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090539-GU

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December 29, 2009

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 090530-GU**

Dear Ms. Cole:

Enclosed for filing, please find the original and seven (7) copies of the Answer of Florida City Gas to Miami-Dade County's Petition together with a CD containing a copy of same in PDF format.

Thank you for your assistance with this filing. Please do not hesitate to contact me if you have any questions.

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SSC \_\_\_\_\_  
ADM \_\_\_\_\_  
OPC \_\_\_\_\_  
CLK \_\_\_\_\_ Enclosures

Sincerely,

/s/-----  
Shannon O. Pierce  
Senior Regulatory Counsel  
AGL Resources Inc.  
(404) 584-3394  
For Florida City Gas

cc: Curt Kiser (PSC) (hand delivery)

DOCUMENT NUMBER-DATE

12249 DEC 29 09

FPSC-COMMISSION CLERK

**STATE OF FLORIDA**  
**PUBLIC SERVICE COMMISSION**

In Re: Petition for Approval of Special )  
Gas Transportation Service Agreement )  
with Florida City Gas by Miami-Dade )  
County through Miami-Dade Water and )  
Sewer Department )  
\_\_\_\_\_ )

Docket No. 090539-GU

Filed: December 29, 2009

**ANSWER OF FLORIDA CITY GAS**  
**TO MIAMI-DADE COUNTY PETITION**

Florida City Gas ("FCG" or "Company"), by and through its undersigned qualified representative, and pursuant to Florida Administrative Code Rule 28-106.203, Florida Administrative Code, hereby files its Answer to the Petition of Miami-Dade County, made through the Miami-Dade Water and Sewer Department ("MDWASD"), and states as follows:

**INTRODUCTION TO FCG ANSWER**

1. MDWASD's arguments and allegations are designed to evade several unavoidable conclusions: (1) The Florida Public Service Commission ("Commission") has plenary jurisdiction over investor-owned utilities' retail sales of natural gas transportation, whether by special contract or tariff; (2) Any going-forward special contract between MDWASD and the Company must be approved by the Commission and has no validity outside this Commission's authority; (3) There is no special contract between MDWASD and the Company currently in effect; (4) Gas transportation service at the rate MDWASD desires is not adequately supported by Company cost data nor supported by data provided by MDWASD and (5) MDWASD seeks prospective and

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FPSC-COMMISSION CLERK

retroactive relief from a lawful, Commission-approved tariffed rate based on theories MDWASD does not specify but which are, in any case, without legal foundation.

2. To be clear, the Company supports the Commission's comprehensive jurisdiction over retail special gas transportation agreements, including any going-forward agreement with MDWASD.

3. The purpose of the instant MDWASD Petition is unmistakable. MDWASD asks, one way or another, that it not have to pay tariffed rates or even its fair share of the cost of serving it as a customer. The Company opposes this. Instead, the Company supports providing MDWASD service on a basis supported by adequate cost justification, in accordance with a Commission-approved agreement, determined to be in the public interest, and to which both parties assent.

4. The Company's predecessor owner began serving MDWASD in 1998 under a ten-year agreement. The entity then known as City Gas operated as a separate division of NUI Utilities Inc., a subsidiary of NUI Corporation. In November 2004, AGL Resources Inc. acquired all of the outstanding common stock of NUI Corporation. NUI Utilities, Inc. thereafter became Pivotal Utility Holdings, Inc. ("Pivotal"), and on December 6, 2004, the name City Gas was changed to Florida City Gas. Florida City Gas currently operates as a division of Pivotal. The instant dispute concerns rates and terms for service to MDWASD due to expiration of the legacy City Gas agreement.

#### **MDWASD's PETITION INTRODUCTION**

5. Paragraphs 1 and 2 of MDWASD's Petition merely recite its basic identifying information and need not be admitted or denied by the Company.

6. The Company admits MDWASD is a department of Miami-Dade County, which is a political subdivision of the state, but the Company is without knowledge of the other facts alleged in MDWASD paragraph 3 and therefore denies same.

7. The Company admits MDWASD paragraph 4. See also the corporate history in paragraph 4 of the Company's Answer.

8. The Company admits MDWASD paragraph 5 except that the Company is without knowledge of MDWASD's actual number of water customers.

