

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint

Docket No. 100315-GU

**COMPLAINT FOR ORDER REQUIRING FLORIDA CITY GAS TO
SHOW CAUSE WHY TARIFF RATE SHOULD NOT BE REDUCED
AND FOR PUBLIC SERVICE COMMISSION TO CONDUCT A
RATE PROCEEDING, OVERTURNINGS PROCEEDING OR
OTHER APPROPRIATE PROCEEDING REGARDING FLORIDA
CITY GAS' ACQUISITION ADJUSTMENT**

Pursuant to Sections 366.05 and 366.076, Florida Statutes, and the Rules of the Florida Public Service Commission, Complainant, Miami-Dade County ("County"), files this complaint for an order requiring Florida City Gas to show cause why its tariff rate should not be reduced and for the Public Service Commission to conduct a rate proceeding, overearnings proceeding or other appropriate proceeding regarding Florida City Gas' acquisition adjustment. In support of this Complaint, the County states:

The name of the Complainant and the mailing address of its principal office in Florida is:

Miami-Dade County
c/o Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue
Suite 514
Miami, Florida 33146

The names and mailing addresses of the persons authorized to receive notices and communications with respect to this Complaint are:

John Renfrow, P.E.
Director
Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue
Suite 514
Miami, FL 33146

Henry N. Gillman
Assistant County Attorney
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128

I. 1998 Transportation Service Agreement

1. In 1998, Miami-Dade County and Florida City Gas ("FCG") entered into a 10-year Natural Gas Transportation Service Agreement ("1998 Agreement").¹
2. The 1998 Agreement provided for the following monthly transportation rates per therm: \$.01 per therm for transporting a maximum annual quantity of 4,200,000 therms of gas to the Alexander Orr Water Treatment Plant; \$.03 per therm for transporting a maximum annual quantity of 3,300,000 therms of gas to the Hialeah Water Treatment Plant; and \$.03 per therm for transporting a maximum annual quantity of 400,000 therms of gas to the South District Wastewater Treatment Plant.²

¹ The Agreement was executed by City Gas Company of Florida, a division of NUI Corporation. Florida City Gas is the successor to City Gas Company of Florida.

² The County is one of FCG's largest customers if not the largest customer.

II. Positive Acquisition Adjustment

3. On October 3, 2006, FCG filed a petition for approval of an acquisition adjustment and recognition of a regulatory asset.³

4. On November 13, 2007, the Public Service Commission (“Commission”) issued Notice of Proposed Agency Action Order Approving Positive Acquisition Adjustment and Regulatory Assets. (“Positive Acquisition Adjustment Order”). A copy of the Positive Acquisition Adjustment Order is attached hereto as Exhibit “A”.

5. In the Positive Acquisition Adjustment Order, the Commission found that FCG demonstrated that the acquisition of FCG by AGL Resources Inc. (“AGLR”) resulted in a benefit to FCG’s customers since FCG would realize a \$442,270 annualized cost savings including reduced gas capacity costs on Florida Gas Transmission system.

6. The Commission further found that “AGLR brings substantial expertise in the business to bear, and has made considerable effort to improve the operations of the Company.” See p. 8, Positive Acquisition Adjustment Order.

7. The Commission considered five factors in determining whether an acquisition adjustment is appropriate for a natural gas utility.

³ FCG is a division of Pivotal Utility Holdings, Inc. which became a wholly-owned subsidiary of AGL Resources Inc. (“AGLR”) when AGLR acquired all of the outstanding common stock of NUI Corporation in November 2004.

8. The five factors included: 1) increased quality of service; 2) lower operating costs; 3) increased ability to attract capital for improvements; 4) lower overall cost of capital; and 5) more professional and experienced managerial, financial, technical and operational resources.

9. The Commission also approved FCG's proposed five-year base rate stay-out period as being in the best interest of the customers.

10. Under the base-rate stay-out provision, FCG is prohibited from increasing base rates for five years beginning October 23, 2007.

11. Notwithstanding the base rate stay-out provision, the Commission may initiate proceedings such as, but not limited to, overearnings proceedings.

12. The Positive Acquisition Adjustment Order provided that FCG may record the purchase price premium of \$21,656,835 as a positive acquisition adjustment to be amortized by FCG over a 30-year period beginning November 2004.

13. However, the Commission approved the acquisition adjustment on a provisional basis since it was the first time the Commission approved an acquisition adjustment outside of a rate proceeding.

14. The Commission reserved the right to revisit the effects of the adjustment in the future and specifically ordered that in FCG's next rate

proceeding, if it is determined that the \$442,270 annual cost savings no longer exist, the acquisition adjustment may be partially or totally removed.

III. 2008 Transportation Agreement (Renewal of 1998 Agreement)

15. The 1998 Agreement provided that it may be renewed for an additional 10 years upon terms and conditions agreed upon by the parties.

16. In May 2007, the County provided notice to FCG that it intended to renew the 1998 Agreement.

17. In October 2007, FCG's representatives agreed to renew the 1998 Agreement with the same terms and conditions including the same rates.

18. Following financial and technical review by management of AGLR and legal review by AGLR's counsel, on August 28, 2008, Henry Linginfelter, Executive Vice-President of AGLR and President of Pivotal Utility Holdings Inc., a subsidiary of AGLR, executed the renewal on behalf of FCG.

