

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Review and)
Determination on the Project Construction)
and Gas Transportation Agreement By and) Docket No.: 160175-GU
Between NUI Utilities, Inc. d/b/a City Gas)
Company of Florida and Florida Crystals) Filed: August 31, 2016
Corporation dated April 24, 2001 and)
Approval of an Interim Service Arrangement)
_____)

**MOTION FOR APPROVAL OF A
TEMPORARY INTERIM SERVICE ARRANGEMENT**

Florida City Gas (“FCG” or “Company”), pursuant to Sections 366.04, 366.041, 366.05, 366.06, 366.07, and 366.076, Florida Statutes, and Rules 25-9.034 and 28-106.204, Florida Administrative Code, hereby files with the Florida Public Service Commission (“PSC” or “Commission”) this Motion for Approval of a Temporary Interim Service Arrangement (the “Motion”). In support of this Motion, FCG states as follows:

I. Introduction

1. On July 22, 2016, FCG filed its 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”). FCG is seeking the Commission’s determination that 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 (hereinafter the “GTA” and attached to the Petition as Confidential Exhibit 1) is not a legally effective or enforceable special contract under Florida law since the GTA was never filed and approved by the PSC prior to its execution, as is required by Rule 25-9.034, Florida Administrative Code.

2. As is described more fully in the Petition, new rates 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” represents a change in rates from the current rates that do not meet the incremental cost standards of FCG’s KDS Schedule, the successor to the KTS Schedule. FCG cannot implement these below cost rates. FCG’s preference would be to successfully negotiate with Florida Crystals a new transportation services agreement that could be submitted and approved by the PSC that would avoid the issues inherent in the GTA and moot the Petition.

3. However, recognizing that a successful negotiation may not occur during the pendency of this docket, FCG proposed an interim service arrangement that would be effective until a successor transportation agreement could be negotiated and approved or until such time as the PSC may later order otherwise. The rates proposed by FCG for the interim service arrangement are set forth at pages 19 to 22 of the Petition (note, the specific terms are filed as confidential) and Confidential Exhibit No. 3, page 1 of 7, at Columns A and B, Rows 24, 25, and 26, which FCG incorporates herein by reference. It was FCG’s hope that in the absence of a new service agreement the proposed interim rates could become effective prior to the anticipated start of the Extended Term rates in January 2017. FCG anticipated that once Florida Crystals filed its substantive response to the Petition, FCG would request a September meeting of the parties and Commission Staff to address the timing and process for the implementation of the interim rates prior to January 1, 2017.

4. On August 29, 2016, Florida Crystals filed its Motion to Dismiss and separate

request for Oral Argument instead of a substantive response to the Petition. FCG intends to separately file an appropriate response to these pleadings. However, by the filing of a Motion to Dismiss, the PSC must now address the substance of the Florida Crystals Motion to Dismiss instead of proceeding on the merits of FCG's Petition and the implementation of the proposed interim rates. Florida Crystals is fully within its legal rights to file a motion to dismiss. However, this additional procedural step means that the PSC will not be able to timely address FCG's Petition on the merits prior to January 1, 2017. In addition, the Motion to Dismiss suggests to FCG that there may not be an opportunity for the parties to develop a cooperative implementation plan whereby FCG's interim service arrangement and rates could become effective prior to January 1, 2017. The likely additional delay on the merits of FCG's Petition presents a more urgent situation for FCG, thus compelling FCG to now make a formal request to implement the interim service arrangement and rates presented in the Petition on a temporary basis until a final order in this matter or until such other appropriate relief is granted.

5. FCG hereby requests that the PSC adopt the interim service arrangement set forth in FCG's Petition as a temporary measure to be effective as soon as practical, but no later than January 1, 2017. For purposes of this Motion, FCG relies upon and incorporates herein by reference the rates, cost support, Exhibits, analysis, and other information set forth in its Petition. The temporary interim rates set forth in Confidential Petition Exhibit No. 3, page 1 of 7, at Columns A and B, Rows 24, 25, and 26, would be in effect until the PSC issues a final order in this docket on the merits of FCG's petition or, prior to such final order, the PSC issues a final order approving a successor transportation agreement. In addition, FCG relies upon the statutory authority within Section 366.04, 366.041, 366.05, 366.06, 366.07, and 366.076, Florida Statutes,

to “regulate and supervise each public utility with respect to its rates and service,”¹ to fix “the just, reasonable, and compensatory rates, . . . to be observed and charged for service” giving consideration to “the cost of providing such service,”² the Commission’s “power to prescribe fair and reasonable rates and charges,”³ FCG’s obligation to “not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved,”⁴ the Commission’s authority with respect to rates that are “unjust, unreasonable, unjustly discriminatory, or in violation of law; . . . [or] insufficient to yield reasonable compensation for the services rendered,”⁵ the Commission’s authority to “determine and by order fix the fair and reasonable rates . . . to be imposed,”⁶ and the Commission’s authority to “conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates.”⁷

6. FCG is required by Florida law to charge Florida Crystals FCG’s applicable tariff rates unless the PSC has issued a final order approving special contract rates.⁸ There is no such final order approving the GTA.⁹ If the PSC does not approve this Motion or take such other final order action, FCG shall begin to charge Florida Crystals the otherwise applicable tariff rate, from the GS 1,250k Schedule, effective January 1, 2017, unless the PSC orders otherwise.

¹ Section 366.04(1), Florida Statutes.

² Section 366.041(1), Florida Statutes.

³ Section 366.05(1), Florida Statutes.

⁴ Section 366.06(1), Florida Statutes.

⁵ Section 366.06(2), Florida Statutes.

⁶ Section 366.07, Florida Statutes.

⁷ Section 366.076(1), Florida Statutes.

⁸ Section 366.06(1), Florida Statutes; Rule 25-9.034, Florida Administrative Code.

⁹ In its Motion to Dismiss, one argument of Florida Crystals is that the PSC approved “all of FCG’s rates in the 2003 City Gas rate case,” in Order No. 04-0128-PAA-GU. Such a position does not meet the clear and unambiguous terms of Rule 25-9.034(1), Florida Administrative Code, which provides, among other requirements, that “such contract must be approved by the Commission prior to its execution.”

7. The implementation of the temporary interim service arrangement set forth herein, or the implementation of the GS 1,250k rates if the temporary interim service arrangement is not approved, would be a temporary measure subject to true up, up or down, based upon the PSC's final order in this docket or, if prior to a final order in this docket, a final order approving a new service agreement.

8. Pursuant to Rule 28-106.204(3), Florida Administrative Code, undersigned counsel has conferred with counsel for Florida Crystals. Counsel for Florida Crystals advises that it opposes this Motion and that Florida Crystals will file a response in opposition to the Motion.

WHEREFORE, Florida City Gas respectfully requests that the Florida Public Service Commission approve the temporary interim service arrangement, including the rates set forth in Confidential Petition Exhibit No. 3, page 1 of 7, at Columns A and B, Rows 24, 25, and 26, with such temporary interim service arrangement remaining in effect until the PSC issues a final order in this docket on the merits of FCG's petition or, prior to such final order, the PSC issues a final order approving a successor transportation agreement. If the PSC does not approve this Motion or take such other final order action, FCG shall begin to charge Florida Crystals the otherwise applicable tariff rate, from the GS 1,250k Schedule, effective January 1, 2017, unless the PSC orders otherwise. Any rates implemented would be subject to true-up, up or down, by any final order in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by E-Mail on this 31st day of August, 2016, to the following:

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