9. The Company admits MDWASD paragraph 6 only insofar as MDWASD purchases gas transportation services from the Company under the Company's tariff, and that Commission approval of any new special contract for retail gas transportation services is required. The Company denies any remaining allegations in MDWASD paragraph 6.<sup>1</sup>

10. MDWASD paragraph 7 appears to contain legal conclusions to which no response is required, but to the extent a response is required, the Company denies the allegations of MDWASD paragraph 7. Further, the Company states that while retaining MDWASD as a customer is preferred, retention cannot be at an unsupportable contract rate. *If by-pass were imminent, it would behoove MDWASD to produce supporting information for the Company and the Commission to analyze. However, MDWASD has heretofore not produced such information.*

#### **MDWASD's BACKGROUND FACTUAL ALLEGATIONS**

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<sup>1</sup> The Company does not agree that MDWASD has standing to file the instant Petition. In the interest of moving forward on the question of Commission jurisdiction and related issues, however, the Company has filed this Answer and reserves its right to argue dismissal on the basis of standing through subsequent filings.

11. MDWASD paragraph 8. The Company admits that its predecessor owners had a special gas transportation agreement with MDWASD and a copy of that prior agreement is included in Exhibit A. The documents attached as Exhibit A speak for themselves. To the extent necessary to address any remaining allegations to MDWASD paragraph 8, that remainder is denied.

12. MDWASD paragraph 9. The Company admits that its predecessor owners had a special gas transportation agreement with MDWASD. Admitted that the copy of that predecessor owners' agreement with MDWASD is included in Exhibit A. Exhibits A and B speak for themselves. To the extent necessary to address any remaining allegations to MDWASD paragraph 9, that remainder is denied.

13. MDWASD paragraph 10. The Company admits that it negotiated terms for a new special gas transportation agreement with MDWASD, and further admits that a number of the terms of the 2008 Agreement are similar to the predecessor agreement. The agreements and pertinent tariffs incorporated by reference in the agreements, however, speak for themselves. To the extent necessary to address any remaining allegations to MDWASD paragraph 10, that remainder is denied.

14. MDWASD paragraph 11. Admitted that Commission approval of any new special agreement is required and that the 2008 Agreement provides that such approval was required within 180 days. (See Petition Exhibit C, page 2, Article 1.) MDWASD's and the Company's predecessor owner's actions or statements regarding there being no necessity for Commission approval have no bearing on the Commission's actual legal authority over special contracts for gas transportation services; and therefore, any such allegations are irrelevant and denied. To the extent necessary to address any

remaining allegations to MDWASD paragraph 11, that remainder is irrelevant or otherwise denied.

15. MDWASD paragraph 12. Admitted Exhibit C includes an executed copy of the 2008 Agreement. The 2008 Agreement speaks for itself. To the extent necessary to address any remaining allegations to MDWASD paragraph 12, that remainder is irrelevant or otherwise denied.

16. MDWASD paragraph 13. Admitted Exhibit D includes an executed copy of the First Amendment. Exhibit D and Exhibit E speak for themselves. To the extent necessary to address any remaining allegations to MDWASD paragraph 13, that remainder is irrelevant or otherwise denied.

17. MDWASD paragraph 14 is admitted only insofar as Exhibit C speaks for itself.

18. MDWASD paragraph 15 is admitted only insofar as Exhibit F is a copy of the referenced November 13, 2008 Company petition ("Company Petition"). The Company Petition speaks for itself.

19. MDWASD paragraph 16 is admitted only insofar as Exhibit G contains a copy of the referenced Commission order. The order speaks for itself. To the extent necessary to address any remaining allegations or inferences to MDWASD paragraph 16, that remainder is irrelevant or otherwise denied.

20. MDWASD paragraph 17 is denied and irrelevant. Further, to the extent relevant, the Company states that the Company Petition's filing was a matter of public record, and MDWASD's consultant was well aware of the docket and the matters

contained therein. MDWASD could have, but chose not to, file as an interested person or intervenor in the docket.