IV. Petition for Commission Approval

19. Following ratification by the Miami-Dade County Board of County Commissioners, FCG submitted the 2008 Agreement to the Public Service Commission for approval.

20. However, FCG withdrew the Petition prior to the Commission's consideration because FCG unilaterally believed that the Commission would not approve the contract rates.

21. FCG asserted that the County must renegotiate the 2008 Agreement in order to obtain Commission approval.

22. When the County refused to renegotiate until the Commission considered the agreed-upon contract terms, FCG threatened to discontinue service to the County and notified the County that it will increase the charges to the County for transportation service by more than 670 percent above the transportation rates agreed upon in the 2008 Agreement.

23. FCG's current billings under FCG's new rates being charged to the County will provide FCG with more than \$800,000 more annually than the amount provided in the 2008 Agreement.

24. On December 9, 2009, the County filed a Petition for Approval of the 2008 Agreement in Docket No. 09-0539-GU.⁴

25. The proceedings of Docket No.09-0539, including Miami-Dade County's Petition and Memorandum of Law on the Public Service Commission's Lack of Jurisdiction over Special Gas Transportation Agreement are incorporated herein by reference.

⁴ The County requested approval of the 2008 Agreement to the extent the special contract is not exempt from Commission jurisdiction pursuant to Rule 25-9.034, F.A.C.

V. FCG SHOULD SHOW CAUSE WHY TARIFF RATE SHOULD NOT BE REDUCED AND COMMISSION SHOULD CONDUCT RATE PROCEEDING, OVERTURNINGS PROCEEDING OR OTHER APPROPRIATE PROCEEDING

26. At the time FCG filed its petition requesting approval of the positive acquisition adjustment in October 2006, the 1998 Agreement was in full force and effect.

27. The 1998 Agreement remained in effect throughout the Commission's review of FCG's petition for acquisition adjustment and the Commission's entry of the Consummating Order on December 6, 2007.

28. FCG and AGLR were fully aware of the transportation rates charged by FCG to the County as provided in the 1998 Agreement at the time FCG petitioned the Commission to approve the positive acquisition adjustment of \$21,656,835.

29. The alleged annual savings of \$442,270 for the acquisition of FCG by AGLR took into account the contract rates that the County was paying under the 1998 Agreement.

30. The bulk of the gas that FCG transports to the County goes to the Alexander Orr Plant (4,200,000 therms annually).

31. FCG's gas line to the Alexander Orr Plant is a dedicated line for the County only.

32. FCG's gas line to the Alexander Orr Plant was paid for by the County and fully depreciated by FCG.

33. AGLR's professional and experienced managerial, financial, technical and operational resources were available to fully review and analyze the 2008 Agreement and the rates contained therein.

34. If the Commission allows FCG to renege on the 2008 Agreement which was executed by Henry Linginfelter following a period of due diligence review by FCG and AGLR's managerial team, FCG will receive an \$8,000,000.00 windfall (\$800,000 annually) at the expense of Miami-Dade County and over 2 million people that are directly or indirectly served by the County's Water and Sewer Department. Query: If the five-year stay-out period applies to all customers, why is FCG able to increase rates charged to the County, much less increase such rates by 670 percent?

35. The Positive Acquisition Adjustment Order specifically provides that the base rate stay-out provision does not preclude the Commission from initiating proceedings, such as, but not limited to, overearnings proceedings.

36. The Commission also reserved the authority to reevaluate the reasonableness of the acquisition adjustment at any time during the stay-out period.

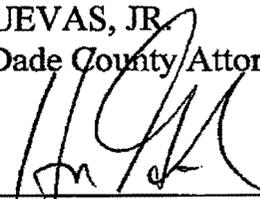
37. Pending the Commission's determination that the 2008 Agreement is exempt from Commission jurisdiction, the Commission should order FCG to show cause why its base rates should not be reduced for all customers in light of FCG's billings to the County which provides FCG an additional \$8,000,000.00 (\$800,000 annually for 10 years); and the Commission should conduct a rate proceeding, overearnings proceeding or other appropriate proceeding regarding FCG's acquisition adjustment.

WHEREFORE, Miami-Dade County, seeks an order from the Public Service Commission to require Florida City Gas to show cause why its tariff rates should not be reduced, and for the Commission to conduct a rate proceeding, overearnings proceeding or other appropriate proceeding pursuant to the Order Approving Positive Acquisition Adjustment and grant such other and further relief as the Commission deems just and proper.

Dated this 4 day of June, 2010.

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
was delivered by email and U.S. Mail this 4 day of
June, 2010 to:

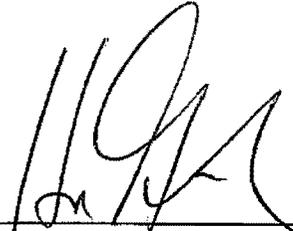
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By:



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of acquisition
adjustment and recognition of regulatory asset
to reflect purchase of Florida City Gas by AGL
Resources, Inc.

DOCKET NO. 060657-GU
ORDER NO. PSC-07-0913-PAA-GU
ISSUED: November 13, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING POSITIVE
ACQUISITION ADJUSTMENT
AND
REGULATORY ASSETS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

Florida City Gas (FCG or Company), formerly City Gas Co. of Florida (City Gas), sells and transports natural gas in Dade, Broward, Brevard, Indian River, Palm Beach and St. Lucie Counties. It is the second largest investor-owned natural gas utility in Florida, serving approximately 104,000 customers. FCG was incorporated in 1949 as a propane dealer, and in the late 1950's it began acquiring liquid propane (LP) companies in South Florida. In 1960, FCG gained access to the Florida Gas Transmission Company's pipeline and converted its existing underground pipeline systems to natural gas. Upon doing so, FCG became regulated by this Commission.

