

Diamond Williams

100315-GU

From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, June 28, 2010 3:00 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 100315-GU
Attachments: 2010-06-28, 100315, FCG's Corrected pages to Motion to Dismiss and Request for Oral Argument.pdf

The person responsible for this electronic filing is:

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The Docket No. is 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, Overearnings Proceeding or Other Appropriate Proceeding Regarding Florida City Gas' Acquisition Adjustment
This is being filed on behalf of Florida City Gas

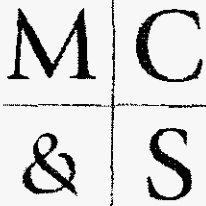
Total Number of Pages is 4

Florida City Gas' Corrected page 4 to their Motion to Dismiss filed June 25, 2010
Florida City Gas' Corrected page 1 to their Request for Oral Argument filed June 25, 2010.

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105313 JUN 28 2010
FPSC-COMMISSIONER OFFICE

6/28/2010



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June 28, 2010

VIA ELECTRONIC FILING

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. 100315-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida City Gas are a corrected page 4 of Florida City Gas' Motion to Dismiss filed on June 25, 2010, and a corrected page 1 of Florida City Gas' Request for Oral Argument filed on June 25, 2010, in the above referenced docket. These pages are being re-filed in order to remove the phrase "with prejudice" which was inadvertently included at the end of paragraph 7 of the Motion to Dismiss and in the first paragraph of the Request for Oral Argument. There are no other changes to the documents.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosure

cc: Shannon O. Pierce, Esq.
Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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, Overearnings Proceeding)
or Other Appropriate Proceeding Regarding)
Florida City Gas' Acquisition Adjustment)

Docket No. 100315-GU

Filed: June 24, 2010

FLORIDA CITY GAS' CORRECTED REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 25-22.0022, Florida Administrative Code, Florida City Gas ("FCG") hereby requests oral argument on its Motion to Dismiss Miami-Dade County's Complaint ("Motion"). Oral argument will aid in the Commission's understanding and evaluation of the issues to be decided as follows:

1. FCG believes that its Motion to Dismiss is clear on its face because Miami-Dade's Complaint on its face fails to state a cause of action. However, given the unique circumstances of this case, FCG believes that oral argument may assist the Commissioners with understanding the relationship between the instant Complaint and the issues set forth in Docket No. 090539-TP. In that situation, FCG would like to afford the Commission with the opportunity to hear brief oral argument of the parties or to at least have the parties available for any questions they may have.

WHEREFORE, Florida City Gas requests oral argument on its Motion to Dismiss at the Commission's convenience.

DOCUMENT V. MARISSA DAVIS
05313 JUN 28 2010
FPSC-COMMUNICATIONS SECTION

Corrected

described the petitioner's pleading obligation under Rule 28-106.201(2), Florida Administrative Code, and described the function of a motion to dismiss as, "its basic function is therefore to test the sufficiency of the Complaint with respect to (1) substantial injury, (2) statutory right and (3) requested relief."² The Commission further stated:

In determining the sufficiency of the Complaint, we confine our consideration to the Complaint and the grounds asserted in the motion to dismiss. Moreover, we construe all material facts and allegations in the light most favorable to [the petitioner] in determining whether the Complaint is sufficient.³

As is further demonstrated below, Miami-Dade's Complaint fails to state a cause of action and its Complaint should be dismissed.

III. ARGUMENT

A. Miami-Dade's Complaint Should Be Dismissed Because There Are No Overearnings by FCG.

8. Without offering any evidence of FCG's earnings, Miami-Dade asserts that FCG is in an overearnings situation merely because the utility has billed its water and sewer department ("MDWASD") for transportation service under its Commission approved tariff. Such naked assertions, unsupported by any earnings evidence, do not meet the minimal pleading requirements for invoking Commission action.

9. In order to establish a prima facie case for relief due to an overearnings situation, Miami-Dade as the petitioning party "shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance

Registration No. TK001, from Sprint Nextel Corp. to LTD Holding Col, Docket No. 050551-TP, Order No. PSC-06-0033-FOF-TP (Jan. 10, 2006).

² *Id.*

³ *Id.*

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 28th day of June, 2010.

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