21. MDWASD paragraph 18 is admitted only insofar as Commission staff propounded several informal data requests to the Company and the Company responded to those requests. The data requests and the Company's responses speak for themselves. Admitted that Exhibit H contains redacted portions of certain responses and various Company filings in the docket. To the extent necessary to address any remaining allegations to MDWASD paragraph 18, that remainder is irrelevant or otherwise denied

22. MDWASD paragraph 19. The referenced response in Exhibit H speaks for itself. To the extent necessary to address any remaining allegations to MDWASD paragraph 19, that remainder is irrelevant or otherwise denied.

23. MDWASD paragraph 20. The referenced response in Exhibit H speaks for itself. Further, the Company states that it pursued Commission approval and staff review honestly and in good faith. To the extent necessary to address any remaining allegations to MDWASD paragraph 20, that remainder is irrelevant or otherwise denied.

24. MDWASD paragraph 21 is denied and irrelevant. Further, to the extent relevant, the Company states that the referenced filings were (to the extent not confidential) a matter of public record, and MDWASD's consultant was well aware of the docket and the matters contained therein. MDWASD could have, but chose not to, file as an interested person or intervenor.

25. MDWASD paragraph 22 is, to the extent relevant, admitted only insofar as staff made data requests to the Company, the Company responded to those requests, staff opined that it did not view the merits of the 2008 Agreement favorably, and the

Company withdrew the petition. See also paragraph 44 of this Answer. Exhibit I speaks for itself. To the extent relevant, any remaining allegation in MDWASD paragraph 22 is denied.

26. To the extent relevant, MDWASD paragraph 23 is admitted.

27. To the extent relevant, MDWASD paragraph 24 is admitted only insofar as the Company and MDWASD entered into additional discussions at the time the Company Petition was withdrawn. Any other allegations in the paragraph are irrelevant, denied or denied for the reasons stated in the other paragraphs of this Answer.

28. To the extent relevant, MDWASD paragraph 25 is admitted only insofar as (a) the Company and MDWASD entered into additional discussions at the time the Company Petition was withdrawn; (b) the Company sought additional information from MDWASD to support a cost basis for a new going-forward rate; (c) MDWASD stated that it had by-pass cost information but never provided the Company with any such information; (d) the Company did not want to resubmit a petition without any new supporting information which could pass muster with the Commission and staff; and (e) after several months of attempted negotiations with no agreement in effect, the Company began charging MDWASD tariffed rates. Any other allegations in the paragraph are irrelevant, denied, or denied for the reasons stated in the other paragraphs of this Answer.

29. To the extent relevant, MDWASD paragraph 26 is admitted only insofar as after several months of attempted negotiations with no agreement in effect, the Company began charging MDWASD tariffed rates. Exhibit J speaks for itself. Any other allegations in the paragraph are irrelevant, denied or denied for the reasons stated in the other paragraphs of this Answer.



### **MDWASD RELIEF SOUGHT AND ARGUMENT**

30. MDWASD paragraph 27 is a request for relief and/or legal argument and therefore no response is required. However, to the extent relevant and a response is necessary, the Company states that MDWASD is not entitled to the relief it seeks. Pursuant to Chapter 366, the Commission's jurisdiction over retail sales by investor owned natural gas utilities is comprehensive. MDWASD is not entitled to prospective or retroactive relief from a tariffed rate by virtue of a rate contained in a special contract which was never approved and hence never made effective.<sup>2</sup> The Company is under no obligation to provide service on rates or terms not included in either an approved tariff or an approved special contract. All customers are by law charged with knowledge of a regulated company's tariff, and MDWASD is appropriately charged the tariffed rate. Exhibit K speaks for itself. MDWASD paid the tariffed rates timely and in full from the date tariffed rates were implemented until the October 2009 invoices. See also paragraph 40 of this Answer regarding MDWASD's recent payments. Any remaining allegation in MDWASD paragraph 27 is denied.

31. MDWASD paragraph 28 appears to be legal argument and therefore no response is required. However, to the extent relevant and a response is necessary, the Company denies any factual allegations in this paragraph. Rule 25-9.034, Florida Administrative Code, speaks for itself. The Company posits that its interpretation of this rule, as stated in the body of the Company Petition, is the correct one, and that the

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<sup>2</sup> The First Amendment and the 2008 Agreement contemplate only termination or re-negotiation should the 2008 Agreement not be approved by the Commission within 180 days. (Petition Exhibit C, page 2, Article I and Petition Exhibit D.)