In 1988, NUI Corporation (NUI) acquired all outstanding shares of City Gas' common stock. City Gas was subsequently merged into Elizabethtown Gas Company, the principal operating subsidiary of NUI Utilities, operating as a separate division of the subsidiary corporation. On November 30, 2004, AGL Resources Inc. (AGLR) acquired all of the outstanding common stock of NUI Corporation. On December 6, 2004, the name of City Gas was changed to Florida City Gas. AGLR has gas operations in Florida, Georgia, Maryland, New Jersey, Tennessee, and Virginia.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

EXHIBIT "A"

On October 3, 2006, FCG filed its petition requesting that we approve a positive acquisition adjustment to be amortized over a period of 30 years. In addition, FCG also requested regulatory asset treatment for the outstanding amount of the former NUI pension plan allocated to FCG.

On May 4, 2007, FCG provided updated figures, revising the purchase price premium to \$21,656,835. The revised transaction and transition costs are \$1,615,149 and \$1,991,998 respectively. The revised pension costs are \$1,365,897, net of deferred taxes. On October 1, 2007, the Company filed a proposal refining certain points of its initial filing and reflecting the figures in its May 4, 2007, update.

An acquisition adjustment is the difference between the purchase price of a utility and an original cost calculation. Such an adjustment provides an incentive for stronger companies to purchase weak or troubled companies. Acquisition adjustments have been allowed in extraordinary circumstances if a company could demonstrate that customers will derive certain benefits attributable to the acquisition. Historically, we have considered five factors when determining whether the recognition of an acquisition adjustment is appropriate for a natural gas utility. Those factors are:

1. Increased quality of service;
2. Lower operating costs;
3. Increased ability to attract capital for improvements;
4. Lower overall cost of capital; and
5. More professional and experienced managerial, financial, technical and operational resources.¹

Although the utility is not requesting a rate increase at this time, it provided testimony and exhibits in conjunction with its petition to provide additional support and information for its request.

We have jurisdiction in this matter pursuant to Sections 366.06 and 366.076, Florida Statutes (F.S.).

II. Positive Acquisition Adjustment

On October 1, 2007, FCG filed a proposal "to reach a favorable resolution by the Commission in this matter." In the proposal, FCG reflected the amounts from schedules that it revised on May 4, 2007, in response to questions from our staff. The dollar figures differed from those in the original petition due to the removal of a small LP gas company, a change in the tax rate, and the use of actual 2006 expenses instead of projected expenses. Using the revised

¹ Order No. 23376, issued August 21, 1990, in Docket No. 891309-WS, In re: Investigation of Acquisition Adjustment Policy; Order No. 23858, issued December 11, 1990, in Docket No. 891353-GU, In re: Application of Peoples Gas Systems, Inc. for a rate increase; and Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for a rate increase by Florida Public Utilities Company.

figures, the acquisition of FCG by AGLR resulted in a purchase price premium of \$117,127,285 in excess of the book value of the original assets, of which \$21,656,835 was allocated to FCG. The transaction and transition costs are \$1,615,149 and \$1,991,998, respectively. The Pension Regulatory Asset is \$1,365,897, net of deferred tax, for a total of \$26,629,879. Transaction and transition costs, and the Pension Regulatory Asset are addressed in other sections of this Order.

FCG asks that the acquisition adjustment and the associated annual amortization be included in rate base and cost of service, respectively. The Company believes that this regulatory treatment will more accurately portray the Company's actual investment and earnings level. FCG is not requesting a rate adjustment associated with the acquisition adjustment at this time. Rather, FCG proposes a three to five year base rate stay-out period, which is addressed later in this Order.

A. Five Factors for Approving Positive Acquisition Adjustment

The Company recognizes that, in the past, we have generally considered five factors when determining whether recognition of such an adjustment is appropriate for a natural gas utility. Those factors are increased quality of service; lower operating costs; increased ability to attract capital for improvements; lower overall cost of capital; and more professional and experienced managerial, financial, technical and operational resources.²

To determine whether the Company has adequately demonstrated the potential or actual qualitative and quantitative benefits to FCG's customers as a result of the acquisition by AGLR, we analyze each of the five factors.

1. Increased quality of service

FCG explains that it has improved customer service by centralizing the call center function in Atlanta, offering third-party payment locations for customers to pay their bills in person, and instituting monthly meter reading using automated meter reading devices, along with other such technological improvements. The Company provided data showing a reduction in call volume as well as a decline in both volume and percentage of abandoned calls. Although AGLR eliminated customer payment locations previously provided by FCG, it replaced them with four free payment locations as well as accepting payments at 109 Western Union locations for a one dollar fee. The Company also increased its number of meter readers to ensure more timely reading of meters.

However, the Commission complaint activity for FCG has remained consistent following its acquisition by AGLR. Prior to its acquisition by AGLR, we logged 144 and 134 consumer complaints against FCG in 2003 and 2004, respectively. Since acquisition by AGLR, in 2005, FCG received 134 consumer complaints, followed by 136 consumer complaints received in 2006. As of October 8, 2007, FCG received 118 complaints for the year. Thus, it appears that the complaints received by us have remained relatively steady. Also, on March 19, 2007, the

² See Orders Nos. 23376, 23858, and PSC-04-1110-PAA-GU.

