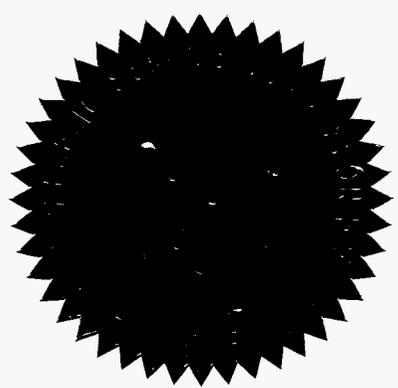


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090539-GU

PETITION FOR APPROVAL OF
SPECIAL GAS TRANSPORTATION
SERVICE AGREEMENT WITH
FLORIDA CITY GAS BY MIAMI-DADE
COUNTY THROUGH MIAMI-DADE WATER
AND SEWER DEPARTMENT.



PROCEEDINGS: STATUS CONFERENCE

BEFORE: COMMISSIONER NATHAN A. SKOP
PREHEARING OFFICER

DATE: Wednesday, December 8, 2010

TIME: Commenced at 9:30 a.m.
Concluded at 12:04 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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3 Self Law Firm, Post Office Box 15579, Tallahassee,
4 Florida 32317 and VICKI FOSTER POTTER, representing
5 Florida City Gas.

6 HENRY N. GILLMAN, ASSISTANT COUNTY ATTORNEY,
7 GREG HICKS and JACK LANGER, Miami-Dade County, 111 NW
8 First Street, Suite 2810, Miami, Florida 33128, and
9 BRIAN ARMSTRONG, ESQUIRE, representing Miami-Dade
10 County.

11 ANNA WILLIAMS, ESQUIRE, MARTHA BROWN, ESQUIRE,
12 FPSC General Counsel's Office, 2540 Shumard Oak
13 Boulevard, Tallahassee, Florida 32399-0850, representing
14 the Commission Staff.

15 MARY ANNE HELTON, ESQUIRE, FPSC General
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18 Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER SKOP:** Good morning. We're going
3 to call the Status Conference to order. Commissioner
4 Skop presiding.

5 If staff could please read the notice.

6 **MS. WILLIAMS:** By notice issued December 1st,
7 2010, the time and place was set for this Status
8 Conference in Docket 090539-GU, in re: Petition for
9 approval of special gas transportation service agreement
10 with Florida City Gas and Miami-Dade County through
11 Miami-Dade Water and Sewer Department. The purpose of
12 the Status Conference is set forth in that notice.

13 **COMMISSIONER SKOP:** Thank you.

14 At this time we'll take appearance of counsel.

15 **MR. GILLMAN:** Henry Gillman on behalf of
16 Miami-Dade County, and with me as a consultant, Brian
17 Armstrong.

18 **COMMISSIONER SKOP:** All right. Very well.
19 And I also believe we have on the phone Mr. Hicks and
20 Mr. Langer.

21 **MR. HICKS:** Yes. Gregory Hicks, Chief of
22 Procurement for Miami-Dade Water and Sewer.

23 **COMMISSIONER SKOP:** And also Mr. Langer.

24 **MR. LANGER:** Yes. Jack Langer, Langer Energy
25 Consulting.

1 **COMMISSIONER SKOP:** And Joe Ruiz.

2 **MR. HICKS:** He will be here momentarily.

3 **COMMISSIONER SKOP:** All right. Very well.

4 Mr. Self.

5 **MR. SELF:** Thank you, Commissioner. Floyd

6 Self with the Messer Caparello and Self law firm

7 representing Florida City Gas. With me today on behalf

8 of Florida City Gas is Vicki Foster, who is a Planning

9 and Partnership Consultant in the Regulatory Affairs

10 Department.

11 **COMMISSIONER SKOP:** All right. Very well.

12 And do we have anyone from AGL that's

13 participating today?

14 **MS. WILLIAMS:** I believe Vicki Foster is here
15 on behalf of AGL Resources.

16 **COMMISSIONER SKOP:** Okay. I wasn't clear on
17 that, so thank you. All right. So Vicki in place of
18 Shannon.

19 **MR. SELF:** Well, Ms. Foster is not an
20 attorney. She's just with the company, and because
21 Shannon Pierce could not be with me today due to a prior
22 conflict, a meeting got moved up, so Ms. Foster was
23 volunteered to send to Tallahassee.

24 **COMMISSIONER SKOP:** Welcome, Ms. Foster.
25 Staff.

1 **MS. WILLIAMS:** Anna Williams and Martha Brown
2 on behalf of Commission staff.

3 **MS. HELTON:** Mary Anne Helton, Advisor to the
4 Commission.

5 **COMMISSIONER SKOP:** All right. Thank you.
6 Okay. Let's start off with some comments regarding
7 procedural matters that we are going to discuss here
8 today. The primary purpose of the Status Conference is
9 to discuss the disputed issues in this docket. Attached
10 to the Status Conference Report was Appendix A, which
11 contains a list of all the issues which have been
12 identified in the proceeding and agreed to by all the
13 parties. And, also, Appendix B, which is the list of
14 disputed issues that we are here to address today.

15 Now, it's my understanding that prior to
16 commencing the status conference this morning,
17 Miami-Dade has provided our staff with a document, and I
18 don't believe staff has had complete and adequate time
19 to review fully. So, Mr. Gillman, if you want to
20 briefly speak to that, and we'll proceed.

21 **MR. GILLMAN:** Yes. Thank you, Commissioner.

22 First of all, I want to thank you for the
23 greeting of the breath-taking and cool weather we have
24 here. I don't think I can get back to Miami soon
25 enough. Just so you know, Commissioner, I do have to

1 leave at noon today.

2 In that note, in that light, we would like to
3 try and see if we could expedite this matter. We have
4 passed out a sheet where we would propose that the
5 issues include -- well, let me, first of all, state that
6 the 25 issues or so that we have disputed, most of those
7 issues are subsumed within the agreed issues, the seven
8 agreed issues. And staff and Florida City Gas have
9 essentially objected that they be specifically
10 delineated and stated as an issue.

11 What we have proposed, then, is to forgo
12 having those issues specifically delineated, and,
13 instead, have these issues heard by the Commission in
14 addition to the agreed-upon issues, or in lieu of them.
15 I will go through them. The first issue would be
16 whether the Commission can approve the 2008 agreement
17 and require Florida City Gas to absorb the difference,
18 if any, between the incremental cost to serve the
19 revenue generated under the 2008 agreement rates. And
20 essentially what this boils down to is we had a contract
21 and we have a contract with City Gas. They agreed to a
22 certain contract rate. It was approved all the way up
23 through their chain of command and reviewed by their
24 managerial staff, their legal staff, and also approved
25 by the president. They at the 11th hour inserted a

1 provision stating it should be approved by the PSC.

2 When they submitted it to the Commission for
3 approval, prior to having the full panel, that the
4 Commission have an opportunity to consider the
5 agreement, they unilaterally withdrew it. And that was
6 not based on any order or any written recommendation
7 from the staff.

8 What this issue asks is whether the Commission
9 can approve that agreement, and to the extent the
10 contract rate and the costs to serve the county, the
11 incremental cost to serve the county, if that is
12 different from the contract rate or revenue generated by
13 the contract, whether City Gas and their shareholders
14 should absorb the difference. And we believe the
15 Commission should hear that issue and should be able to
16 specifically address that issue in this matter.

17 **COMMISSIONER SKOP:** Okay. Real quick on that
18 particular point, on what is the document that has been
19 provided as the captioned legal issue. Do you have any
20 more comments on that? I do have a question with
21 respect to that proposal, and I will look to Mr. Self,
22 Ms. Foster, and the Commission staff. Do you have
23 anything else to add at this time on that?

24 **MR. GILLMAN:** No, sir.

25 **COMMISSIONER SKOP:** Mr. Gillman, with respect

1 to that request, is that issue substantially similar to
2 what has been identified as Issue 30? Notwithstanding
3 some changes in semantics, but just the overall subject
4 matter of the issue that Miami-Dade is seeking to have
5 become a documented issue in this docket? Is it very
6 similar?

7 **MR. GILLMAN:** Yes, it is, Commissioner.

8 **COMMISSIONER SKOP:** All right. Very well.
9 Mr. Self, do you want to speak to that, or would you
10 rather he just proceed with the remaining issues on that
11 sheet, and then we can go in totality, or do we want to
12 address these issue-by-issue? What is your preference?

13 **MR. SELF:** I have no preference, whatever you
14 think would be the best way to go.

15 **COMMISSIONER SKOP:** Mr. Gillman, you're
16 recognized to continue, then.

17 **MR. GILLMAN:** The next issue would be an issue
18 that we would add to the first agreed-upon issue
19 regarding the incremental costs, because the reason why
20 we are here in the first place is that City Gas
21 represented to the Commission that the contract rate
22 meets their cost of serving the county. And then staff
23 raised the issue with City Gas as to whether or not
24 their rates actually do meet their costs, their
25 incremental costs, and what their incremental cost is to

1 serve us. It's very, very important for us and for the
2 Commission to spell out exactly what the incremental
3 costs are, what the components of the incremental costs
4 are, and that would be Issues 1A, B, C, D, E, and F.

5 If I can go through those issues, first is
6 what is the amount of investment which City Gas has made
7 in facilities serving Miami-Dade.

8 Second was the amount of accumulated
9 depreciation of the facilities serving Miami-Dade.

10 Third was the amount of contributions in aid
11 of construction associated with the facilities serving
12 Miami-Dade.

13 Fourth, what is the appropriate cost of
14 capital on City Gas' net investment in facilities
15 serving Miami-Dade, and within that, what is the
16 appropriate cost of long-term debt, and what is the
17 appropriate return on equity.

18 Fifth would be what is City Gas' cost to
19 operate and maintain facilities serving Miami-Dade, and
20 next is what is the customer service and billing costs
21 to serve Miami-Dade.

22 And just so you are aware, Commissioner, in
23 this matter we are talking about City Gas transporting
24 gas owned by the county over a few miles of pipe, a
25 couple of miles of pipe. And at this point, right

1 now -- and City Gas has provided different amounts for
2 what it costs to serve the county. I think it's very
3 important that we know exactly what are the incremental
4 costs to serve Miami-Dade County and its facilities.