Commission has jurisdiction over all investor-owned natural gas utilities' **retail** sales by special contract to a municipality. Neither the Company, nor any party, has the power by statement, action or inaction to alter Commission jurisdiction under state law. To conclude otherwise would permit individuals to re-write state law.<sup>3</sup> The Company specifically denies that the footnote in the Company Petition meant anything other than that although the Company believed its interpretation of the rule was correct and the Commission did have jurisdiction, the Company would abide by an enforceable Commission order either way.<sup>4</sup>

32. MDWASD paragraph 29 appears to be legal argument and therefore no response is required. For reasons stated in the Company Petition and this Answer, the Company believes that the rule affirms Commission jurisdiction and requires filing and approval of the 2008 Agreement.

33. MDWASD paragraph 30 appears to be legal argument and therefore no response is required. The Company incorporates in this paragraph its response in paragraph 31 (other than the first sentence) of this Answer.

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<sup>3</sup> In any case, Miami-Dade County on behalf of MDWASD has already agreed the Commission had jurisdiction over the 2008 Agreement. (MDWASD Petition Exhibit C, page 2, Article I.)

<sup>4</sup> The referenced footnote from the Company Petition reads its entirety as follows:

Rule 25-9.034(1), Florida Administrative Code, states that the rule does not apply to contracts "by or between a public utility and a **municipality** or R.E.A. cooperative . . . ." (Emphasis added.) It is within the Commission's discretion to determine that "municipality" in that rule means any municipal customer. However, based on a review of other references in Chapter 25-9 to "municipality," including in Rule 25-9.001(1), and in Section 366.11, Florida Statutes, the Company believes the Commission meant "municipal utility" when it said "municipality" in Rule 25-9.034(1). However, the Company does not oppose the interpretation that would obviate the need for the instant petition.

34. MDWASD paragraph 31 appears to be legal argument and therefore no response is required. In addition, the Company states executed special contracts for other companies have been filed with the Commission, **subject to** Commission approval before the contract could become effective. The same was done in this case. To the extent necessary to address, any other allegations in MDWASD paragraph 31 are irrelevant, denied or denied for the reasons stated in the other paragraphs of this Answer.

35. MDWASD paragraph 32 appears to be legal argument and therefore no response is required. The Company incorporates in this paragraph its responses in paragraphs 31, 32 and 34 (other than the first sentences) of this Answer.

36. MDWASD paragraph 33 appears to be legal argument and therefore no response is required. The Company incorporates in this paragraph its responses in paragraphs 31, 32 and 34 (other than the first sentences) of this Answer. Further, to the extent relevant, the Company states it has not found evidence that its predecessor owner filed the 1998 Agreement. The Company brought this fact to the attention of the Commission in the Company Petition, where the Company also reinforced its commitment to good faith, going-forward compliance with Commission requirements.

37. MDWASD paragraph 34 appears to be legal argument and therefore no response is required. However, to the extent relevant and a response is necessary, the Company denies any factual allegations in MDWASD paragraph 34 other than that MDWASD is the Company's largest single customer in Florida. Further, the Company states that to the extent MDWASD has other options for gas transportation, MDWASD has not provided the Company or the Commission with detailed information regarding

those other options despite the Company's request. The Company is aware of the proximity of one MDWASD plant to a gas transportation pipeline.

38. MDWASD paragraph 35 quotes the 2008 Agreement, which in turn cross references the Company's tariff. Both of these documents speaks for themselves. To the extent relevant and a further response is necessary, the Company denies any factual allegations in MDWASD paragraph 35.

39. MDWASD paragraph 36 quotes the 2008 Agreement and the Company Petition. Both of these documents speaks for themselves. To the extent relevant and a further response is necessary, the Company denies any factual allegations or inferences in MDWASD paragraph 36.