Company moved its call center function to India. Therefore, our review shows that the level of customer complaints shows neither an improvement nor a decline in quality of service.

2. Lower operating costs

FCG made a number of improvements to reduce operating costs. AGLR centralized its facilities and implemented an inventory management system that it believes is more efficient. By increasing controls over material purchasing and ordering, stock inventory has been reduced. As a result, the Company was able to close one warehouse that it was leasing, thereby reducing related operations and maintenance expense.

The Automated Dispatch (AD) system, known as Field Force Automation (FFA), was implemented in all Florida locations in 2005. The purpose of FFA is to maximize electronic orders and minimize paper orders to increase efficiency and performance. FFA allows for more efficient assignment of work orders and enhances FCG's ability to respond more quickly to emergency situations. The Company advises that the use of the automated dispatch system has resulted in an increase in the number of work orders completed per field technician from 12 to 16 per day, and allowed the reduction of 18 field distribution employees.

FCG has put a greater emphasis on reducing its response time to reports of natural gas leaks. It has employed Geographic Information System (GIS) mapping and mobility tracking, which is a technology that allows dispatchers to locate the leak and assign the work order to the closest available field technician. Mobility tracking allows dispatchers to electronically assign the work order directly to the selected field technician. The Company shows a decrease in average leak response time from 39.1 minutes in May, 2005, to 29.3 minutes in April, 2006.

The Company also believes the relationships between AGLR and its multiple contractors has opened FCG's contracted services to more competition. FCG points out that most of the new growth is in Brevard, Indian River, and St. Lucie counties. The contract services for this area were bid out in early 2005 with a resulting 20 percent reduction in pricing. The Company advises that simplification of the blanket contract pricing structure has reduced engineering labor costs for design and estimating. Conversion to AGLR's work management system has reduced engineering administration labor. These cost reductions have afforded FCG the ability to provide new service to more customers in the area by eliminating or significantly reducing the need for customer contributions.

The Company states that AGLR ownership has resulted in an annual reduction in gas capacity cost of \$.5 million. This reduced gas cost represents a reduction in the gas reservation charge payments made by FCG to Florida Gas Transmission Company (FGT). FCG states that AGLR personnel, using their forecasting and modeling tools, determined that a portion of the capacity under the FGT contract could be released without affecting customer deliverability or reliability.

The Company's revised schedules also show annualized savings of \$1,305,000, which takes into consideration the federal tax rate of 34 percent rather than 35 percent (excluding the

impact of state taxes), as originally filed. However, the schedules do not include amortization of the Pension Regulatory Asset, nor do they reflect the accelerated amortization of the transaction and transition costs proposed by the Company. When adjustments are made for these items, a cost savings is still apparent. A review of FCG's quarterly surveillance reports also shows evidence of a reduction in costs.

3. Increased ability to attract capital for improvements

FCG is a division of Pivotal Utility Holdings, Inc., which became a wholly-owned subsidiary of AGLR when AGLR merged with NUI Corporation (NUI) on November 30, 2004. AGLR has an equity market capitalization of approximately \$3.0 billion as of August 2007, is traded on the New York Stock Exchange, and has an investment grade credit rating. With natural gas operations in Florida, Georgia, Maryland, New Jersey, Tennessee, and Virginia, AGLR has become the largest natural gas distribution company along the East Coast of the United States in terms of number of customers. As a result, FCG is now able to benefit from AGLR's ability to attract capital for improvements.

Moody's Investors Service (Moody's) had assigned NUI and NUI Utilities non-investment grade (speculative) credit ratings of Caal and BI, respectively. For comparison, AGLR is assigned investment grade credit ratings of Baa1 and A- from Moody's and Standard & Poors' (S&P), respectively. This improved ability to attract capital is demonstrated by AGLR's ability to refinance NUI's short-term debt, which carried an interest rate of London Interbank Offered Rate (LIBOR) plus 4.83 percent (10.15 percent at the time of acquisition), into fixed rate long-term debt with an interest rate of 5.50 percent. Additionally, AGLR was able to refinance two series of long-term debt held by NUI at fixed interest rates of 6.35 percent and 6.40 percent, respectively, into long-term debt with variable interest rates of 3.63 percent and 3.82 percent, respectively, as of June 30, 2006. Prior to the acquisition, FCG had been overly reliant on short-term debt due to NUI's inability to obtain new long-term financing under reasonable terms. FCG is now able to obtain both short-term and long-term financing as needed through AGLR.

Another example of FCG's improved ability to attract capital is demonstrated by the performance of AGLR's stock. NUI's stock price had been in a state of decline, falling from \$26.78 per share on July 1, 2002, to \$13.30 on July 15, 2004 (the date of the announcement of the acquisition). In contrast, AGLR's stock price had risen from \$18.95 on July 1, 2002, to \$25.99 on July 15, 2004. As of October 5, 2007, AGLR's stock closed at \$40.68.

For the reasons discussed above, we find FCG is now better positioned to attract the debt and equity capital needed to support its operations as a result of AGLR's acquisition of NUI.

