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February 16, 2010

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COMMISSION CLERK

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BY HAND DELIVERY

Ms. Ann Cole, Commission Clerk
Office of Commission Clerk
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 090539-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida City Gas is an original and five copies of Florida City Gas' Response to Florida Public Service Commission Staff's First Data Request in the above referenced docket.

Please acknowledge receipt of these documents by stamping the enclosed extra copy of this letter "filed" and returning same to me.

- COM
APA
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Thank you for your assistance with this filing.

Sincerely yours,

[Handwritten signature of Floyd R. Self]

Floyd R. Self

ERS/amb
Enclosures
cc: Shannon O. Pierce, Esq.
Parties of Record

01044 FEB 16 2010
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Special Gas) Docket No. 09539-GU
Transportation Service agreement)
with Florida City Gas by Miami-Dade) Date Filed: February 16, 2010
through Miami-Dade Water and Sewer)
Department)
_____)

**Florida City Gas Company's Responses
to Staff's Data Request No. 1**

1. Was FCG's 1998 contract with Miami-Dade Water and Sewer Department (MDWASD) approved by the Commission? If yes, please provide the Docket number and any orders issued by the Commission.

Response:

As the corporate successor to City Gas of Florida, an NUI company, Florida City Gas has no information indicating that a docket was opened to review the 1998 contract with Miami-Dade Water and Sewer Department, or that any order of the Commission was issued specifically approving said agreement. However, the impact of the 1998 contract on FCG's general body of ratepayers has been subject to annual Commission review under FCG's Competitive Rate Adjustment (CRA) review, in addition the Company's 2003 Rate Case.

This response prepared by or under the supervision of David Weaver, Director, Regulatory Affairs, AGL Services Company.

2. What is the total dollar amount collected from FCG's general body of ratepayers through the Competitive Rate Adjustment mechanism (CRA) during the term (and any extensions) of that contract?

Response:

In its annual CRA filings during the term of the MDWASD contract, FCG has provided the CRA recovery information for the negotiated contract with MDWASD as provided on Confidential Attachment 2 (attached hereto).

This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic Business and Financial Planning, AGL Services Company.

DOCUMENT NUMBER DATA
01044 FEB 16 09
FPSC-CONFIDENTIAL

- 1 3. What analysis did FCG perform to ensure that the contract entered into in 2008 was cost
2 effective to its general body of ratepayers?
3

4 **Response:**

5
6 The Contract executed in 2008 extended the overall terms and conditions of service from the
7 original contract, subject to the review and approval of the PSC prior to becoming effective.
8 At the time, no further analysis on the impact on the general body of ratepayers was deemed
9 necessary as the contract impact through the CRA had been reviewed and approved annually
10 by the PSC.
11

12 This response prepared by or under the supervision of David Weaver, Director, Regulatory
13 Affairs, AGL Services Company.
14

- 15 4. What is FCG's incremental cost to serve MDWASD as a transportation customer?
16

17 **Response:**

18
19 Based on the December 2009 Surveillance Report, the current incremental cost to serve
20 MDWASD as a transportation customer is as follows:
21

22 [REDACTED] for Alexander Orr Accounts [REDACTED] and [REDACTED].
23

24 [REDACTED] for Miami-Dade Water and Black Point Accounts [REDACTED] and
25 [REDACTED].
26

27 *See Confidential Attachment 4 for the detailed calculations.*
28

29 This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic
30 Business and Financial Planning, AGL Services Company.
31

- 32 5. What percent of FCG's system sales does MDWASD represent?
33

34 **Response:**

35
36 During the period January through December 2009 MDWASD represented [REDACTED] of FCG's
37 total system sales and transportation volumes.
38

39 This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic
40 Business and Financial Planning, AGL Services Company.

1 6. What is the annual impact to FCG's general body of ratepayers if MDWASD is lost as a retail
2 customer?
3

4 **Response:**
5

6 If MDWASD is lost as a retail customer, FCG would need to recover [REDACTED] annually
7 from FCG's general body of ratepayers based on the GS-1,250k tariff rate that FCG is
8 currently charging MDWASD. See Confidential Attachment 6 for the detailed calculations.
9

10 This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic
11 Business and Financial Planning, AGL Services Company.
12

13 7. Please provide a discussion of how FCG's general body of ratepayers benefits from having
14 MDWASD as a customer.
15