5 **COMMISSIONER SKOP:** Anything other on what has
6 been identified as add to Issue 1 at this time?

7 **MR. GILLMAN:** No. Just to state that what
8 City Gas is now charging the county is a million dollars
9 for those couple of miles of pipe, again, to provide
10 transportation service only to the county.

11 **COMMISSIONER SKOP:** So at issue, so I'm clear
12 in following your representations -- and, again, Mr.
13 Self will have the ability to contest anything that he
14 disagrees with, but at issue is basically the
15 transportation costs as the gas is physically owned by
16 Miami-Dade and merely transported by Florida City Gas to
17 the delivery point, is that correct?

18 **MR. GILLMAN:** That is correct. And what we
19 need to know is what is the actual incremental cost to
20 serve the county only.

21 **COMMISSIONER SKOP:** Very well. You may
22 proceed.

23 **MR. GILLMAN:** The next issue, which supplants
24 Issue Number 2. Issue Number 2 asks -- the agreed Issue
25 Number 2 asks does the contract rate in the 2008

1 agreement cover City Gas' incremental cost to serve the
2 county.

3 What we would propose is that the issue should
4 be phrased what is the appropriate amount of revenue
5 that City Gas receives under the 2008 agreement to be
6 compared to City Gas' incremental cost of service.

7 The amount of revenue in the 2008 agreement,
8 the annual revenue is approximately \$130,000. When you
9 have -- when you are transporting approximately
10 7 million therms to the county at the contract rate.
11 And what we would propose is that the Commission address
12 what is the appropriate amount of revenue to be compared
13 to City Gas' incremental cost of service.

14 The next issue would be added to Issue Number
15 4, which under the agreed issues are what, if any -- is
16 what, if any, FCG tariff applies to the 2008 agreement
17 for gas transportation services due to Miami-Dade
18 County. And the proposed issue that we would add is
19 whether the Commission should establish a separate
20 service classification for serving Miami-Dade, if no
21 other City Gas customer is similarly situated to
22 Miami-Dade County.

23 And, again, we would state that here
24 Miami-Dade County receives approximately 7 million
25 therms of gas over a couple of miles of pipe. And to

1 the extent City Gas now is seeking to charge the county
2 under a schedule, the GS-1250K schedule, which applies
3 to all customers regarding -- using at least
4 1.25 million therms, we would argue that Dade County is
5 not similarly situated with any other customer.

6 We take the amount of therms that we receive,
7 and the fact that we receive it on a 24-hour-basis,
8 seven days a week, 365 days a year. We need to know
9 whether there's any other customers that are similarly
10 situated to us, and how they are -- they would be
11 charged.

12 **COMMISSIONER SKOP:** Okay. You may proceed.

13 **MR. GILLMAN:** And the last issue would be a
14 new issue to add to the agreed issues, which would be
15 should City Gas' failure to present the 2008 agreement
16 or the amendment to the 1998 agreement to the Commission
17 for approval in a timely manner be considered in the
18 Commission's deliberative process. In this case, City
19 Gas agreed to a contract rate, they inserted the
20 requirement that it be subject to PSC approval, but then
21 they failed to promptly bring it to the Commission for
22 approval. When they finally did file a petition, then
23 they unilaterally withdrew it before the Commission had
24 a chance to rule on it.

25 And then during that same time period they

1 agreed to an amendment to our prior ten-year agreement,
2 which had the exact same contract rates, but that
3 amendment did no require any approval by the Commission.
4 And we believe that these actions and inactions by City
5 Gas are important for the Commission to consider, and
6 that it would be subsumed within this issue.

7 **COMMISSIONER SKOP:** Anything else to add, Mr.
8 Gillman?

9 **MR. GILLMAN:** That's it. Thank you.

10 **COMMISSIONER SKOP:** Okay. Here is how we are
11 going to proceed. Again, Miami-Dade has provided this
12 additional one-page document for consideration in
13 addition to the agreed-upon issues seeking to revise or
14 modify some of the agreed issues as well as forgo some
15 of the disputed issues. So what we're going to do here
16 in the interest of fairness is I'm going to allow Mr.
17 Self and Florida City Gas, as well as Ms. Foster, to
18 provide any comment as to the Miami-Dade submittal, and
19 then I'll look to Commission staff. And then my plan is
20 to go through -- initially through the list of
21 agreed-upon issues and hash those out.

22 If there are any changes that would need to be
23 made, we can consider those at that time, possibly
24 incorporating some of what has been proposed subject to
25 agreement amongst the parties, and any concerns from

1 staff if they have some. Then we will proceed into the
2 list of disputed issues and go from there.

3 Now, what I want to make clear, and crystal
4 clear to each of the parties as well as Commission
5 staff, if there is a situation that arises where either
6 an agreed-upon issue or a disputed issue does not come
7 in as an issue, that should not mean nor should it be
8 construed as that subject matter cannot be the subject
9 of discovery, testimony, or cross-examination at
10 hearing. Just because we're not framing it as a
11 specific issue does not mean it's not relevant and it
12 does not mean that it should not be fair game at
13 hearing.

14 So, again, if there is something that arises
15 that we need to say, no, that is far afield, subject to
16 hearing from the parties and staff, that it is way
17 beyond the realm or very speculative, then that issue
18 may be precluded from discovery, hearing, or
19 cross-examination because of its relevance at that
20 point.

21 But some of these issues, again, and looking
22 to hear from the parties, I would think that some may be
23 subsumed, but I don't want that to preclude either
24 Miami-Dade or Florida City Gas from being able to do
25 discovery, or to argue that, or to file testimony, or to

1 explore those specific areas under cross-examination at
2 hearing. So we will go through this as amicably as we
3 can. And, Mr. Self, you're recognized.

4 **MR. GILLMAN:** Commissioner, if I may. I
5 appreciate that very much. I just want to make it clear
6 when we say forgo, we're not waiving those disputed
7 issues, it's just that we are forgoing having them
8 specifically delineated as an issue.

9 **COMMISSIONER SKOP:** Correct. And the reason
10 for that is, again, you know, if there is a laundry list
11 of issues, but there are global issues to which those
12 subissues can be subsumed in, and it stands to reason
13 that the arguments of the subissues should be made, and
14 the Commission ultimately hearing the evidence provided
15 and making its decision on the global issues, because
16 those elements will come into that decision-making
17 calculus. That is at least my understanding.

18 But in fairness to Mr. Self, who has been very
19 patient, I want to give him the opportunity to initially
20 respond to the one-page document that Miami-Dade
21 presented by Mr. Gillman this morning.

22 And Mr. Self, you're recognized.

23 **MR. SELF:** Thank you, Commissioner.

24 First off, I appreciate Miami-Dade's
25 recognition that many of the 29 issues or whatever it is

1 are, in fact, subsumed within existing issues. And I
2 completely agree with you, Commissioner, that to the
3 extent we are talking about a topic that is, in fact,
4 subsumed within an issue, that certainly would be an
5 appropriate area for discovery, and testimony, and those
6 sorts of things.

7 Just so the record is clear, there are a
8 couple of questions that I think are completely
9 irrelevant and would be out of bounds for discovery, let
10 alone testimony, and we can certainly address those when
11 we get to them. I appreciate Miami-Dade's effort to
12 trim this down to the one page that they have given us
13 today. I've got just a couple of responses, I think,
14 that I can quickly go over with you.

15 First, with respect to the legal issue, the
16 first one that they have put forth here, I think this is
17 a position for Miami-Dade and it's not an issue. I
18 think they can discuss this topic under existing Issue
19 5, should the 2008 agreement be approved. Again, that
20 can be their position if they want it to be, but we
21 don't need a separate issue that goes to this language
22 here that they are talking about.

23 With respect to the A through F that they
24 would like to add to Issue 1, I believe that A, B, C,
25 and D -- I'm sorry, A, B, C, and E, as in elephant, are

1 clearly within the scope of Issue 1, and these are
2 discovery questions that they can and they may have
3 already asked some of these already, but regardless,
4 these are issues that are appropriate for discovery.

5 Issue or Subpart F here, I think, is
6 irrelevant or there may be an aspect of this that would
7 be subject to discovery. I'm not sure what the customer
8 service and billing costs with respect to Miami-Dade has
9 to do -- I understand there would be a billing cost
10 that's somewhere built in ultimately to incremental
11 costs and that would be appropriate to ask.

12 As for the Subpart D for Issue 1 that they
13 want to put in, this is not a cost of capital
14 proceeding. The Commission has an approved cost of
15 capital, and if they want to ask us what the
16 Commission's approved cost of capital is, they can
17 certainly do that. I'm unaware of the Commission ever
18 creating or establishing a separate cost of service to
19 serve one customer, so I think any question that goes to
20 what is the appropriate cost of capital to serve
21 Miami-Dade, I think is beyond the scope of the
22 proceeding.

23 With respect to their replacement language for
24 Issue 2, I prefer the language that's in the existing
25 Issue 2. I would -- I think they raise a potential good

1 point here regarding the revenue issue, and perhaps it
2 would be better if on the agreed Issue 2, if the word
3 cover was changed to recover. So the issue would read,
4 "Does the contract rate in the 2008 agreement recover
5 FCG's incremental cost to serve Miami-Dade?" That may
6 be a slightly better wording.

7 With respect to Issue 4A that they want to
8 add, I think this issue actually raises a good question.
9 I'm not certain this is necessarily the best language
10 for it, but it may be appropriate to discuss as a
11 separate issue that to the extent there's not an
12 existing tariff provision that either authorizes a
13 contract rate with Miami-Dade, there may be an
14 appropriate issue regarding whether the utility should,
15 in fact, create such a tariff provision that would
16 authorize a contract rate, or maybe there is a way to
17 create an actual tariff rate that would address
18 Miami-Dade and its unique facts and circumstances. So,
19 Commissioner, I would say Issue 4A is something that we
20 need to discuss.

