State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 26, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Merryday, Draper) EJD THM PDGS WT
Office of the General Counsel (Trierweiler) CM

RE: Docket No. 20180043-GU – Petition for approval of area extension plan rate extension agreement with United States Sugar Corporation, by Florida City Gas.

AGENDA: 05/08/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 20, 2018, Florida City Gas (FCG or utility) filed a petition for approval of an Area Extension Plan Rate Extension Agreement (AEP Agreement) with United States Sugar Corporation (U.S. Sugar). The extension of the utility's distribution facilities to serve U.S. Sugar and the surrounding area is known as the Glades AEP Project.

The Area Extension Plan (AEP) tariff is designed to provide FCG with an optional method to recover its capital investment to provide natural gas service to customers in a discrete geographical area who do not have gas service available.[1] The AEP tariff provides for the determination of a surcharge based on the required investment and the projected gas sales to customers located in the geographical area. The surcharge is applied on a per therm basis over a

[1] Order No. PSC-95-0506-FOF-GU, issued April 24, 1995, in Docket No. 950206-GU, *In re: Petition for approval of tariffs governing extension of facilities by City Gas Company of Florida.*

ten year amortization period in addition to all other tariffed charges. The AEP tariff specifies the formula to calculate the charge; the utilization of the tariff itself does not require Commission approval.

The AEP tariff provides for a surcharge recalculation on the third anniversary of facilities being placed in service. The customers on the Glades AEP Project began taking service in 2012, therefore, a true-up was to occur in 2015. However, significant problems led FCG to request, in October 2015, that the Commission approve a variance to the AEP tariff to provide relief to customers on the Glades AEP Project. The Commission approved FCG's request in 2015 in Order No. PSC-16-0066-PAA-GU (2015 Order).[2]

FCG stated that it has used the AEP tariff mechanism for eight projects since its 1995 implementation, and the AEP has proved helpful to the utility and customers that may have otherwise been unable to receive service. However, the primary customer on the Glades AEP Project, U.S. Sugar, continues to face unique and significant challenges and a surcharge recalculation pursuant to the 2015 Order may interfere with the economic wellbeing and development in the area. Therefore, FCG filed the instant petition. On March 22, April 6, and April 16, 2018, FCG responded to staff's data requests. On April 18, 2018, FCG filed a supplemental amendatory petition to clarify that the AEP surcharge will terminate in 2024 for all Glades AEP Project customers except for U.S. Sugar as provided for in the AEP Agreement. The AEP Agreement is attached to the recommendation as Attachment A (Exhibit A to the AEP Agreement is not attached as it contains confidential information). The Commission has jurisdiction over this matter pursuant to Section 366.06, Florida Statutes.

[2] Order No. PSC-16-0066-PAA-GU, issued March 2, 2016, in Docket No. 150232-GU, *In re: Petition for Approval of Variance to Delay Area Extension Program True-Up and Extend Amortization Period by Florida City Gas*

Discussion of Issues

Issue 1: Should the Commission approve the AEP Agreement and FCG's request for a variance from the AEP tariff for the Glades AEP Project?

Recommendation: Yes, the Commission should approve the AEP Agreement and FCG's request for a variance from the AEP tariff for the Glades AEP Project. (Merryday)

Staff Analysis: In November 2012, when the customers on the Glades AEP Project first began taking service, the surcharge was calculated to be $0.241 per therm. This assumed reasonably forecasted natural gas usage and an amortization period of ten years. At the time of the original third year true-up, the utility determined that, to keep the amortization period to ten years, the new surcharge would have to be $0.515 per therm. This was the result of unanticipated environmental issues, fewer new customers taking service than expected, and a citrus canker blight which caused U.S. Sugar to use significantly less natural gas than predicted. To reduce the financial strain on customers and encourage economic growth, FCG asked the Commission to delay the surcharge recalculation by two years, until October 2017, with the amortization period extending through October of 2024. The Commission approved the proposal and the rate remained $0.241 per therm.

In late 2017, the utility performed the true-up calculations required by the 2015 Order, but determined that extenuating factors have continued to impede natural gas usage and would make the recalculated rate increase to $0.629 per therm. FCG explained that the December 2017 through May 2018 citrus harvesting and processing season was on track to be the first productive year after more than a decade of disease, but Hurricane Irma destroyed up to 89 percent of the crops where U.S. Sugar sourced its fruit. The utility also notes that primarily the fruit, and not the trees, were damaged and citrus production should increase next season.

Being mindful of the significant economic impacts such a rate increase would have on the Glades AEP Project customers, including the largest industrial customer in the Glades project, U.S. Sugar, FCG proposed the special AEP Agreement with U.S. Sugar and revised AEP surcharges for all Glades customers. While the AEP Agreement is between the utility and U.S. Sugar and any affiliates (for whom the project was primarily designed), it provides benefits to all customers on the Glades AEP Project. The AEP Agreement and the revised AEP surcharges to all other Glades customers are discussed below.