16 **Response:**
17

18 Public policy is best served when all customers who desire utility service receive such
19 service under the Company's tariff or under a special contract. As MDWASD provides
20 numerous benefits to its customers, many of whom are also FCG customers, maintaining
21 affordable gas service to MDWASD benefits both MDWASD's customers and FCG's
22 general body of ratepayers. FCG believes that it is important to retain MDWASD as a
23 customer provided that such service recovers at least the incremental cost of providing utility
24 service. This maintains all the benefits of providing service to MDWASD without undue
25 impact on the general body of ratepayers. Further, having MDWASD as a customer
26 decreases the system-wide costs that would otherwise be born by the general body of
27 ratepayers without MDWASD.
28

29 This response prepared by or under the supervision of David Weaver, Director, Regulatory
30 Affairs, AGL Services Company.
31

32 8. What is the total annual cost impact to FCG's ratepayers to serve MDWASD under the
33 proposed special contract, assuming recovery of the discount through the CRA mechanism is
34 approved?
35

36 **Response:**

37 FCG stands by its stated position that no valid special contract exists. The 2008 Agreement
38 was not approved by the PSC and is currently not in effect.

39 Assuming for the sake of answering Staff's data request that the 2008 Agreement was
40 approved by the PSC, the total annual cost impact to FCG's ratepayers to serve MDWASD
41 under the proposed special contract would be as follows: for 2009: the CRA cost would be
42 [REDACTED] as MDWASA was a customer under the 2008 Amendment through July 22, 2009.
43 For 2010, the CRA cost would be [REDACTED], which represents [REDACTED] of the margin for
44 MDWASD (i.e. MDWASD would only pay [REDACTED] of the cost to serve them). See Confidential
45 Attachment 6 for the detailed calculations.

MDWASD (*i.e.* MDWASD would only pay 13% of the cost to serve them). *See Confidential Attachment 6* for the detailed calculations.

This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic Business and Financial Planning, AGL Services Company.

9. Is FCG currently billing MDWASD under an existing tariff rate? If yes, under which tariff rate schedule does MDWASD take service? If no, how is MDWASD currently being billed for its service?

Response:

FCG is currently billing MDWASD tariff rates under its Rate Schedule GS-1,250k tariff rate.

This response prepared by or under the supervision of David Weaver, Director, Regulatory Affairs, AGL Services Company.

10. Has MDWASD informed FCG of any viable bypass options available to it? If yes, please provide any cost support and quotes from any such viable bypass option provided by MDWASD to FCG.

Response:

In discussions between the parties, MDWASD informed FCG that it had investigated bypass options and had performed a cost analysis, but MDWASD did not provide any specific options. FCG requested information regarding the options investigated to aid in evaluating alternative special contract options for MDWASD, but to date MDWASD has not provided FCG any documentation regarding any viable bypass options.

This response prepared by or under the supervision of Donna N. Peeples, Vice President and Chief Marketing Officer, AGL Resources Inc.

11. If the contract is not approved, what other options is FCG willing to offer to retain MDWASD as a customer?

Response:

FCG is committed to maintaining service to MDWASD provided that such service is consistent with the Commission's rules and regulations and FCG's General Terms and Conditions in its Tariff. The Company is willing to explore with MDWASD any viable options that may exist that would be supported by Commission rules and regulations whether through a special contract or a tariff amendment. *See also* the response to Question 10.

This response prepared by or under the supervision of Melvin Williams, Vice President and General Manager, Florida City Gas.

For the following question nos. 12-17, "1998 Agreement" refers to Exhibit A to MDWASD's Petition, "2008 Amendment" refers to Exhibit D to MDWASD's Petition, and "2008 Agreement" refers to Exhibit C to MDWASD's Petition.

12. Please explain why the Commission has authority to approve the 2008 Agreement, given the provisions included in Paragraph 1 of the 2008 Amendment and Article I, Paragraph 1 of the 2008 Agreement.

Response:

Section 366.06(1), Florida Statutes, requires that “[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,” Thus, FCG is required to charge MDWASD only rates that have been approved by the Commission. In implementing this statute, the Commission generally requires a utility to file a tariff containing the applicable rates, terms, and conditions of service, which FCG has done and which is on file. Florida Administrative Code Rule 25-9.034(1) authorizes a utility to enter into a “special contract . . . 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, . . .” However, any such special services contracts “must be approved by the Commission prior to its execution.” The only exemption to this requirement for prior approval is if the contract is between a public utility and a municipality or REA cooperative. The rationale for this exemption is not stated in the rule, but regardless, Miami-Dade County is not a municipality or an REA cooperative. Under the Miami-Dade charter, Miami-Dade may exercise certain powers such as have been granted to municipalities. But Miami-Dade’s legal status under the Florida Constitution and its charter is as a county government and not a municipality, so the exemption does not apply. Accordingly, notwithstanding what may or may not have happened in the past, any contract with Miami-Dade County must be filed and approved by the Commission prior to its execution.