4. Lower overall cost of capital

As noted earlier, FCG's ability to attract capital under reasonable terms was in a state of decline prior to the acquisition by AGLR. Due to NUI's deteriorating financial condition, it was required to pre-pay for its gas supply, including the gas supply for FCG. As a result of the acquisition by AGLR, FCG was able to resume the practice of post-paying for its gas supply.

Post paying for its gas supply allowed FCG to decrease its amount of working capital which resulted in a one-time reduction in financing costs of approximately \$375,000. Additionally, due to its poor credit rating, NUI was borrowing at short-term rates of LIBOR plus 4.83 percent. In contrast, as a result of the acquisition, FCG is now able to borrow at short-term rates of LIBOR plus 0.05 percent.

In addition to the reduction in borrowing costs discussed above, AGLR used three methods to compare the overall cost of capital under NUI ownership versus the cost of capital under AGLR. Each of the three methods showed a decrease in the overall cost of capital under AGLR ownership compared to NUI ownership. Two of the three cost of capital calculation methods showed a decrease in the revenue requirement while one of the methods showed an increase in revenue requirement. Our own comparison of the overall cost of capital under NUI and AGLR as of June 30, 2006, shows a decrease in both the overall cost of capital and the revenue requirement.

Even though two of the three methods used by AGLR showed a decrease in the revenue requirement and support the Company's position that FCG has a lower cost of capital under AGLR ownership, the Company did not include an amount associated with the reduction in the cost of capital in the calculation of the savings resulting from the acquisition. The Company stated that it excluded the impact on cost of capital due to the conflicting results and to present a conservative estimate of the savings. Based on our own analysis, we find FCG has a lower cost of capital as a result of AGLR's acquisition of NUI.

5. More professional and experienced managerial, financial, technical and operational resources

AGLR is among the largest gas distributors in the country, the single largest operator of liquefied natural gas (LNG) peaking facilities, and states it is consistently one of the top quartile operators according to industry metrics. It serves 2.2 million natural gas customers, owns more than 35,000 miles of natural gas pipelines and five LNG facilities. Further, AGLR advises that it was named the 2003 Gas Company of the year by Platt's Global Energy Awards, and was a finalist for that award in 2004. In 2006, AGLR was ranked as the 10th Best Managed Utility Company in the United States by Forbes.

AGLR contends that this experience in operating a natural gas utility benefits FCG's customers and allows AGLR to develop a number of best practices and metric measurements with regard to operations, inventory management, productivity improvements, safety and reliability. AGLR also states that FCG has been able to tap into the expertise and employ these techniques and processes to enhance the operation of the FCG system and it has been able to take advantage of the synergies to reduce costs and deploy advanced technologies which allow additional efficiency gains for work processes in the field. We have no evidence to the contrary.

B. Savings

In the table below, we show the savings reported by the Company and the impact of the amortization resulting from the acquisition. Column 1 shows the revised amounts as filed by the

Company as of 2004, adjusted by us to reflect the transaction and transition costs and the amortization of the Pension Regulatory Asset discussed later in this Order. Column 2 shows the impact of accumulated amortization on rate base through December 2006. We note that although the Company filed 2006 savings information, no adjustment for accumulated amortization was made to show the effect of the amortization on rate base.

Because we are approving a 5-year amortization period for transaction and transition costs later in this Order, the transaction and transition costs will be fully amortized by November 2009. The pension costs will also be fully amortized over a shorter timeframe than the acquisition adjustment. As the acquisition adjustment and regulatory assets are amortized, the impact will be to increase the net savings, assuming savings in O&M expenses remain unchanged.

Net Savings to Florida City Gas as a Result of the AGL Resources Inc. Acquisition		
	(1) Company Proposed 2004	(2) EOY 2006 Balances
Operation and Maintenance Expense Savings	\$4,170,000	\$4,170,000
Reduction in Gas Cost--Financing	415,000	415,000
Reduction in Gas Cost--Release of Excess Capacity	495,000	495,000
Total Savings Due to Acquisition	\$5,080,000	\$5,080,000
Acquisition Adjustment Allocated to Florida City Gas		
Purchase Premium	\$21,656,835	\$20,092,730
Transaction and Transition Costs	3,607,147	2,044,050
Pension	1,365,897	1,143,939
Total	\$26,629,879	\$23,281,000
Multiplied by Wtd. Ave. Cost of Capital (After-tax)	7.11%	7.11%
Return on Rate Base - Operating Income Requirement	\$1,893,384	\$1,655,259
Gross-Up Factor	1.6329	1.6329
Revenue Requirement	\$3,091,707	\$2,702,873
Annual Amortization*	1,546,023	1,545,766
Total Revenue Requirement	\$4,637,730	\$4,248,639
Annualized Savings as a Result of the Acquisition	\$442,270	\$ 831,361

*Amortization includes the Acquisition Adjustment, Transaction and Transition Costs, and Pension Costs

C. Provisional Treatment

At this time, the Company has demonstrated that the acquisition of FCG by AGLR has resulted in a benefit to FCG's customers. AGLR brings substantial expertise in the business to bear, and has made considerable effort to improve the operations of the Company. What remains to be seen is whether these benefits will continue in the future. Further, the approval of the acquisition in this case would represent the first time we have approved an acquisition adjustment outside of a rate proceeding. Given that, we find that it is appropriate to revisit the effects of the adjustment in the future. There is precedent for our approval of acquisition adjustments on a provisional basis.