Glades AEP Agreement

The AEP Agreement includes the following elements:

- The AEP surcharge will be set at $0.301 per therm instead of $0.629 (a reduction of $0.328 per therm).
- In exchange for the reduced rate, U.S. Sugar agrees to continue taking service for its Southern Gardens citrus processing facility (plant) and paying the AEP surcharge through November 2027 or until it has repaid 87.13 percent of the contribution in aid of construction (CIAC). In the event that a balance remains at the end of November 2027 or

that U.S. Sugar terminates service at its plant early, U.S. Sugar will submit the remainder of the CIAC to FCG within 45 days.

- U.S. Sugar's affiliates and subsidiaries agree to continue taking service and paying the AEP surcharge after the amortization period ends in 2024. Thereafter, if natural gas is no longer an economically viable option, U.S. Sugar's affiliates and subsidiaries, excluding the plant, may provide reasonable documentation to that effect in order to cease taking service. U.S. Sugar's affiliates and subsidiaries must provide at least 60 days notice to do so.

- Glades AEP surcharge recalculations will occur in November 2020 and November 2022, with one subsequent recalculation occurring upon U.S. Sugar demonstrating a six percent increase in annual natural gas consumption thereafter.

Other Glades AEP Customers

For the remaining customers on the Glades AEP Project, the AEP surcharge will also be set at $0.301 per therm (instead of the recalculated rate of $0.629 per therm). Similar to the AEP Agreement discussed above, AEP surcharge recalculations will occur in November 2020 and November 2022, with one subsequent recalculation occurring upon U.S. Sugar's demonstrated six percent increase of natural gas consumption after November 2022. The utility explained that with U.S. Sugar being the largest customer in the Glades AEP Project, a six percent increase in consumption by U.S. Sugar would result in a reduction in the AEP surcharge, therefore benefitting all customers. As provided for in the 2015 Order, the AEP surcharge assessed to the Glades AEP Project customers will terminate in October 2024.

FCG stated that it has been able to contact 36 of 38 customers on the Glades AEP Project regarding the recalculated AEP rate. In response to Staff's First Data Request, FCG claims that these customers have accepted the recalculated AEP rate. For the remaining two customers, FCG states that a representative left contact information.

Conclusion

The utility states that the proposed lower AEP surcharge will reduce recovery on the Glades AEP Project by approximately $5 million. However, according to the utility, the $5 million under-recovery will not affect the general body of rate payers and any unrecovered amount is a risk to the utility's shareholders.

In FCG's recent rate case, the Commission approved changes to the AEP tariff that provides for true-ups on the third, fifth, seventh, and ninth anniversaries of the date when each AEP project goes into service.[3] The utility stated that this will prevent spikes in AEP rates and allow for gradual adjustments over time, if needed. In its response to Staff's Second Data Request, FCG indicated that these true-up requirements will not apply to the Glades AEP Project.

FCG's proposal will benefit U.S. Sugar, the large industrial customer in the Glades Project area, who is facing unique economic challenges. The proposal will also give relief to the other

[3] Order No. PSC-2018-0190-FOF-GU, issued April 20, 2018, in Docket No. 20170179-GU, *In re: Petition for rate increase by Florida City Gas*

customers by providing for a lower AEP rate. Staff therefore recommends that the Commission approve FCG's request for the AEP Agreement and a variance from the AEP tariff.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Trierweiler)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

AREA EXTENSION PLAN RATE EXTENSION AGREEMENT

THIS RATE EXTENSION AGREEMENT ("Agreement") is entered into by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a natural gas local distribution company ("LDC") and a subsidiary of Southern Company Gas, hereinafter referred to as ("**FCG**"), and United States Sugar Corporation ("USSC"), hereinafter referred to as ("**Customer**") (jointly, "**Parties**").

WITNESSETH:

WHEREAS, FCG operates facilities for the distribution of natural gas in the State of Florida; and

WHEREAS, Customer owns and operates a citrus processing facility at 1820 County Road 833, Clewiston, Florida (the "Plant"):

WHEREAS, FCG constructed its Glades pipeline to serve Customer and currently provides natural gas service to Customer, as well as other entities, via the Glades pipeline; and

WHEREAS, when the Glades pipeline was placed into service, the booked investment exceeded the Maximum Allowable Construction Cost ("MACC"), resulting in a contribution in aid of construction to be recovered consistent with FCG's Florida Public Service Commission ("FPSC") tariff; and

WHEREAS, the cost of the installation of the Glades pipeline is $17,766,616, which results in the amount to be recovered from the Customer and other entities served by the Glades pipeline being $13,159,111, plus carrying a cost of $3,332,088, for a total of $16,491,199 (such total, the "Contribution"):

WHEREAS, the Parties acknowledge that the Contribution may vary depending upon consumption of natural gas by customers on the Glades pipeline; and

WHEREAS, recovery of the Contribution has been addressed by application of FCG's tariffed Area Extension Plan ("AEP"), which provides for calculation of a surcharge amount to be applied over a 10-year period to recover FCG's capital investment to provide natural gas service to customers to a discrete geographic area, which area, in this instance, is referred to as the "Glades Project"; and

WHEREAS, FCG's tariff provides that the AEP surcharge may only be recalculated, if at all, at Year 3 of the amortization period based upon updated costs and therm usage; and