This response prepared by or under the supervision of undersigned counsel.

13. Given specific provisions in the 2008 Agreement requiring Commission approval, please explain whether FCG believes Commission approval would not be required even if Rule 25-9.034(1), Florida Administrative Code (F.A.C.), were interpreted to exempt the 2008 Agreement from the requirement that special agreements be approved by the Commission.

Response:

Yes, Commission approval of the rate charged to MDWASD is required, either through the tariff or through the rule. As is more fully explained in response to Question 11, FCG must either charge the tariff rate or enter into a contract that must be approved by the Commission prior to execution. Likewise, given the language of Rule 25-0.034(1), the exemption does not apply to Miami-Dade since it is not a municipality or an REA cooperative.

The language in the 2008 Agreement by itself cannot confer jurisdiction on the Commission to approve the contract. However, the obligation for approval exists independently of the

contract language. Article II of the 2008 Agreement states that the parties “confirm that Customer [MDWASD] qualifies for the Contract Demand Service Rate Schedule.” The company’s Contract Demand Service Rate Schedule (“KDS”) is set forth at Sheets 49 to 51 of its tariff. The KDS schedule does not enumerate a requirement for such contracts to be approved. But whether the company enters into a contract with MDWASD pursuant to the KDS schedule or some other schedule, Section 1 of the company’s tariff, at Sheet 8, states that the company’s tariff is “supplemental” to the Commission’s rules and regulations and that where there is a contradiction between the tariff and the Commission’s rules and regulations that the Commission’s rules and regulations shall prevail. Given the clear statutory language in Section 366.06(1) that a utility shall not charge or receive any rate “not on file with the commission” the agreement must be filed and approved prior to execution in order to be effective. Thus, we do not see how the rule can be interpreted to exempt a contract with Miami-Dade County from Commission review and approval prior to execution and effectiveness.

This response prepared by or under the supervision of undersigned counsel.

14. Please explain whether FCG's approved tariff rates applicable to MDWASD's class of service should apply to MDWASD pursuant to Section 366.06, Florida Statutes (RS.), in the absence of an effective agreement between MDWASD and FCG.

Response:

Yes, the tariff rate should apply in the absence of an approved contract between MDWASD and FCG. As is further discussed in response to Question 12, Section 366.06(1), Florida Statutes, requires that “[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,” In the 2008 Agreement the parties, including MDWASD, acknowledge that the contract is being entered into pursuant to the company’s Contract Demand Service Rate Schedule (“KDS”), set forth at Sheets 49 to 51 of its tariff. If there is no contract and no service under the KDS schedule, then FCG is required by statute to charge MDWASD only rates that have been approved by the Commission, which would be one of the other rate schedules in the tariff.

This response prepared by or under the supervision of undersigned counsel.

15. Please explain whether FCG believes that its June 22, 2009 letter (Exhibit J to MDWASD's Petition) giving MDWASD 30 days' notice effectively terminated the 2008 Amendment.

Response:

Yes. The June 22, 2009 letter giving MDWASD 30 days’ notice of termination terminated the 2008 Amendment. As stated in Section 2 of the 2008 Amendment (Exhibit D to MDWASD’s Petition), the purpose of the 2008 Amendment was “to avoid a gap in service between the expiration of the [the October 29, 1998 Agreement between the Parties] and the Effective Date of the New Contract and, if necessary, to allow the parties additional time to negotiate a new agreement in the event the New Contract does not become effective”

Additionally, Section 2 of the 2008 Amendment provides:

. . .the parties hereby agree to extend the Term of the [the October 29, 1998 Agreement between the parties] on a month-to-month basis effective as of July 1, 2008, until the earlier of: (a) the Effective Date of the New Contract; or (b) thirty (30) days following written notice from either Party of its election to terminate the Agreement.

