to the PSC to provide notice to Florida Crystals as to the PSC’s ongoing jurisdiction over the GTA. Thus, it is entirely appropriate for FCG to petition the PSC for a ruling on the effectiveness and enforceability of the GTA during the Extended Term. In the absence of an approved special contract, FCG’s obligation is to charge Florida Crystals the applicable tariff rate from the GS 1,250k Schedule.

## **VII. FCG’s Proposed Interim Service Arrangement**

46. FCG recognizes that there are unique service requirements and opportunities in having Florida Crystals as a customer and that service to Florida Crystals can be provided in a manner that would be cost effective to FCG and Florida Crystals while providing benefits to

FCG's general body of ratepayers. Based upon recent experience, FCG's transportation service for Florida Crystals can be net profitable at rates below the tariff rate. At the time FCG had its last rate case in 2003, the service volume rate classes in the tariff simply did not contemplate a customer of the size of Florida Crystals at the volumes set forth in the GTA. If FCG were to restructure its rate classes for a customer like Florida Crystals, there likely would be one or more volumetric rate classes with volumes greater than the present GS 1,250k Schedule and the rates for such classes would be lower than those in the present GS 1,250k Schedule.

47. In view of the potential transportation volumes associated with Florida Crystals, FCG believes that the application of GS 1,250k rate would be inappropriate to Florida Crystals and likely result in Florida Crystals bypassing or otherwise leaving FCG. As a provisional measure – until the parties negotiate a special contract that would be filed reviewed, and approved by the PSC or the PSC issues some other applicable final order – FCG has prepared an analysis that is contained in Confidential Exhibit 3 for an alternative, interim rate arrangement for Florida Crystals. Pursuant to that Confidential Exhibit 3 analysis, FCG hereby proposes that the Commission approve an interim special service arrangement that would contain the following rates, terms, and conditions:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48. To the extent not addressed by the foregoing, the terms and conditions of the GS 1,250k Schedule shall apply and to the extent not addressed by the GS 1,250k Schedule, any other applicable FCG tariff terms not in conflict with the foregoing.

49. The PSC shall retain continuing jurisdiction over this interim service arrangement. The PSC may entertain requests by either party to reform, extend, or terminate this interim service arrangement as may be required by any statute, rule, or order of the PSC, changed facts or circumstances, or FCG's tariff in the public interest.

50. FCG would work with the Commission Staff to develop the specific regulatory framework for this interim service arrangement (e.g., a tariff or some other appropriate

mechanism along with any necessary reporting requirements). This interim service arrangement would remain in effective until a new successor special contract is approved or the PSC issues some other applicable final order, whichever occurs first.

51. FCG believes that the above rates, terms, and conditions of this interim service arrangement are consistent with Rule 25-9.034, Florida Administrative Code, and FCG's tariff and are in the public interest. FCG respectfully requests that this special service arrangement be approved for natural gas transportation service to Florida Crystals as set forth herein along with any other appropriate requirements the PSC may set.

### **VIII. Conclusions and Relief**

52. FCG acknowledges that City Gas failed to submit the GTA to the Commission as is required by Rule 25-9.034, Florida Administrative Code. FCG believes that had the GTA been properly submitted that it never would have been approved given the below cost rates and failure of the GTA to meet the applicable standards of the Commission's statutes and rules and FCG's then effective tariff. While such actions by City Gas would constitute a violation of the PSC's rules, under these circumstances the imposition of a fine or other penalty would not serve the public interest. Like in the Miami-Dade case, this was a problem AGL inherited. Up to this point, FCG's general body of ratepayers have not been adversely impacted by service to Florida Crystals, and in fact in recent years FCG's customers have benefited from having such a large customer on FCG's system. AGL through its FCG management has acted in good faith to remedy this situation in a manner that will not in the future adversely impact FCG's general body of ratepayers or Florida Crystals. If anything, AGL's management team for FCG reflects a continuing effort to address and resolve problems in a manner where the solution provides

benefits and does not worsen the situation. FCG believes that both the determination that the GTA is not legally effective and enforceable along with the proposed interim service arrangement well and sufficiently balances the concerns of all of FCG's customers and is in the public interest.

53. FCG met with Florida Crystals prior to filing this matter in an effort to inform Florida Crystals of this Petition and to seek to begin the process to negotiate a special contract that would comply with Florida law and be approved by the PSC. This meeting was a good start. FCG remains willing to negotiate such a transportation services agreement, and FCG is committed to that process with Florida Crystals. In the meantime, the interim service arrangement as set forth herein represents a reasonable and cost-justified basis for permitting FCG to continue to provide natural gas transportation service to Florida Crystals in lieu of the GS 1,250k Schedule. Given the foregoing and the specific history and issues presented by this Petition, FCG believes that the unique circumstances of this matter merit the PSC's attention and actions as set forth herein, and that such actions are in the public interest.

WHEREFORE, Florida City Gas respectfully requests that the Florida Public Service Commission conduct the review requested herein and take the following actions:

- (1) Determine that the GTA is (a) not legally effective because the GTA was never filed and approved by the Commission, and (b) not legally enforceable because whether filed or not, the terms of the GTA for the Extended Term do not meet the Commission's rules and statutes and FCG's tariff requirements for a special contract.
- (2) Approve the interim service arrangement as set forth herein to be effective until the Commission approves a new successor special transportation service agreement that complies with Florida law or the PSC issues such other applicable final order.



(3) Take no further action with respect to FCG's past performance under the GTA unless the PSC determines that such action is required, but in no event is a fine or any other penalty appropriate in this matter.

Respectfully submitted,

s/ Floyd R. Self  
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*Counsel for Florida City Gas*

Petition for Review and Determination  
and Approval of an Interim Service

Arrangement

July 22, 2016

Confidential Exhibit No. 1:

April 21, 2001 GTA

Redacted Version:

46 Page Document

Redacted in its Entirety

Petition for Review and Determination  
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July 22, 2016

Confidential Exhibit No. 2:  
Revenue Requirement Study

Redacted Version:  
1 Page Spreadsheet  
Redacted in its Entirety

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Confidential Exhibit No. 3:

Revenue Requirements

Redacted Version:

7 Page Spreadsheet

Redacted in its Entirety