WHEREAS, in 2015, FCG petitioned the FPSC for approval, and was allowed, to defer the recalculation of the AEP charge for a period of two years and to extend the project amortization period from 10 years to 12 years through November 2024 ("Amortization Period"), because the

AEP surcharge for Customer and others in the Glades Project was projected to increase from $0.241 per therm to $0.629 per therm; and

WHEREAS, the extension of the AEP recalculation ended October 31, 2017, and as such, the recalculated, higher AEP surcharge would be assessed to Customer and others served by the Glades pipeline with the December 2017 bill; and

WHEREAS, an increase in AEP charge would have significant negative consequences to Customer and others in the Glades Project as acknowledged in Order No. PSC-2016-0066-PAA-GU; and

WHEREAS, Customer's operation has significant economic consequences for Clewiston and the surrounding areas; and

WHEREAS, the FPSC has recognized the benefits to the general body of ratepayers of retaining large customers on LDC systems; and

WHEREAS, retention of Customer as contemplated in this Agreement will have no adverse impacts to FCG's ratepayers nor will it put the ratepayers at increased risk;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be bound hereby, the Parties do therefore agree as follows:

1.0 Surcharge Amount. Effective January 31, 2018, ("Effective Date"), the AEP charge for the Glades Project will be set at $0.301 per therm for all customers, which [redacted] consistent with the model contained in Exhibit A as attached hereto and incorporated herein by reference.

2.0 Continuation of AEP Surcharge. This Agreement shall remain in effect from the Effective Date through the end of November 2027. At the end of the 12-year Amortization Period, Customer and its affiliates, including, but not limited to the Plant, which are being served by the Glades pipeline, will continue to be assessed the $0.301 per therm AEP charge per Exhibit A for the remainder of the Term of this Agreement, except as otherwise contemplated in Section 4.0 below.

3.0 Release of Non-Affiliates. The Parties agree and acknowledge that, at the end of the 12-year Amortization Period, the AEP charge will be eliminated for all other customers served by the Glades pipeline that are not otherwise affiliated with USSC, in accordance with FCG's tariff and the FPSC's Order No. PSC-2016-0066-PAA-GU.

4.0 Recalculation of AEP Charge. The AEP charge will be recalculated in November 2020 and November 2022 to capture changes in annual consumption only. Each recalculation [redacted] consistent with FCG's AEP tariff. Subsequent to the recalculation in 2022 through the end of the Term of this Agreement, Customer may request one additional recalculation of the AEP, which shall be implemented by FCG upon demonstration by Customer of a 6% overall increase in natural gas consumption by Customer from the FCG system occurring during the period subsequent to the year 9 recalculation (November 2022) and the date of the request for the additional recalculation.

5.0 Service Commitment.

5.1 Southern Gardens. Customer commits that Plant will either maintain service with FCG for, at a minimum, the period of time necessary for FCG to fully recover the Contribution or, consistent with Exhibit A, Customer will pay the then outstanding balance for AEP investments to serve their facilities, excluding the ROE, within 45 days of termination of service by Customer.

5.2 Affiliates and Subsidiaries. Customer shall cause all other USSC affiliates and subsidiaries served by the Glades pipeline to maintain natural gas service with FCG as long as natural gas service is an economically viable option. In the event that Customer determines that natural gas is no longer an economically viable option for the USSC affiliates and subsidiaries, Customer shall provide FCG with reasonable and verifiable documentation supporting Customer's conclusion that natural gas service is no longer an economically viable option for any or all of the USSC affiliates and subsidiaries and shall provide no less than 60 days' notice of intent to suspend or terminate service. Consistent with Section 5.1 above, this Section 5.2 shall not apply to Plant.

5.3 Early Termination of Obligation. Customer may terminate its obligations hereunder prior to the end of the Term by submitting, in full, payment for the remainder of the amount of its obligation hereunder, which is 87.13% of the Contribution. The Parties recognize and agree that the Contribution will change as payments are made consistent with this Agreement and FCG's tariff, and if natural gas consumption on the Glades pipeline changes.

6.0 Definitions: For purposes of this Agreement, "economically viable" shall be construed as meaning that the sum total cost of utilizing natural gas a fuel source is equal to, or less than, the sum total cost of utilizing another fuel source, including the cost of any new or revised equipment installations necessary to utilize a fuel source other than natural gas.

7.0 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this

Agreement and the provision of natural gas service hereunder. FCG and Customer shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. FCG and Customer shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency, other than the FPSC, over this Agreement or any part thereof. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

8.0 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be before the FPSC or in a court of the State of Florida otherwise having jurisdiction.

9.0 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY
Pivotal Utility Holdings, Inc.
d/b/a Florida City Gas

By: ____________________
Name: Carolyn Bermudez
Title: Vice President

CUSTOMER
United States Sugar Corporation

By: ____________________
Name: Ryan Gasper
Title: Vice President - Citrus

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: ____________________
Title: ____________________
Date: ____________________

Attested By: ____________________
Title: ____________________
Date: ____________________