21 With respect to the final issue on the list, I
22 think this is -- I think it's irrelevant, but to the
23 extent that they want to discuss this, I think that's
24 subsumed within the other issues, especially Issue 5,
25 most certainly, whether the contract should be approved,

1 and potentially Issue 6, as well. But I think that is a
2 position, it is not -- it is not really a separate
3 issue.

4 **COMMISSIONER SKOP:** Very well. Ms. Foster,
5 anything to add? All right. Very well.

6 All right. Staff, let's talk about this
7 briefly. Again, it is my intent to go directly into the
8 agreed-upon issues to try and hash out what the parties
9 have already agreed to, incorporating, you know, any
10 discussion that arises as a result of the document
11 provided by Miami-Dade. But I wanted to get staff's
12 initial impressions on the documents that -- or document
13 that Mr. Gillman provided on behalf of Miami-Dade.

14 **MS. WILLIAMS:** Sure. Thank you, Commissioner.

15 **COMMISSIONER SKOP:** If staff needs more time,
16 or if we need to take a few minutes, you know, I will do
17 that, too. I know you all got it late.

18 **MS. WILLIAMS:** I think we have had enough
19 time. We will know better when we start going through
20 it, but I am prepared to speak to -- I'll start with the
21 legal issue, and at some point I will hand it over to
22 Connie Kummer.

23 I think that this legal issue really
24 incorporates two separate issues. The first portion,
25 whether the Commission can approve the 2008 agreement,

1 is very similar to disputed Issues 8 through 10, which
2 in staff's opinion have already been decided by this
3 Commission and are therefore, inappropriate.

4 With respect to the latter portion of that
5 issue, that is very similar to Miami-Dade's proposed
6 disputed Issue Number 30. I think Miami-Dade has
7 already acknowledged that. And with some tweaking to
8 the language of Issue 30, I think that staff would be
9 okay with that being added as an issue to the agreed
10 issues list, noting that we would definitely want to
11 change some of the language that is in that proposed
12 issue.

13 **COMMISSIONER SKOP:** All right.

14 **MS. WILLIAMS:** I'm going to let Connie speak
15 to the details about adding to Issue 1 these 1A, B, C,
16 D, E, and F, but as a general matter, I do think, as Mr.
17 Self noted, 1A, B, C, and E are very similar to what
18 would be discovery questions or testimony filings. They
19 are very factual matters that would be subsumed under
20 agreed Issue 1 and 2 regarding incremental costs. So I
21 don't think that they need to be added as additional
22 issues, and I will let Connie speak to those.

23 **COMMISSIONER SKOP:** Ms. Kummer.

24 **MS. KUMMER:** Good morning.

25 I agree with Mr. Self that the additions to

1 Issue 1 are simply things that you will need to consider
2 in arriving at the incremental costs. I don't think we
3 gain anything by having these individual items broken
4 out. And I also agree with Mr. Self's comments on Part
5 D. The Commission has established the company's cost of
6 capital in its last rate case. Trying to go into cost
7 of capital arguments in this docket is just way beyond
8 the scope of this contract approval.

9 On replacement Issue 2, with a little
10 rewording, I could agree to use that in place of the
11 agreed-upon Issue 2. What I would suggest the new
12 wording would be what are the appropriate rates under
13 the 2008 agreement, because our Issue 2 says does it
14 cover incremental costs, but the real issue is what are
15 the appropriate rates, and I could live with that
16 modification without tying the rates to incremental
17 costs specifically.

18 On Issue 4A, creating a new rate class impacts
19 all customers, not just Miami-Dade. Because of the way
20 the cost of service is prepared and approved in the rate
21 cases, you can't simply single out and change one rate
22 class without changing the cost allocation of every
23 other rate class. And since those other parties are not
24 represented in this docket, I think it would be
25 inappropriate to be looking at designing a new rate

1 class in this docket. That is not to say that we can't
2 or we shouldn't in some other proceeding, but, again,
3 because we don't have all the parties at the table who
4 would be impacted by any change in rate classification,
5 I don't think it should be considered here. Thank you.

6 **COMMISSIONER SKOP:** Thank you.

7 **MS. WILLIAMS:** And could I address the new
8 issue?

9 **COMMISSIONER SKOP:** In one second. I want to
10 ask Ms. Kummer two questions. With respect to your
11 comments, Ms. Kummer, on the proposed additions to Issue
12 1, I believe Subsection D, or Paragraph D as to the cost
13 of capital, did I hear you correctly that you thought
14 that that was inappropriate to address in the
15 proceeding?

16 **MS. KUMMER:** Yes, sir, because those are
17 things that are set in a rate case for a utility, and
18 cost of capital, as you are well aware, can be a very
19 involved process, and I think it really goes beyond the
20 scope of this docket.

21 **COMMISSIONER SKOP:** And with respect to the
22 issue of cost of capital as it pertains to the
23 incremental cost of service, the currently authorized
24 cost of capital would factor into providing that cost of
25 incremental service, is that correct?

1 **MS. KUMMER:** I would certainly expect it to do
2 so, yes, sir.

3 **COMMISSIONER SKOP:** All right. Thank you.

4 And then also, too, with respect to your
5 comments that you just added on Issue 4A, and then I
6 will ask Ms. Williams to speak to that a little bit
7 further, it seems as if when you talk about establishing
8 rate classes as you astutely acknowledged, given your
9 vast experience in that area, obviously we don't have
10 all of those potential parties here, so that seems to
11 represent a potential due process issue to tackling
12 that. Although I think you also acknowledged that
13 notwithstanding the due process concern of addressing
14 that within the course of this proceeding, that that
15 question itself may provide a potential option or
16 solution for the Commission to consider in addressing
17 the issue as a whole. Is that --

18 **MS. KUMMER:** That's correct. A utility may
19 come in and offer a new rate schedule at any time. The
20 utilities do it all the time. At that time, however, we
21 would have to look at the cost of service study and the
22 cost basis for the rate and it brings in a lot of other
23 issues that, again, are really beyond the scope of this
24 docket.

25 **COMMISSIONER SKOP:** Very well. And,

1 Ms. Williams -- thank you, Ms. Kummer.

2 And, Ms. Williams, you're recognized on the
3 new issue.

4 **MS. WILLIAMS:** Yes. Thank you.

5 On the new issue, staff believes that this
6 could be subsumed as an argument of Miami-Dade under
7 either Issue 5, which is whether or not the contract
8 should be approved, or under Issue 30 in disputed issues
9 were that to be finagled and added as an issue.

10 **COMMISSIONER SKOP:** All right. Thank you.
11 And then with respect to Ms. Kummer's comments on the
12 appropriateness of considering the cost of capital
13 within this docket, I think that in the Commission's
14 prior decision there was a -- refresh my memory, a
15 denial of opening this up into an overearnings or rate
16 case type proceeding, is that correct?

17 **MS. WILLIAMS:** Yes, Commissioner, that's
18 correct.

19 **COMMISSIONER SKOP:** All right. Anything to
20 add before we move forward to looking at the agreed upon
21 issues, and then we will tackle whatever concerns come
22 up from there? Mr. Self, you're recognized.

23 **MR. SELF:** Thank you, Commissioner. Just to
24 follow up on one thing that Ms. Kummer said. When I was
25 talking about Issue 4A, I agree with her, I wasn't

1 trying to come up with a totally new rate schedule that
2 would impact all the customers in the company. There's
3 an issue as to -- a subissue, perhaps, is maybe the way
4 to call it, with respect to the tariff provision upon
5 which the 2008 contract relies as to whether that's an
6 appropriate tariff provision to authorize that kind of
7 contract.

8 All I was trying to get to is if there was a
9 determination that that particular tariff didn't apply,
10 and if there was no other tariff that would authorize a
11 contract with Miami-Dade, would it be appropriate to
12 have a tariff provision that would recognize the
13 situation that might lead to a special service agreement
14 for Miami-Dade. That's all I was trying to get to.

15 **COMMISSIONER SKOP:** Very well. And, you know,
16 again, part of this process in having the status
17 conference is trying to get the parties together and
18 hash things out, and, you know, figure out where there
19 are areas that consensus can be built and areas where
20 disagreements obviously still exist, and then it comes
21 down to me as the prehearing officer to kind of exercise
22 my discretion and judgment as to, you know, what is fair
23 to the parties as well as equally fair to the
24 Commission.

25 Just my initial impressions, again, the

1 document submitted, again, I think was provided to staff
2 prior to the start of the hearing. I have had, you
3 know, 20 minutes to absorb it and listen to the
4 questions from the parties, but, again, when I walked in
5 this morning, again, it was my intent to work off the
6 agreed issues and the disputed issues and try and build
7 consensus around that.

8 Initial impressions, just on the document that
9 Mr. Gillman submitted, hearing from Mr. Gillman on
10 behalf of Miami-Dade, Mr. Self on behalf of Florida City
11 Gas, and the Commission staff, I tend to agree with
12 staff on the legal issue that is identified on that one
13 page document. To the extent that it seems relevant,
14 however it is substantially similar to what's at stake
15 in Issue 30, which, again, I tend to also agree with
16 staff that so long as the wording on Issue 30 is tweaked
17 to more of a neutral manner, then, you know, I'm going
18 to hear from the parties and I will make a decision at
19 that point. But I do share staff's position to some
20 degree on the legal issue presented by Mr. Gillman.

21 With respect to the proposed additions to
22 Issue 1, I tend to agree with Mr. Self as well as
23 Commission staff, to the extent that these are all
24 relevant questions of fact that deal with factual
25 matters, very specific matters, they are certainly fair

1 game for discovery. It is certainly fair game to file
2 testimony as to what the position of the respective
3 parties should be. Certainly fair game and file
4 testimony for cross-examination and discussion at
5 hearing. But as far as having these as subissues to the
6 existing issue, again, I think the principle of
7 summation, where it is subsumed in the existing issue is
8 better suited to the way the Commission operates. So we
9 will get to that when we talk about what to do with
10 Issue 1.

11 As far as replacing Issue 2, I think that
12 there was some consensus between the parties on that.
13 To the extent that Mr. Self agreed that the revenue
14 aspect of what Mr. Gillman proposed, you know, might beg
15 a good question. And Mr. Self, I believe, proposed
16 changing the word cover to recover. And then Ms. Kummer
17 added a little bit to that, and suggested that Issue 2
18 might be better framed as what are the appropriate rates
19 to recover, so we will get to that question as it
20 pertains to Issue 2 in due course.