In Order No. 18716, issued January 26, 1988,³ a \$200,000 acquisition adjustment for Central Florida Gas Company (Central Florida) was approved based on projected savings due to the acquisition of Central Florida Gas Company by Chesapeake Utilities Corporation in 1985. The acquisition adjustment was approved with the caveat that the projected savings would be analyzed in future rate cases to determine if the projected savings actually occurred or had eroded. However, it was later found that Central Florida had experienced a total increase in its revenue requirements after its acquisition by Chesapeake. As a result, the acquisition adjustment of \$200,000 was removed from Central Florida's rate base.⁴

A positive acquisition was approved for Peoples Gas System (Peoples) when it demonstrated extraordinary circumstances to justify a positive acquisition adjustment resulting from its purchase of Southern Natural Gas.⁵ We determined that the adjustment "should be amortized over 30 years and all funds . . . held subject to refund with interest at the short-term average commercial paper rate (as reported in the Wall Street Journal) pending review of the anticipated savings, in the Company's next rate case."⁶ In Peoples' next rate case, the Commission found that no portion of the revenues held subject to refund as a result of the approved acquisition should be refunded.⁷ FCG is not requesting an increase in rates; thus, unlike Peoples Gas System, there is no rate increase to hold subject to refund.

Per the Uniform System of Accounts, acquisition adjustments are to be recorded in Account 114, Gas Plant Acquisition Adjustments. The related acquisition adjustment amortization is to be recorded in Account 425, Miscellaneous Amortization, unless we authorize the use of another account. Account 425 is a below-the-line expense account that is not included for ratemaking or earnings surveillance purposes. However, we can authorize the use of Account 406, Amortization of Gas Plant Acquisition Adjustments, as an above-the-line expense account. The amortization amounts recorded in Account 406 would be included for ratemaking and earnings surveillance purposes. As discussed previously, the customers have derived benefits

³ In Docket No. 870118-GU, In re: Petition of Central Florida Gas Company to increase its rates and charges.

⁴ Order No. 23166, issued July 10, 1990, in Docket No. 891179-GU, In re: Petition of Central Florida Gas Co. and Plant City Natural Gas Co. Divisions of Chesapeake Utilities Corp. for a rate increase, pp. 3-4.

⁵ Order No. 23858, issued December 11, 1990, in Docket No. 891353-GU, In re: Application of Peoples Gas Systems, Inc. for a rate increase.

⁶ Id. at 6.

⁷ Order No. PSC-92-0924-FOF-GU, issued September 3, 1992, in Docket No. 911150-GU, In re: Application for a rate increase by Peoples Gas System, Inc., p. 4.

from the acquisition. Therefore, we find that FCG shall amortize the acquisition adjustment to Account 406 for ratemaking and earnings surveillance purposes.

However, FCG shall file its quarterly earnings surveillance reports (ESR) showing the effects of the acquisition adjustment, and showing the earnings if the acquisition adjustment is not included. The effect of not including the acquisition adjustment shall be shown in the appropriate "Pro Forma Adjustment" sections of the ESR. This will allow our staff to monitor the impact until the next rate proceeding.

Based on the above, Florida City Gas shall be allowed to record the \$21,656,835 purchase price premium as a positive acquisition adjustment to be amortized over a 30-year period beginning November 2004. The amortization shall be recorded in Account 406, Amortization of Gas Plant Acquisition Adjustments. The permanence of the cost savings supporting FCG's request shall be reviewed in the Company's next rate proceeding. The Company shall file its earnings surveillance reports with and without the effect of the acquisition adjustment. If it is determined that the cost savings no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by this Commission.

III. Creation of Regulatory Asset for Transaction and Transition Costs

In addition to the purchase premium, AGLR incurred transaction costs and transition costs as a result of the acquisition, which were allocated in part to FCG. The numbers reflect the use of a 34 percent federal tax rate instead of the 35 percent rate used by the Company (excluding the state tax impact).

Transaction Costs

Transaction costs are those costs necessary to effect the acquisition of FCG by AGLR. FCG stated that AGLR incurred \$8,735,259 in transaction costs, of which \$1,615,149 or 18.49 percent was allocated to FCG. Approximately two thirds of the total costs were incurred for the investment banker (\$3,081,847) and legal fees (\$2,774,279). Other costs include such items as consultants and Federal Trade Commission filing fees.

Transition Costs

Transition costs are costs incurred after the acquisition. The total transition costs were \$165,399,973. Of that amount, \$5,383,831 or 18.49 percent was allocated to FCG. The Company decreased the amount by \$2,025,936, for deferred taxes, resulting in net transition costs of 3,357,895. Those costs were further reduced by the regulatory asset for pensions of \$1,365,897, net of deferred tax. The details of these costs are discussed below. The regulatory asset for pensions is discussed in the next section of this Order.

1. Employee Severance Payments: The Company explained that it operates under a business model to lower costs through increased efficiencies. One of the areas where the Company achieved lower costs was improved employee productivity, which resulted in a reduced number

of employees. According to FCG, the reduced number of employees performed the same amount of work without sacrificing the level of service. This increased productivity enabled the Company to reduce the number of FCG employees by 34 since the acquisition. The result was a reduction to payroll and employee benefits of approximately \$1.3 million and \$.4 million, respectively, for the twelve-month period ended September 2004. The total severance payments were \$2,180,930.