40. MDWASD paragraph 37 is, to the extent relevant and a response is necessary, denied. As stated above in this Answer, MDWASD was aware of the docket and chose not to file as an interested party or to intervene. Since the 2008 Agreement rates could not be supported by cost information, the Company Petition was withdrawn. MDWASD refused to renegotiate or provide other cost information, so the Company began charging MDWASD tariffed rates. MDWASD is not entitled to withhold payment of lawfully applied tariffed rates or declare any part of any payments due subject to refund. MDWASD paid the full tariffed rate on time for several months. As of the October 2009 invoice, due in September, MDWASD began withholding full payment. The Company intends to respond to MDWASD's failure to pay its past due balance in due course. The Company reserves its right to exercise available remedies in accordance with the Company's tariff and the Commission's rules and to bring such matters before

the Commission if and when necessary. The Company has no knowledge of MDWASD escrow accounts or any funds therein.

41. The Company is without knowledge of the allegations of MDWASD paragraph 38 and therefore denies and asks for proof of same.

42. The Company denies paragraph MDWASD 39 to the extent MDWASD alleges it has no ability to renegotiate with the Company and bring a renegotiated agreement for approval by its Board due to any allegations in this Petition.

43. MDWASD paragraph 40 appears to be legal argument and therefore no response is required. To the extent a response is relevant or necessary, the Company denies all allegations in MDWASD paragraph 40, and acknowledges only that the terms of the 2008 Agreement, contained in Exhibit C, speak for themselves. The Company further states that service to MDWASD is governed by the Company's tariff and not by agreement.

44. To the extent relevant, MDWASD paragraph 41 is admitted only insofar as specifically stated in the following. The Company pursued approval of the 2008 Agreement in good faith. Based on staff's inquiries and input, and based on the Company's continuing review of cost information, the Company reasonably believed the 2008 Agreement could not be approved. The Company attempted in good faith to renegotiate with MDWASD, and the Company provided MDWASD with data supporting the basis for renegotiation. MDWASD, in turn, refused to provide any supporting information in its possession for a renegotiated agreement. Any other allegation in MDWASD paragraph 41 is denied.

45. To the extent a response is necessary or relevant, MDWASD paragraph 42 is denied. The Company incorporates herein its response in the prior paragraph of this Answer. Further, service to MDWASD is governed by the Company's tariff and not agreement.

#### **FLORIDA CITY GAS AFFIRMATIVE DEFENSES**

46. Any allegation not expressly admitted herein is denied, including any allegations in footnotes associated with MDWASD's numbered paragraphs. The relevance of MDWASD's allegations are not admitted.

47. MDWASD has failed to state a cause of action upon which relief can be granted.

48. This Commission does not have jurisdiction over equitable claims and remedies.

49. This Commission does not have jurisdiction to award damages.

50. MDWASD lacks standing to bring its claims to the Commission.<sup>5</sup>

51. MDWASD is not entitled to any prospective relief.

52. MDWASD is not entitled to any retroactive relief.

53. MDWASD's claims are barred by the filed rate doctrine.

54. MDWASD has waived its claims.

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<sup>5</sup> See footnote 1, supra.

WHEREFORE, Florida City Gas states it does not object to this Commission affirming its comprehensive authority over any going-forward special gas transportation agreements for retail service to MDWASD and that such special gas transportation agreements have no validity outside this Commission's authority; Florida City Gas further pleads that the Commission should deny MDWASD's Petition in every other respect for the reasons stated in this Answer.

Docket No. 090530-GU  
Answer of Florida City Gas

Respectfully submitted this 29th day of December, 2009.

By: Shannon O. Pierce

Shannon O. Pierce, Esq.  
Senior Regulatory Counsel  
AGL Resources Inc.  
Ten Peachtree Place  
Atlanta, GA 30309

For Florida City Gas as its Qualified  
Representative



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email and/or U.S. Mail this 29<sup>th</sup> day of December, 2009.

Mr. Curt Kiser / Ms. Mary Anne Helton Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850	Mr. John Renfrow Director Miami Dade Water and Sewer Dept. 3071 Southwest 38 <sup>th</sup> Avenue Suite 514 Miami, FL 33146-1520
Mr. Henry N. Gillman Assistant County Attorney Miami-Dade County Attorney's Office 111 NW First Street Suite 2810 Miami, FL 33128	Mr. Melvin Williams Florida City Gas 933 East 25th Street Hialeah, FL 33013

By: 

Shannon O. Pierce, Esq.  
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For Florida City Gas as its Qualified  
Representative