21 Issue 4A, again, initial impression, the
22 wording gave me a little bit of pause, but what really
23 gave me concern is the due process argument that arose,
24 particularly in this proceeding, since we don't have all
25 the other parties that may have a substantial interest

1 in any proposed Commission action. So that due process
2 aspect gives me substantial angst in terms of moving
3 forward on that, however it does appear to be relevant.
4 It's just a matter of is this the right docket to take a
5 look at that, so we'll discuss that a little bit further
6 when we get to agreed Issue 4.

7 As far as the new issue, again, I tend to
8 agree with Commission staff. The wording of the
9 proposed new issue seems to be somewhat accusatory or
10 conclusive that -- you know, FCG's failure, so the
11 wording of that gives me some pause. However, the prior
12 conduct of the parties certainly seems to be a fair
13 issue to address, whether in testimony filed, or
14 cross-examination, or discussion in hearing, so we will
15 get to that as we move forward.

16 But with that in mind, does anyone have any
17 further questions before we take up the agreed issues
18 and try and solidify those? All right. Hearing none,
19 let's turn to the notice of the status conference, Page
20 3, Appendix A, where we have the agreed issues, and
21 we'll first take up Issue 1. And Issue 1 is currently
22 framed as what are FCG's incremental costs to serve
23 MDWASD, formerly known as -- or hereafter known -- well,
24 I'll just shorten it as Miami-Dade gas transportation
25 requirements for the Alexander Orr, Hialeah-Preston, and

1 South Dade Wastewater Treatment Plants respectively.

2 So I will look to Mr. Gillman. The only
3 proposed changes to agreed Issue 1 that I heard
4 Miami-Dade raise would be to add to Issue 1 Items 1A
5 through 1F, is that correct?

6 **MR. GILLMAN:** That's correct, Commissioner.

7 I want to emphasize that in prior discussions
8 regarding the issues, we want to -- there has been some
9 differences as far as what are the incremental costs.
10 How are incremental costs defined? And we thought it
11 would be the better approach is where you can list out
12 what those incremental costs are and the components of
13 the incremental cost. So there's no, you know, debate
14 or discrepancy regarding what the incremental costs
15 would be to serve the county.

16 And if I may --

17 **COMMISSIONER SKOP:** Okay. Go ahead, you may
18 continue.

19 **MR. GILLMAN:** If I may allow Mr. Armstrong to
20 just add anything on that.

21 **COMMISSIONER SKOP:** You may.

22 Mr. Armstrong, you're recognized.

23 **MR. ARMSTRONG:** Thank you, Commissioner Skop.

24 Commissioner Skop, I have heard a number of
25 times today that this is not a rate case and not a rate

1 proceeding, but, in point of fact, that is exactly what
2 this turns out to be. We are here because of some
3 preliminary staff suggestions of whether or not the rate
4 that FCG agreed to with Miami-Dade will cover their
5 incremental cost of service, and that's really the
6 predominant reason we are here.

7 Through the course of discussions, and like I
8 say, this a rate case, and I can point to so many
9 Commission orders where the rate cases have an issue.
10 What is the operating cost, what is the appropriate
11 maintenance cost, what is the appropriate customer
12 service and billing costs specifically delineated. And,
13 Commissioner Skop, because of discussions between the
14 parties, it's awfully clear that there is not an
15 agreement on what is included, to be included in the
16 incremental cost to serve here. And for the purpose of
17 due process, for the purpose of allowing Miami-Dade to
18 be able to present testimony specifically as to each of
19 these components and then know in the end what the
20 Commission's decision is on each of those components, I
21 think it's extremely important that we have them
22 separately identified like you would in a rate case as
23 to what are the incremental investment of FCG in the
24 facilities.

25 You know, Mr. Gillman mentioned, and I think

1 what we are talking about here is an agreement pursuant
2 to which an approximation of revenue would be paid to
3 Miami-Dade -- to FCG is about 130 to 150,000 a year.
4 Under FCG's tariff schedule, they propose to charge over
5 a million dollars a year, and we are talking about a
6 couple of miles of pipe only. Approximately a couple of
7 miles of pipe just transporting our gas to our
8 facilities.

9 So, I mean, again, a lot of the concern that
10 we have, Commissioner, is based upon discussions between
11 your staff and FCG as to what is truly an incremental
12 cost in this docket. And because of that, we really
13 think even more, just like any rate case, it is so
14 important to identify each of those incremental costs
15 and how much, how much investment do they have. By the
16 way, we haven't received a single document establishing
17 any investment in the facilities, you know, and we have
18 asked those questions.

19 Because we haven't received answers,
20 Commissioner, I think -- particularly because we haven't
21 received answers to those, and particularly because we
22 are trying to expedite and participate and cooperate to
23 expedite the hearing, we need to know that we are going
24 to have answers, and we are going to have information,
25 and specifically delineate these costs.

1 You know, to us this is a rate case. It is an
2 incremental cost of service study never provided to us,
3 never conducted by FCG as of their last communications
4 with us, and we need to have that information
5 specifically addressed so that we can look at it, and if
6 the Commission makes a mistake, we can appeal
7 appropriately.

8 **COMMISSIONER SKOP:** Anything else to add
9 before we move on?

10 **MR. ARMSTRONG:** Thank you.

11 **COMMISSIONER SKOP:** All right. Thank you, Mr.
12 Armstrong.

13 And, again, with all due respect, the
14 incremental cost associated with providing this special
15 gas transportation service agreement does not
16 necessarily make a rate case. So, again, I think your
17 argument, you know, while I have entertained it, I think
18 the Commission has addressed that aspect that this is
19 not intended to be a rate case proceeding. However, the
20 various cost drivers and elements that make up the
21 incremental costs are certainly part of the calculus,
22 you know, that it seems relevant. But, again, to make
23 the suggestion or to turn this into a rate case, I think
24 that that is not the nature or the subject of the
25 proceeding. But your points are well taken.

1 With respect to discovery requests that are
2 outstanding, to my knowledge there has been no motions
3 to compel. But certainly I assure the parties that with
4 respect to some of the questions, whether they come in
5 as issues or not, that are the subject of discussion
6 here as to elements that make up the cost of
7 providing -- the incremental cost of providing service,
8 if discovery is served on the parties, I fully expect
9 that the parties, absent objections or other legal
10 means, would provide that cost information to the
11 respective party in a timely manner. So we'll take that
12 up as it comes forward, but to date I have not seen a
13 motion to compel on any outstanding discovery.

14 We are still in the preliminary part of the
15 proceeding, but it would be my expectation that both
16 parties, not just one, but both parties be fully
17 compliant in discovery requests and interrogatories as
18 it pertains to adducing the, you know, evidence that the
19 parties will need to prepare their testimony and conduct
20 cross-examination here.

21 So with that, Mr. Self, you can be recognized
22 and will speak on Issue 1.

23 **MR. SELF:** I think the existing language is
24 fine, as I have previously indicated, with respect to A,
25 B, C, E, and probably even F. Those are all discovery

1 requests or questions. Obviously we are going to
2 have -- FCG is going to have to ultimately demonstrate
3 whether or not the contract rate is above or below the
4 incremental cost to the company. And so the parties are
5 free to argue about what the incremental cost is with
6 the language that's there. So I think there is plenty
7 of room for them and us to wade into the subject of the
8 incremental cost of service.

9 **COMMISSIONER SKOP:** Very well. Staff?

10 **MS. KUMMER:** Commissioner, I think Miami-Dade
11 made the best possible argument for an all-inclusive
12 issue, because we don't know at this point what the
13 incremental costs are. They are looking for a laundry
14 list that they can say it is A, B, C, D, E, and F. I
15 don't think we are at that point yet. And I think
16 having the broader issue would allow them to address
17 whatever they think is appropriate to be included as
18 incremental costs.

19 **COMMISSIONER SKOP:** Okay. Ms. Williams,
20 anything to add?

21 **MS. WILLIAMS:** No, Commissioner.

22 **COMMISSIONER SKOP:** Very well. All right.
23 With respect to Issue 1, my ruling is going to be to
24 leave agreed Issue 1 as it is currently written. The
25 reason for that is I've heard from the parties and

1 Commission staff it would be difficult at best to try
2 and articulate every possible element that might go into
3 the incremental cost of providing service. My concern
4 is that if we identify the laundry list that Ms. Kummer
5 attempted to -- or attempt to engage in that process,
6 that ultimately we might inadvertently omit something,
7 or could not anticipate everything, or one size of shoe
8 might not fit every particular situation. And what
9 would pain me is for the Commission to have an order
10 saying incremental service is defined as A, B, and C,
11 but in a different case that might not work.

12 So I think that the issues that Miami-Dade has
13 sought to introduce but are being subsumed into Issue 1
14 are fair game for discovery, fair game for filing of
15 testimony, and fair game for cross-examination and
16 discussion at hearing, as well as prehearing briefs, or
17 prehearing positions, or post-hearing briefs. To make
18 those arguments to the Commission that the Commission
19 should consider, you know, this, that, and the other
20 thing in determining what incremental costs would be,
21 and I would expect opposing counsel would argue what it
22 thought it would be, and that way the Commission can
23 make an informed decision as well as Commission staff as
24 to which is the more persuasive of the arguments and it
25 makes the better case on that issue.

1 With respect to the appropriate cost of
2 capital, certainly those are arguments that can be made
3 based on, you know, discovery as to what would be the
4 currently authorized rate of return. But, again, I
5 expect that discovery in that area would be limited to
6 authorized rates of return, and any arguments made could
7 be made in testimony or briefs as it pertains to that
8 Subsection D. But, you know, to be clear, again,
9 notwithstanding Mr. Armstrong's advocacy, is this is not
10 intended to be a rate case, but those are issues that
11 one could possibly anticipate might come up in the
12 course of one's written brief, or discovery, or
13 testimony advocating what, you know, Miami-Dade's
14 position is. But we don't need to turn this into a
15 full-blown rate case.