2. Information System Write-Offs: Another part of AGLR's business model was the consolidation of its subsidiaries' technology systems into a single system, to the extent possible. These systems included, but were not limited to, financial, general networks and programs, and customer management. The consolidation rendered existing systems obsolete, requiring the write-off of NUI's financial and general information systems. The cost of the write-offs was \$926,670.

3. Change of Control Payments: These payments were the result of agreements between NUI and certain NUI executives that were made prior to the acquisition by AGLR. Under the agreements, the executives were to be compensated if they were terminated within a three-year period if there was a change in control, which in this case was an acquisition. The payments totaled \$871,726.

4. Retention Compensation: Retention compensation was paid to certain FCG and NUI employees prior to and during the transition period after AGLR's acquisition. Total payments of \$435,033 were made to mitigate the financial and operational impact of the acquisition.

5. Directors' and Officers' Insurance: AGLR agreed to provide liability insurance for the former directors and officers of NUI. FCG states that this coverage was a necessary part of the transition of ownership and was one of the terms of the acquisition agreement. The cost was \$647,519.

6. Transition Costs Not Allocated to FCG: AGLR incurred \$75,230,524 of transition costs that were not allocated to FCG. These costs were related to other companies acquired from NUI, non-jurisdictional operations, or the impairment of non-FCG assets.

7. Pensions and Post-retirement Benefits Other Than Pensions: First, as a result of the acquisition, Generally Accepted Accounting Principals (GAAP) require the recognition of accelerated pension costs. Statement of Financial Accounting Standards No. 87, Employers Accounting for Pensions (FAS 87), requires the acquiring company to recognize the full projected benefit obligation in excess of plan assets at the time of the acquisition. The projected benefit obligation included deferred investment plan asset gains and losses and prior service costs. These costs are typically amortized over the average remaining service period of active employees expected to receive the benefits. The effect of the FAS 87 requirement is to accelerate these costs at the time of the acquisition. The \$2,189,990 in accelerated pension costs recognition was assigned to FCG based on an actuarial study. The Company is requesting regulatory asset treatment of this, and that request is considered in the next section of this Order.

Second, this item includes a \$321,953 reduction to the acquisition adjustment to reflect the appropriate level of pension assets for FCG. As of this acquisition date, FCG had a liability recorded on its books, but the records should have reflected an asset. An adjustment was made to correct the books for this item.

8. Deferred Tax Adjustment: This item reflects the effect on accumulated deferred income taxes for each component of the transition costs. The \$1,201,843 in deferred taxes (net of deferred taxes on the Pension Regulatory Asset) was calculated by applying the 37.63 percent combined federal and state tax rate to each of the transition items.

Analysis

The FERC Uniform System of Accounts adopted by us prescribes the accounts to be used by regulated natural gas utilities. Account 114, Gas Plant Acquisition Adjustments, is the appropriate account for use in recording acquisition adjustments. This account states in part that “[t]his account shall include the difference between (a) the cost to the accounting utility of gas plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated, if not known, of such property. . . .”

We find that the transaction and transition costs do not fit the description of plant costs to be included in Account 114. These costs are more appropriately recorded as a regulatory asset to be amortized over five years. A regulatory asset is a cost that is capitalized and recovered over a future period, rather than charged to expense when incurred. This approach has been used by us for recording of gains and losses for plant sales. Normally, gains are amortized back to customers over an appropriate period as decided by this Commission, usually five years. For instance, Southern States Utilities, Inc. was required to amortize gains on the sale of facilities and land over a period of five years.⁸ We found that “[when] a utility sells property that was formerly used and useful or included in uniform rates, the ratepayers should receive the benefit of the gain on sale of such utility property.”⁹ Similarly, in an FPL rate proceeding,¹⁰ we stated:

We have addressed the issue of the actual sale of Utility property in FPL’s last full rate case and in a number of other rate cases. In those cases, we determined that gains or losses on disposition of property devoted to, or formerly devoted to, public service should be recognized above the line and that those gains or losses, if prudent, should be amortized over a five-year period. We reaffirm our existing policy on this issue.

⁸ Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

⁹ Id. at 202.

¹⁰ Order No. 13537, issued July 24, 1984, in Docket No. 830465-EI, In re: Petition of Florida Power and Light Company for an increase in its rates and charges, pp. 17-18.

More recently, we approved petitions by Florida Public Utilities Company's gas division to amortize gains on the sale of property above the line.¹¹

Based on the above, we find that transaction and transition costs of \$1,615,149 and \$1,991,998, respectively, shall be recorded as a regulatory asset and amortized over five years beginning November 2004. This approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future rate proceedings.

Further, we will allow above-the-line treatment of these expenses in this case because the Company has agreed not to seek rate relief for a period of five years, and the Company has agreed to an accelerated amortization period such that these costs will be fully amortized by the end of the 5-year "stay out" period. Thus, allowing above-the-line accounting of these costs in this case will not raise rates. Approval of this accounting treatment for these transaction and transition costs, as specified herein, is strictly limited to the facts of this case and shall not be considered precedential for purposes of future Commission proceedings addressing similar costs associated with other utility acquisition adjustment proposals.