With the June 22nd letter, FCG gave more than the required thirty (30) days notice to terminate the October 29, 1998 Agreement. The 2008 Amendment is part of the October 29, 1998 Agreement, as it extended the Term of that Agreement. Therefore the June 22nd letter appropriately terminated the 2008 Amendment.

The necessity for the termination arose out of FCG's efforts to have the 2008 Agreement approved by the Commission. As is discussed more fully in response to Question 12, the 2008 Agreement states that it is subject to the tariff, specifically the Contract Demand Service Rate Schedule ("KDS"). The KDS schedule requires that any negotiated rate set pursuant to the KDS schedule "shall not be set lower than the incremental cost the Company incurs to serve the Customer." When the Company learned that the Commission Staff's analysis had determined that the rates in the 2008 Agreement did not comply with the requirement to not be lower than the incremental cost, the Company reevaluated the rates in the 2008 Agreement and agreed with the analysis of the Commission Staff that the proposed rates would not comply with the applicable regulatory requirements. FCG then attempted to negotiate a successor agreement that would meet the statutory and tariff requirements for a rate that was not "lower than the incremental cost." After attempting in good faith to negotiate a successor agreement for several months, and realizing that a successor agreement was not going to be obtained, FCG felt it important to bring service to MDWASD into compliance with applicable law by terminating the 2008 Amendment and beginning to charge the tariff rate identified in response to Question 16 since that would be the otherwise applicable rate. FCG continues to stand ready to negotiate an appropriate successor agreement that complies with the statutory and tariff requirements to not be lower than the company's incremental cost of service.

This response prepared by or under the supervision of undersigned counsel.

16. If FCG's answer to Number 15 is affirmative, please identify and explain what rates FCG believes it should have charged MDWASD given that the 2008 Amendment had been terminated and no new agreement (2008 Agreement) had become effective?

Response:

Under Florida law, as stated above, service to a customer must be under a valid special contract or an approved tariff. FCG has appropriately charged MDWASD pursuant to Rate Schedule GS 1.2k since the termination of the 2008 Amendment. MDWASA paid to FCG the tariff rates for the August and September 2009 billing periods. MDWASD is delinquent in payments for services rendered for the October, November and December 2009 billing

periods. The Department claims that it is keeping in escrow the difference between the tariff rate and the rate under the expired 1998 contract and terminated 2008 Amendment between the parties (*see* Attachment 16). To date, we have not entered into any escrow agreement with Miami-Dade nor have we seen any documentation regarding the establishment of such an escrow agreement, the rights and responsibilities of the escrow agent, or the terms and conditions by which the escrow agent would release any of the escrow amounts to FCG.

This response prepared by or under the supervision of David Weaver, Director, Regulatory Affairs, AGL Services Company.

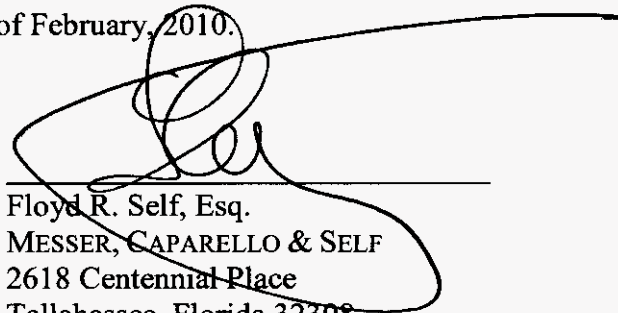
17. When did FCG inform MDWASD that FCG filed a Petition for Approval of the 2008 Agreement with the Commission on November 13, 2008 in Docket No. 080672-GU?

Response:

FCG verbally informed MDWASD that it had filed the November 13, 2008 Petition for Approval of the 2008 Agreement in Docket No. 08067-GU shortly after filing and emailed MDWASD with the docket number in the proceeding on November 26, 2008.

This response prepared by or under the supervision of Carolyn Bermudez, Director, Strategic Business and Financial Planning, AGL Services Company.

Respectfully submitted this 16th day of February, 2010.



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Counsel for the Florida City Gas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 16th day of February, 2010.

Anna Williams, Esq.
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Floyd R. Self

FLORIDA CITY GAS ATTACHMENT 2 IS CONFIDENTIAL

FLORIDA CITY GAS ATTACHMENT 4 IS CONFIDENTIAL

FLORIDA CITY GAS ATTACHMENT 6 IS CONFIDENTIAL

FLORIDA CITY GAS ATTACHMENT 16 IS CONFIDENTIAL