16 Again, that would be over staff's objections
17 as well as mine. But, again, I want to give latitude on
18 D, but, again, let's not try and turn this into a rate
19 case. But other areas that are necessary to establish
20 elements of the incremental cost of service to be
21 provided certainly seem ripe for discovery.

22 So hopefully if there are any questions on
23 that I am free to try and clarify it, but I'm trying to,
24 you know, make sure there's no animosity and that all
25 the parties that come in, and we know we're going to

1 litigate the issues and have a fair and transparent
2 process that the Commission will use to make a decision
3 on the merits in a fair and impartial manner, and that
4 is what I would expect.

5 So any other concerns on Issue 1 before we
6 move forward? All right. Hearing none, Issue 1 stands
7 as agreed upon in Appendix A. And that brings us to
8 Issue 2, which is currently framed does the contract
9 rate in the 2008 agreement cover FCG's incremental cost
10 to serve Miami-Dade?

11 And, Mr. Gillman, you're recognized. I think
12 that you sought in your document to replace Issue 2, so
13 ever so briefly, if you could address any proposed
14 modifications to what has currently been agreed to as
15 Issue 2.

16 **MR. GILLMAN:** We would just seek to have the
17 issue framed a little differently, which is what we had
18 proposed this morning, which would be focusing on what
19 is the appropriate amount of revenue under the agreement
20 that was executed by City Gas compared to City Gas'
21 incremental cost to serve the county.

22 **COMMISSIONER SKOP:** Anything else on that, Mr.
23 Gillman?

24 **MR. GILLMAN:** No.

25 **COMMISSIONER SKOP:** Thank you.

1 Mr. Self.

2 **MR. SELF:** Thank you, Commissioner.

3 The Commission sets rates based upon revenue
4 requirements. I think the language that Ms. Kummer
5 proposed is an alternative. I think that would work to
6 get us to where we need to be.

7 **COMMISSIONER SKOP:** Okay. Ms. Kummer.

8 **MS. KUMMER:** I think that in looking over this
9 again, I think Issue 2 as staff has proposed on the
10 agreed issue list is a bit more limiting than what
11 Miami-Dade has proposed, and that is why I would suggest
12 a modification to Miami-Dade. Issue 1 will establish
13 what the incremental cost is. Issue 2 is what should be
14 given the decision made in Issue 1, what should be the
15 rates under the contract; that leaves the Commission
16 free to decide if they should be at incremental cost,
17 above or below incremental cost. Phrasing it as I have
18 proposed is what are the appropriate rates; that allows
19 the Commission more discretion in determining that
20 issue.

21 **COMMISSIONER SKOP:** Okay.

22 **MR. ARMSTRONG:** Commissioner, if I may.

23 **COMMISSIONER SKOP:** Hold on for one second.

24 You will be recognized in due course.

25 All right. Ms. Kummer, if we were to adopt

1 staff's proposal, obviously we're going to have to fine
2 tune the language based on what we currently have in
3 Appendix A, and so if I could get you to write out what
4 you anticipate that issue might be better framed as,
5 because if I understood you correctly it's currently
6 framed very narrowly, and I think by framing it more
7 broadly, it allows not only the Commission to consider
8 Miami-Dade's argument, but also have the discretion to
9 make an appropriate judgment exercising its discretion
10 as to what the appropriate rate to recover would be, is
11 that correct?

12 **MS. KUMMER:** That is correct, Commissioner.
13 Again, their last phrase as compared to FCG's
14 incremental cost I think is redundant. Once you
15 establish what the incremental cost is, then the next
16 decision is, well, given the incremental cost what
17 should the rate be. And that would simply be my
18 working, is what are the appropriate rates under the
19 agreement.

20 **COMMISSIONER SKOP:** Very well. Mr. Armstrong,
21 you're recognized.

22 **MR. ARMSTRONG:** Thank you, Commissioner Skop.
23 Again, some history of discussions between the
24 parties and between your staff prior to today. This
25 came up in the last discussion in particular, and what

1 we heard on behalf of Miami-Dade was that the Commission
2 and staff will not set a rate. You know, this is a
3 contract and they are going to -- the Commission is
4 going to approve or disapprove the contract. So, I
5 mean, what we have heard today now is quite a bit
6 different than that.

7 What is before the Commission is a rate that
8 was negotiated and agreed upon between Miami-Dade and
9 FCG, and we have some concern -- incremental cost has
10 been the only, only, only determiner of that rate right
11 up until today that we have heard coming out of staff's
12 mouth until the last meeting, the last discussion we had
13 when it was a suggestion of incremental cost plus. And
14 then we inquired what do you mean plus? All we have
15 heard is incremental cost.

16 So I guess the issue now is, if we agree to
17 what the staff's proposed issue is, is the Commission
18 would actually establish a rate in this proceeding and
19 that rate might be above the incremental cost based upon
20 what we are hearing, and that causes the company, you
21 know, extreme concern and really takes us aback based
22 upon prior discussions that we have had.

23 We think incremental cost is the rate, if
24 there is any issue whatsoever in this docket, and that
25 is why it was phrased and agreed upon with you right

1 until today. We would like to see it. You know, we did
2 hear what Mr. Self said about recover. Our concern is,
3 you know, is that what I have already suggested to you,
4 and the only issue we ever heard was this thing about
5 incremental cost and does the revenue generated under
6 the contract cover their costs and allow them to recover
7 those costs. I prefer to see that as opposed to the new
8 staff issue.

9 **COMMISSIONER SKOP:** Very well. And, Mr.
10 Gillman, notwithstanding Mr. Armstrong's comment, I note
11 that Miami-Dade sought to change the language in Issue 2
12 that has been previously agreed upon, so I will let you
13 briefly speak to that, and then I'm going to look to Mr.
14 Self, and then I'm going to go back to Commission staff.
15 Because, again, I think Mr. Armstrong raised a concern
16 that I want to go back and, you know, validate what
17 Commission staff just represented to the extent that an
18 arms-length agreement between the parties, I'm not so
19 sure that the Commission should really kind of set that
20 rate. So I think that the nuance that Mr. Armstrong
21 raised was a good point.

22 So, Mr. Gillman, you're recognized. I'll go
23 to the Mr. Self and then back to the Commission staff.

24 **MR. GILLMAN:** Well, it is true, Commissioner,
25 there was an arm's-length negotiation between City Gas

1 and the county, and there was a rate set. If the
2 Commission comes back with another rate that's a high
3 rate, the county obviously should be able to have the
4 discretion as to whether or not it would accept that
5 rate and go forward with it.

6 You know, of course, we would want to have the
7 agreement approved with the rate in there that the
8 president agreed to on behalf of City Gas. And to the
9 extent if that rate that he agreed to does not cover
10 their incremental cost, again, that goes back to the
11 other issue, then, is that is City Gas's business
12 decision that they made, and they should be the ones to
13 absorb any difference between the revenues from the
14 contract rate that they agreed to and what their alleged
15 incremental costs are.

16 **COMMISSIONER SKOP:** And I think I understand
17 the gist of that as you are stating for agreed to Issue
18 2 is basically that test to see whether the contract
19 rate under the 2008 agreement is greater than or equal
20 to the incremental cost to serve. Is that generally
21 correct?

22 **MR. GILLMAN:** That's correct.

23 **COMMISSIONER SKOP:** Okay. All right. Thank
24 you.

25 Mr. Self, you're recognized.

1 **MR. SELF:** Thank you, Commissioner.

2 First to dispute one thing that Mr. Armstrong
3 said, my recollection going back to -- I want to say it
4 was a year and a half ago when the parties first met to
5 talk about this case. It seems like a -- whatever it
6 was, whenever that was, I believe there was discussion
7 that -- I recall discussion at that meeting about the
8 fact that in terms of an appropriate rate under a
9 contract would be incremental cost plus something else.
10 And we obviously are going to -- there's obviously a
11 dispute about that, and I think that is already included
12 within the existing set of issues as to what that is.

13 As for whether this issue should be changed, I
14 absolutely am opposed to talking about the amount of
15 revenue under the agreement, because this isn't a
16 revenue. The issue is whether or not, I think whether
17 the contract rates recovers the incremental cost, and
18 that is a yes or no kind of question. Ms. Kummer's
19 language would broaden the scope of the question. As
20 much as I don't like it, I was at least amenable to that
21 sort of approach, but I think the bottom line would be
22 the same under either Ms. Kummer's language or the
23 existing language. If we said that the contract rate
24 was below incremental cost, then, you know, that is
25 obviously going to be our position.

1 I think under, I guess under Issues 5 and 6 we
2 could potentially argue about what the rate should be.
3 I think we do agree. I think we agree that the
4 Commission isn't necessarily going to set a rate in the
5 case, assuming it denies the contract, but I think it
6 would obviously be helpful to the parties to know what
7 rate would meet the legal standards for what an
8 appropriate rate should be, and then whether or not the
9 parties -- assuming it's something other than the
10 contract rate, whether the parties would then enter into
11 a contract on that basis obviously would be their
12 choice. I don't know if that was helpful. I apologize.

13 **COMMISSIONER SKOP:** No, it was helpful. I
14 mean, there is obviously a lot at stake for both parties
15 in the course of the decision that the Commission will
16 ultimately make, based on the record evidence, so I
17 think it is important to get this right and be as fair
18 as possible to the parties. And, I guess, thankfully
19 you guys got me today, so a short-timer on the
20 Commission, but I am well versed in what I hope to
21 understand as to the position of the parties and what
22 the parties are seeking to try and introduce as
23 arguments in the course of the hearing, which I will not
24 be here for, but I think that your comments were helpful
25 as well as Mr. Gillman's and Mr. Armstrong's.

1 Now, let me go back to Ms. Kummer and
2 Ms. Williams as to broadening the issue in the manner in
3 which Ms. Kummer suggested, while it seems very good
4 suggestion, I think it presents the problem that Mr.
5 Armstrong raised, so if you can brief speak to that.

6 **MS. WILLIAMS:** I do agree with Mr. Armstrong
7 that we have discussed that in our past meetings and
8 there is a problem with the Commission setting a rate
9 for this agreement between the parties.