IV. Creation of a Net Regulatory Asset for Pensions

FCG and AGLR account for pension costs in accordance with FAS 87. We have recognized FAS 87 for ratemaking purposes. Essentially, this means that utilities must account for benefit plan costs using accrual accounting, as opposed to "pay-as-you-go" methods which were prevalent prior to the promulgation of the above standard. FAS 87 requires that the acquiring company in a merger recognize the full projected benefit obligation in excess of plan assets at the time of acquisition. For a pension plan, the projected benefit obligation is the actuarial present value of all benefits attributed by the pension benefit formula to employee service rendered prior to that date.

According to FCG, an amount of \$2,189,990 in accelerated pension cost recognition was assigned to FCG based on an actuarial study. FCG is requesting the creation of a regulatory asset for this amount, net of the associated deferred income taxes. The Company states that the amount of the deferred taxes is \$824,093. The Company also states that the appropriate period for amortization of the regulatory asset is 13.3 years, which is the approximate remaining service period of FCG employees expected to receive benefits from the pension plan. In its petition, the Company notes that prior to the acquisition, FCG had recovered pension costs in its base rates. Further, FCG states that establishing the regulatory asset and amortizing it over 13.3 years will result in recognition of the accelerated items over a period which approximates the normal pension expense recognition under FAS 87.

¹¹ Order No. PSC-02-1159-PAA-GU, issued August 23, 2002, in Docket No. 020521-GU, In re: Petition for approval to amortize gain on sale of property over five-year period by Florida Public Utilities Company; and Order No. PSC-02-1727-PAA-GU, issued December 9, 2002, in Docket No. 021014-GU, In re: Petition for approval to amortize gain on sale of property by Florida Public Utilities Company.

FAS 71 allows regulated companies to defer costs and create regulatory assets, provided that it is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. To create a regulatory asset or liability, a regulated company must have the approval of its regulator. This concept of deferral accounting allows companies to defer costs due to events beyond their control and seek recovery through rates at a later time. The alternative would be for the Company to seek a rate case each time it experiences an exogenous event.

We find FCG's request to create a regulatory asset to record charges that would otherwise have been recorded in equity under the provisions of FAS 87 meets the requirements of FAS 71, and it is approved. The amount of the regulatory asset shall be \$1,365,897 (\$2,189,990 gross, less \$824,093 accumulated deferred taxes) and this amount shall be amortized over 13.3 years, beginning November 2004. Our approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future rate proceedings.

V. Five-Year Stay-Out Period

In its October 1, 2007, proposal, FCG indicated a willingness to agree to a three to five-year stay-out period, beginning with the date of a favorable vote on its proposal. The Company advises that the stay-out period would not include the annual cost recovery proceedings such as the Purchased Gas Adjustment (PGA). It also would be subject to certain exceptions, such as unforeseen acts, force majeure, acts of God, and/or terror-related events.

We find that a five-year base rate stay-out period is in the best interests of the customers. Under such a provision, base rates will not be increased for five-years from October 23, 2007. The exceptions proposed by the Company are reasonable; however, unforeseen acts shall be items beyond the control of the Company.

The base rate stay-out provision does not preclude us from initiating proceedings, such as, but not limited to, overearnings proceedings. We may also reevaluate the reasonableness of the acquisition adjustment at any time during the stay-out period.

Accordingly, FCG's proposal for a five-year base rate stay-out period is accepted. The stay-out period shall not include annual cost recovery proceedings, and shall begin on October 23, 2007, if there is no protest. Exceptions to the base rate stay-out shall include items such as unforeseen acts, force majeure, acts of God, and terror-related events.

In consideration of the above, it is

ORDERED by the Florida Public Service Commission that Florida City Gas shall be allowed to record the \$21,656,835 purchase price premium as a positive acquisition adjustment to be amortized over a 30-year period beginning November 2004. It is further

ORDERED that the amortization shall be recorded in Account 406, Amortization of Gas Plant Acquisition Adjustments. It is further

ORDERED that the permanence of the cost savings supporting Florida City Gas' request shall be subject to continuing review. It is further

ORDERED that Florida City Gas shall file its earnings surveillance reports with and without the effect of the acquisition adjustment. It is further

ORDERED that in Florida City Gas' next rate proceeding, if it is determined that the cost savings no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by this Commission. It is further

ORDERED that transaction costs of \$1,615,149 and transition costs of \$1,991,998 shall be recorded as a regulatory asset and amortized over five years beginning November 2004. It is further

ORDERED that the approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future rate proceedings. It is further

ORDERED that Florida City Gas shall be authorized to use deferral accounting to create a net regulatory asset in the amount of \$1,365,897 to recognize and offset the accelerated treatment for pension costs the company must record in accordance with Statement of Financial Accounting Standards (FAS) 87. It is further

ORDERED that this amount shall be amortized over a period of 13.3 years, beginning November 2004. It is further

ORDERED that the approval to record the regulatory asset or liability for accounting purposes does not limit our ability to review the amounts for reasonableness in future rate proceedings. It is further

ORDERED that the proposal of Florida City Gas for a five-year base rate stay-out period is accepted. The stay-out period shall not include annual cost recovery proceedings, and shall begin on October 23, 2007, if there is no protest. It is further

ORDERED that exceptions to the base rate stay-out shall include items such as unforeseen acts, force majeure, acts of God, and terror-related events. It is further

ORDERED that the provisions of this Order are issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by this Proposed Agency Action files a protest within 21 days of the Order, a Consummating Order will be issued and the docket will be closed.

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By ORDER of the Florida Public Service Commission this 13th day of November, 2007.



ANN COLE
Commission Clerk

(SEAL)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 4, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.