10 **COMMISSIONER SKOP:** I have an idea.

11 **MS. WILLIAMS:** Again, that is a problem with
12 getting these documents at 9:30 in the morning. If
13 staff could possibly have ten minutes and come back with
14 a proposed issue and discuss this.

15 **COMMISSIONER SKOP:** I think I have a proposed
16 issue, but let me toss that out and maybe we will take a
17 five-minute break. We are going to be time pressed
18 here, because we still have to go through 27 or 30 other
19 issues. And I know somebody has got a 12:00 o'clock
20 flight, or needs to leave by 12:00, and, you know,
21 obviously we are going to try and entertain the parties.

22 As it pertains to Issue 2, before we break, it
23 is currently written as does the contract rate in the
24 2008 agreement cover FCG's incremental cost to serve
25 Miami-Dade. I know that has been agreed upon. My

1 inclination, based on what I have heard, would be to
2 keep that as it is, but I want to allow Commission staff
3 to turn that around and meet with the parties. But I
4 would propose taking what I heard Mr. Self on the word
5 recover, but also the comments heard from Mr. Gillman.
6 I would propose does the contract rate in the 2008
7 agreement allow FCG to recover FCG's incremental cost to
8 serve Miami-Dade? And that might tighten, you know, the
9 ambiguous term cover. I mean, I think I understand what
10 it means. I'm sure Mr. Self does, as Mr. Gillman, but
11 if we want to make it a little tighter, based on some of
12 the comments here, that may be a way to go. But I will
13 leave that to the parties.

14 So, with that, Staff, is it still your
15 preference to take a brief break and confer with the
16 parties and staff?

17 **MS. WILLIAMS:** I think you hit the nail on the
18 head. I think that is what we would want to accomplish
19 with that issue. I think that is what Miami-Dade, if
20 that is my understanding, what they are trying to
21 accomplish, and I think that is what Mr. Self was. I
22 will let them speak to that, but staff is okay with that
23 rewording of the issue.

24 **COMMISSIONER SKOP:** Okay. Well, I just
25 scribbled on the fly something to try and, you know,

1 take the best, you know, input from what I heard from
2 the parties and staff. But it's not my job to frame the
3 issues, unless it's absolutely necessary, so this is,
4 you know, the parties' issues, and if the parties could
5 get comfortable with that and if staff is comfortable
6 with that, then we may not need to take a brief recess.

7 Ms. Kummer, do you have anything to add, or is
8 that --

9 **MS. KUMMER:** No. I was just asking my
10 attorney here if your rewording, which I do agree
11 with -- I did misspeak earlier, and I apologize for
12 that. We did have the discussion about rates and that
13 we didn't want to go there, but I think your wording
14 satisfies staff's concerns, and it's my understanding
15 that would be in lieu of Miami-Dade's replacement issue,
16 that would not be in addition to.

17 **COMMISSIONER SKOP:** That would be, yes, in
18 lieu of the replacement issue and changing the wording
19 in the currently agreed-upon Issue 2. But, again, I
20 would look to the parties.

21 **MR. GILLMAN:** Why we have a little
22 consternation here, Commissioner, is that it seems like
23 this would possibly undermine the county's issue and
24 position that the contract can be approved as written by
25 the PSC, by the Commission. In other words, we are here

1 today because we have a contract that City Gas has
2 agreed to with this specific contract rate. And
3 regardless of whether it allows -- that contract rate
4 allows them to recover their incremental costs, you
5 know, shouldn't matter as far as whether that contract
6 is binding on City Gas, and that they should be, you
7 know, required to abide by it. And that the
8 Commission -- that goes back to the other issue, whether
9 the Commission has the authority to require City Gas to
10 absorb any difference in not recovering their
11 incremental costs.

12 **COMMISSIONER SKOP:** I understand. And as it
13 pertains to, again, Issue 2 only, I'm a little confused
14 because Issue 2 as currently framed, the proposed
15 suggestion or modification to that as agreed upon, the
16 parties trying to hash out what I have heard today,
17 instead of substituting or replacing Issue 2 as
18 Miami-Dade proposed, what is before me now at bench is
19 Issue 2 as agreed upon, and apparently the parties
20 really didn't like the term cover, so I attempted to try
21 and keep the same intent, but change the words just
22 merely, but it should have no change in meaning or the
23 position of Miami-Dade and the party.

24 Now, I think your point is well taken as to
25 deficiencies or what have you, and as we have discussed

1 and we will get to in due course, Issue 30 has some of
2 those things that, obviously, are relevant on that
3 point. But to suggest that I'm trying to impair
4 Miami-Dade's ability to argue relevant points, I'm not
5 doing that in any way. What I'm focused on, and laser
6 focused on right now is Issue 2, and trying to address
7 the tweaking of that cover word just ever so slightly
8 based on what I have heard to preserve Miami-Dade's
9 intent on the agreed-upon issue, recognizing that
10 replacement Issue 2 has been objected to by Mr. Self and
11 Commission staff.

12 **MR. GILLMAN:** Well, to the extent that we
13 would not be prejudiced by the language, we will accept
14 that.

15 **COMMISSIONER SKOP:** Okay. Well, I'm not
16 trying to prejudice anyone. Again, I can't -- I want to
17 make it abundantly clear, every argument that you have
18 raised, you know, with respect to what should happen
19 with the contract, or any, you know, cost differential
20 or something like that, those are arguments that I would
21 expect through the course of discovery and testimony
22 that your side would raise as it deems fit. And I'm not
23 trying to preclude that.

24 Now, if we do get to a situation where it's
25 way outside the scope of the docketed matter before us,

1 such as a full blown -- or the suggestion of a full
2 blown rate case, then I'm going to put the gavel down
3 and say, no, we are not going there. But, again, you
4 know, if it is germane and relevant to litigating the
5 issue as it pertains to establishing the incremental
6 cost to serve, then by all means that should be fair
7 game as well as discovery, but making those arguments.

8 **MR. GILLMAN:** Thank you.

9 **COMMISSIONER SKOP:** Okay. Mr. Self.

10 **MR. SELF:** Thank you, Commissioner. I think
11 the ultimate thing that Mr. Gillman is talking about is
12 Issue 5.

13 **COMMISSIONER SKOP:** Okay. We haven't gotten
14 there yet.

15 **MR. SELF:** And I understand that, but from a
16 structural standpoint, Issues 1, 2, 3, and 4 are really
17 the lead-up questions to 5, what is the incremental
18 cost; does the contract rate recover the incremental
19 cost; is by-pass an issue here; and what tariff would
20 authorize the agreement. Issue 5, their position can be
21 notwithstanding your decisions with respect to 1 to 4,
22 you need to approve the contract and here is why.

23 Our position would be, you know, obviously
24 something different. And I don't want to get into all
25 the substance of that. So I think they are more than

1 open to argue, especially by the time you get to Issue
2 5, a lot of the other things that they talk about that
3 they want to be able to discuss. The incremental cost
4 doesn't matter, whatever else it is, they can say you
5 can ignore what the incremental cost is in 1, and all
6 the other stuff that you have heard a couple of times
7 already today. I think your wording for Issue 2 works.
8 I will say that --

9 **COMMISSIONER SKOP:** If you all want to keep it
10 the same, I'm perfectly fine in keeping it as it is.

11 **MR. SELF:** I'm happy with the existing, maybe
12 change cover to recover, maybe that is just --

13 **COMMISSIONER SKOP:** But, see, recover doesn't
14 work in the currently written context, though, that is
15 what I'm saying.

16 **MR. SELF:** Yes.

17 **COMMISSIONER SKOP:** It just seems like recover
18 needs a few more little words in there to make it read
19 properly.

20 **MR. SELF:** And I agree with that. I just want
21 to put out there I certainly agree on one level that the
22 Commission is not going to -- in the event the
23 Commission disapproves the contract, then we have a
24 now-what-do-we-do situation that the parties face. And
25 I think the answers to some of these questions will be

1 helpful in the parties trying to decide what they want
2 to do next.

3 And I agree that probably the Commission can't
4 establish a rate in this case, but I have seen
5 situations in the past where the Commission has provided
6 guidance in saying, okay, now the parties need to go
7 negotiate, but here is the floor for that negotiation.
8 And I can't think of the order, but I can pull that out
9 for you later and send that to the parties, if you wish.
10 And that may be helpful. And all I'm trying to do is
11 consider what the possible outcomes are. Yes, one
12 outcome is the Commission approves the contract and
13 that's that, and whatever flows from that does. But
14 another possible outcome is that the Commission doesn't
15 approve the contract. And if that happens, where does
16 that leave the parties?

17 I don't want us spending another two years
18 bickering about what happens at that point in terms of
19 what that rate should be. So I think personally, to
20 be -- and I don't know if my client would approve, but I
21 just think to be intellectually honest, there may need
22 to be some issue or at least an agreement that one of
23 these other issues would afford the parties the
24 opportunity to ask the Commission and say, you know,
25 provide us some guidance as to what the rate should be

1 if the contract is not approved.

2 And I really think that's in Miami-Dade's best
3 interest as much it is the utility's, as well. Because
4 we are happy to charge them the tariffed rate, but,
5 quite frankly, and as we have said before, we don't want
6 to do that any more than they want to be subject to
7 that. So I just want to provide an opportunity for a
8 solution, especially if Miami-Dade doesn't get what they
9 want.

10 **COMMISSIONER SKOP:** Well, Mr. Gillman, ever so
11 briefly, because we need get the cart rolling on this
12 one.

13 **MR. ARMSTRONG:** Commissioner, what I would
14 like to do is say, to the extent that Mr. Self agreed to
15 your issue as restated, which I understand to be does
16 the contract rate in the 2008 agreement allow FCG to
17 recover FCG's incremental cost to serve Miami-Dade, we
18 would agree to that. So, I mean, we can agree if they
19 just agreed.

20 But I do want to -- there is one point,
21 Commissioner, that I do want to just clarify here, and
22 that is when Miami-Dade talks about this being a rate
23 case, we do not mean a full blown rate case. We are
24 talking about simply a single rate. What is the
25 incremental cost to serve us; what is their investment

1 in two miles of pipe; what is their operating cost for
2 that two miles of pipe. That is our point. You know,
3 we are not trying to do a whole full-blown rate case.

4 **COMMISSIONER SKOP:** I understand. But in
5 terms of the usage as the Commission entertains the word
6 rate case versus the incremental cost to serve, I think
7 it is apples and oranges. I think the better context
8 would be what is the incremental cost.

9 **MR. ARMSTRONG:** You're right.

10 **COMMISSIONER SKOP:** That is the focus. All
11 right. And, again, my lengthy discussion on this is
12 trying to give assurances to both parties that this is
13 going to be, you know, an open and transparent process
14 driven on the merits and the Commission will ultimately
15 make the decision, you know, sometime after I'm no
16 longer on the bench.

17 But, again, getting the data before the
18 Commission is the important part. It seems like both
19 parties are very cooperative and hopefully will continue
20 to be in allowing that to happen. So as it pertains to
21 Issue 2, again, I think we have got agreement, but I
22 don't want to frame the issue, so I'm going to give you
23 three quick options. We can leave it as it is currently
24 written; we can have it changing the word cover to
25 recover; or we can do it as I have articulated, does the

1 contract rate in the 2008 agreement allow FCG to recover
2 FCG's incremental cost to serve Miami-Dade. So which of
3 those three, the original as written, Mr. Self's, or
4 mine?

5 **MR. GILLMAN:** The last one is fine.

6 **COMMISSIONER SKOP:** Mr. Self?

7 **MR. SELF:** I agree.

8 **COMMISSIONER SKOP:** Very good. I like it.

9 All right. So Issue 2 as modified will now
10 read does the contract rate in the 2008 agreement allow
11 FCG to recover FCG's incremental cost to serve
12 Miami-Dade.

13 All right. So that takes us to Issue 3. Does
14 Miami-Dade have a viable bypass option. Any
15 disagreement on that issue? Hearing none, show it
16 adopted. Very good.

17 All right. Issue 4: What, if any, FCG tariff
18 schedule applies to the 2008 agreement for gas
19 transportation services to Miami-Dade? Any changes to
20 that?

21 **MR. GILLMAN:** That is fine.

22 **COMMISSIONER SKOP:** Okay. Hearing none, show
23 agreed Issue 4 adopted.

24 That takes us to agreed Issue 5: Should the
25 2008 agreement between Miami-Dade and FCG be approved as

1 a special contract? Any discussion on that?

2 **MR. GILLMAN:** That's okay.

3 **COMMISSIONER SKOP:** Okay. Staff, anything to
4 add on that? Okay. And so we will show Issue 5 agreed
5 issue to be adopted.

6 That takes us to Issue 6 on the agreed issues
7 list. In the absence of a special agreement, what
8 existing FCG tariff schedule applies to the natural gas
9 transportation service provided to Miami-Dade? Any
10 concerns on that? Staff. Hearing none from staff or
11 the parties, Issue 6 will remain as agreed to by the
12 parties.

13 That takes us to Issue 7. Based on the
14 Commission's decisions in this case, what monies, if
15 any, are due to Miami-Dade and/or FCG?

16 **MR. SELF:** Commissioner Skop, could I propose
17 a two-word addition? At the end of that, and I'm
18 available for rewrites, but add the words and when. The
19 situation we have is the utility has been charging
20 Miami-Dade the tariffed rate, since we believe there is
21 not a contract. Miami-Dade has been paying the contract
22 rate and holding the difference between the contract
23 rate and the tariffed rate in a reserve or a special
24 account, I forget the terminology they use.

25 And all we would want is if the ultimate

1 decision is that the contract is not approved, that the
2 tariffed rate was appropriate, then we would simply want
3 to know when we are going to get paid. And so we would
4 want to be able to argue how soon the payment of that
5 money being held in reserve would occur.

6 **COMMISSIONER SKOP:** Okay. Mr. Gillman.

7 **MR. GILLMAN:** Well, apply the same to us. I
8 mean, we paid money to City Gas under protest for
9 several months, and then since then we do believe that
10 we have a contract in place and in effect, and so we
11 have been paying the contract rate. And initially, we
12 had -- well, actually, we have continued since then to
13 place the disputed amount, which is the amount, the
14 difference between the contract rate and the alleged
15 tariffed rate that FCG has been charging the county in a
16 separate surrogate account. So, that amount, those
17 monies are accounted for, they are separately placed.

18 **COMMISSIONER SKOP:** So the disputed funds are
19 currently being held in escrow somewhere, is that right?

20 **MR. GILLMAN:** They are with the county in a
21 separate account.

22 **COMMISSIONER SKOP:** Okay. All right.

23 **MR. GILLMAN:** So we don't have a separate
24 escrow agent, but as a county, you know, I can show Mr.
25 Self exactly the amounts that we have held. And it's

1 bearing, you know, it's a low amount of interest, but it
2 is bearing some interest.

3 **COMMISSIONER SKOP:** I think everyone has
4 problems with that these days. Interest rates are so
5 low. All right. So, Mr. Self, if I understand your
6 proposed addition which, again, obviously Miami-Dade
7 would have to agree to, it would be after the word "if
8 any," insert the words and when. Is that generally what
9 you suggested, what monies, if any, and when are due
10 from --

11 **MR. SELF:** However it works best.

12 **COMMISSIONER SKOP:** Well, you guys tell me.
13 (Simultaneous conversation.)

14 **MR. GILLMAN:** We would ask for a refund from
15 City Gas.

16 **COMMISSIONER SKOP:** Right.

17 **MR. SELF:** And I think saying when would then
18 give them the opportunity say, and, you know, we should
19 get the refund in however many days they think is
20 appropriate. I just think it's important to not just
21 say how much, but, when is it due. And I think that
22 language gives both parties, depending on the outcome of
23 the case.

24 **COMMISSIONER SKOP:** Okay. My concern was not
25 necessarily that, but I think that is a good catch on

1 both parties' part, because not only, you know, what is
2 the amount, but, you know, how are we going to true it
3 up. A very good point, because left open ended, that is
4 a nature for a whole separate dispute.

5 My concern is what monies -- is there a better
6 way to say that, would it be what true-up, or what
7 monetary adjustment, or something like that. Are you
8 guys comfortable with what monies --

9 **MR. SELF:** I think we know what that means.

10 **COMMISSIONER SKOP:** -- or what amounts.

11 **MR. GILLMAN:** We just don't want to waive any
12 of our rights, though, Commissioner, to the extent we
13 want to proceed outside of the PSC, this venue, with
14 regard to those amounts. So we could leave the question
15 as it is.

16 **COMMISSIONER SKOP:** All right. That's fine.
17 So, basically, to bring this in for a landing here,
18 because we really have to move on to the disputed
19 issues.

20 Issue 7, based on the Commission's decision in
21 this case, what monies, if any, insert and when, are due
22 Miami-Dade and/or FCG. Are the parties good with that?
23 And, Ms. Williams, do you have something to add?

24 **MS. WILLIAMS:** I hate to throw a wrench in it,
25 but would it be possible to say based on the

1 Commission's decisions in this case, what monies, if
2 any, are due Miami-Dade and/or Florida City Gas, and
3 when should such monies be due?

4 **COMMISSIONER SKOP:** I have no problem with
5 that.

6 **MR. SELF:** Paid, instead of due.

7 **MS. WILLIAMS:** And when such monies should be
8 paid.

9 **MR. GILLMAN:** I think should be due.

10 **MR. SELF:** Either way is fine.

11 **MS. WILLIAMS:** I'm indifferent.

12 **MR. SELF:** Ms. Williams' wording is fine, too.

13 **COMMISSIONER SKOP:** Okay.

14 **MR. GILLMAN:** So such monies be paid.

15 **COMMISSIONER SKOP:** So, Ms. Williams, can you
16 please repeat that for the record as to what the parties
17 hopefully will agree on on Issue 7.

18 **MS. WILLIAMS:** Yes. "Based on the
19 Commission's decisions in this case, what monies, if
20 any, are due Miami-Dade Water and Sewer Department
21 and/or Florida City Gas, and when should such monies be
22 paid?"

23 **COMMISSIONER SKOP:** Okay.

24 **MR. SELF:** I'm good with that.

25 **COMMISSIONER SKOP:** Mr. Gillman?

1 **MR. GILLMAN:** Can we just add in there, either
2 at the beginning or at the end, and subject to Dade
3 County's or the parties' legal rights.

4 **COMMISSIONER SKOP:** I'm sorry, I didn't hear
5 you.

6 **MR. GILLMAN:** Subject to the parties' legal
7 rights.

8 **COMMISSIONER SKOP:** I'm not so sure that we
9 need to preserve that. I'm seeing head shaking from our
10 staff. I mean, if there is a compelling reason -- and,
11 again, it is not to prejudice any rights that the county
12 has outside of the Commission's jurisdiction. I think
13 the thing that gives me the most concern is the
14 Commission's jurisdiction in itself creates some, you
15 know, legal analysis which we don't need go there on.
16 But I think that may be overkill, and I'm trying to
17 facilitate consensus amongst the parties.

18 **MR. GILLMAN:** As long as, again, that we are
19 not waiving.

20 **COMMISSIONER SKOP:** I don't think you are
21 waiving anything by agreeing to the issue here. It's
22 not -- you know, it wouldn't even pertain to
23 jurisdiction outside the Commission, because I don't
24 have that jurisdiction. I only have jurisdiction for
25 within the statutory grant that the legislature gave.

1 So, Ms. Williams, one final pass at this so every party
2 hears it and we can agree to it, then we are moving on.

3 **MS. WILLIAMS:** All right. Issue 7, as
4 proposed, would be based on the Commission's decisions
5 in this case, what monies, if any, are due Miami-Dade
6 and/or Florida City Gas, and when should such monies be
7 paid.

8 **COMMISSIONER SKOP:** Agreement from the
9 parties?

10 **MR. SELF:** Yes.

11 **MR. GILLMAN:** Yes.

12 **COMMISSIONER SKOP:** Okay. Show it done. So
13 that takes care of the agreed issues list. Let's move
14 on to Appendix B now, which is on Page 4 of the notice
15 of Status Conference docket. And Appendix B is the
16 disputed issues list. And first we are going to deal
17 with the issues proposed by Miami-Dade, and the first
18 issue is Issue 8, whether Miami-Dade County is a
19 municipality for the purposes of Rule 25-9.034, Florida
20 Administrative Code.

21 I'll look to Mr. Gillman briefly.

22 **MR. GILLMAN:** At the last conference, I
23 believe we were going to receive a stipulation from
24 staff that we were a municipality for purposes of
25 25-9.034. So if we can get a stipulation, then we don't

1 need the issue.

2 **COMMISSIONER SKOP:** All right. Very well.
3 Mr. Self, briefly, and then I'll look to staff.

4 **MR. SELF:** I believe, Commissioner, that that
5 is what is in the order. So, you know, what's in the
6 order is in the order.

7 **COMMISSIONER SKOP:** Okay. And that's the crux
8 of the matter that I think staff needs to address,
9 because the Commission took this up before. I'm looking
10 at the order, and I will look to staff to address the
11 nuances of whether staff wants to stipulate to the issue
12 or whether we need to do something else.

13 Ms. Williams.

14 **MS. WILLIAMS:** Thank you, Commissioner.

15 I don't think staff wants to stipulate to this
16 issue because this staff has already been decided by
17 Order Number PSC-10-0671-PCO-GU, which was the order
18 determining jurisdiction. In that order, the Commission
19 determined that it had jurisdiction over this agreement,
20 and that order does state that Miami-Dade is a
21 municipality entitled to the rights and privileges of a
22 municipality under Florida law.

23 What staff's concern is with Issue 8 is we
24 believe Miami-Dade is asking the wrong question. The
25 issue is not whether Miami-Dade is a municipality for

1 purposes of the rule. The issue is whether this
2 particular contract between Miami-Dade and Florida City
3 Gas is subject to approval by the Commission, and that
4 was decided. Whether they are a muni under the rule or
5 not is irrelevant to the contract.

6 **COMMISSIONER SKOP:** Okay. Looking at Page
7 10 of that order that I have before me, it discusses
8 beginning on Page 10 at the bottom, Miami-Dade County is
9 a municipality, it recites it's entitled to the rights
10 and privileges available to municipalities, as you
11 stated. And then concluding on Page 12, the Commission
12 order, accordingly, the water and wastewater system of
13 Miami-Dade County is not subject to our regulation,
14 quote, as a utility, end quote, however, that does not
15 mean that we lack jurisdiction over a contract to which
16 Miami-Dade is a party.

17 So I think that what has been proposed as
18 Issue 8 has already been adjudicated by the Commission,
19 so my intent or desire is not really to include it. I
20 think it clutters the issue. I mean, certainly, if you
21 need to argue something, you are free to argue it in
22 your brief, testimony, cross-examination, but I think
23 the Commission has conclusively ruled on that by prior
24 order, and I don't want to rehash what the Commission
25 has already ruled upon.

1 So with that, unless there's any other
2 concerns, Issue 8 will not be an issue. All right.
3 hearing none, show that done. Issue 8 is not an issue.
4 If there are arguments that need to be made in briefs,
5 though, you know, the Commission has already ruled upon
6 it, but we don't really to need rehash the past. But if
7 you feel the need, feel free to do that at your own
8 discretion.

9 That takes us to Issue 9, whether Florida City
10 Gas/Miami-Dade gas transportation agreement is exempt
11 from Commission jurisdiction. Just to cut this, nip
12 this in the bud, I think that our prior order has
13 already adjudicated that. So unless there's any concern
14 to Issue 9, I don't believe that it would be appropriate
15 for Issue 9 to be included.

16 Mr. Gillman.

17 **MR. GILLMAN:** Commissioner, only to the extent
18 that the Commission didn't hear actually facts put into
19 the record, and as long as we can still provide factual
20 testimony as needed on this issue.

21 **COMMISSIONER SKOP:** Mr. Self, do you have any
22 problem with that? I mean, we have a prior Commission
23 order that, you know, adjudicates these specific issues.
24 Again, as I expressed, that it's not my intent to put
25 this in the specific issue, but I don't know anything

1 that would preclude Miami-Dade from arguing a change in
2 law or what have you within its briefs. I mean, if it
3 wishes to go there, withstanding the prior Commission
4 order.

5 **MR. SELF:** Well, they can certainly argue a
6 change in law. I don't know what facts changed the
7 legal conclusion. I think 8, 9, and 10 have all been
8 decided by the Commission in the order. You know, there
9 may be stuff that they would say as kind of an
10 explanation or background how the contract came about.
11 They are certainly entitled to discuss that in their
12 testimony.

13 **COMMISSIONER SKOP:** And, again, the Commission
14 has always been pretty liberal in terms of allowing
15 parties to write whatever. I mean, we are cognizant of
16 prior orders and prior rulings as well as our staff is.
17 So, you know, if it has been -- you know, take the
18 arguments into consideration, but, I mean, if it has
19 been adjudicated previously in the Commission order, I
20 think the Commission is smart enough to give it the
21 weight it is due. So with that, hearing no other
22 comments, Issue 9 will not be included.

23 And that takes us to Issue 10, whether FCG
24 should be equitably estopped from asserting that Florida
25 City Gas/Miami-Dade County gas transportation agreement

1 is not exempt from Commission jurisdiction. Again, the
2 same thing. I think the order addressed this. You
3 know, if there is a compelling reason, I'll look to Mr.
4 Gillman and hear from the parties, as well as Mr. Self,
5 but I think Mr. Self hit the nail on the head, that 8,
6 9, and 10 are pretty much covered conclusively by the
7 prior order. But, again, if there are some compelling
8 arguments that need to be raised in briefs, I don't want
9 to rehash the issues that we have already decided, but I
10 don't want to, you know, preclude Miami-Dade from
11 advocating what it wishes to advocate, even if the
12 Commission has already decisively ruled.

13 So, Mr. Gillman, any concern on 10?

14 **MR. GILLMAN:** No, that's fine.

15 **COMMISSIONER SKOP:** Great. Mr. Self.

16 **MR. SELF:** No, sir.

17 **COMMISSIONER SKOP:** Okay. Issue 10 will not
18 be coming in. I will leave it to Miami-Dade if they
19 want to continue to argue up against the prior
20 Commission order.

21 That takes us to Issue 11 through 14. I'll
22 take these individually. My view is that I'll hear from
23 the parties to afford them due process, however this
24 seems to be very substantially similar to the additions
25 that we discussed to Issue 1, so hopefully this won't be

1 a lengthy discussion. But, Issue 11, what are the terms
2 and conditions -- excuse me, what terms and conditions
3 are required to be included in the special contract with
4 Florida City Gas for gas transportation services.

5 Mr. Gillman, I'll let you speak on that
6 briefly, but it sounds like we are trying to define a
7 laundry list in agreements among the parties, and I'm
8 not so sure that even with the best effort you could
9 articulate every possible term and condition, so I'll
10 look to you on that one.

11 **MR. GILLMAN:** Sorry, Commissioner. I think
12 that is the whole point, though, is that we don't know
13 what are the terms and conditions for a special
14 contract. And here City Gas is telling us, you know,
15 this is a special contract, but yet it needs to go to
16 the Commission for approval. So that begs the question,
17 what are the terms and conditions required.

18 **COMMISSIONER SKOP:** Very well. Mr. Self.

19 **MR. SELF:** These are all subsumed within
20 Issues 1, 2, 4, and 5. They can discuss all of these
21 issues. We will have to discuss all of these issues, I
22 do believe. That is a position, I agree with Ms.
23 Kummer, trying to enumerate a specific list of
24 incremental costs as an issue is a waste of time. So I
25 would -- they can discuss all of these, absolutely, but

1 these will relate to their positions on those issues.

2 **COMMISSIONER SKOP:** Very well.

3 Having heard from the parties as well as Ms.
4 Kummer, I tend to agree with Mr. Self and Ms. Kummer.
5 Particularly on Issue 11, you know, to develop a
6 specific list or an express list of terms and
7 conditions, I'm not so sure that anyone can possibly get
8 that right to fit every possible situation.

9 I think that what would be more appropriate is
10 having the parties brief that issue and tell us what
11 should be included from their respective positions, and
12 that gives the Commission the insight to better
13 understanding the parties' positions. But also, again,
14 it's problematic to articulate in any order what these
15 terms and conditions would be on a forward-going basis,
16 and I have pause.

17 So Issue 11 will not be coming in, however,
18 the parties can advocate zealously, if they choose to do
19 so, what they feel should be the required elements, and
20 perhaps then everyone will learn from that process. I
21 look forward to reading the briefs, even though I won't
22 be on the Commission.

23 That takes us to Issue 12, what are the
24 standards for approving a special contract for gas
25 transportation. Again, I think that could be covered in

1 prefiled testimony and discussed at hearing, subject to
2 cross-examination as the parties see fit, but I will
3 hear from the parties in the interest of due process.

4 **MR. GILLMAN:** If I may, I would like to have
5 Mr. Armstrong address that.

6 **COMMISSIONER SKOP:** Yes. Mr. Armstrong.

7 **MR. ARMSTRONG:** And I will be brief,
8 Commissioner.

9 And I appreciate your giving us the
10 opportunity to put these on the record in terms of our
11 due process, but we are unable to decipher at all what
12 the standards are for PSC approval of these contracts.
13 And, you know, what we have repeatedly heard is the need
14 for the Commission and Commission staff to protect the
15 financial integrity of the utility, but what we need to
16 also know, though, is where in the standards of approval
17 does a situation like ours where we have a utility owned
18 and operated by a local government, the board of
19 directors of which is comprised of elected officials,
20 who are there are to stand up for and negotiate on
21 behalf of two million customers in this instance, and
22 the acknowledgment that the costs that we are forced to
23 pay to FCG get passed through to those customers. And
24 so I really think our only question is what is the
25 standard for approval? And, you know, Commissioner, so

1 far we don't have an answer.

2 **COMMISSIONER SKOP:** Okay. Very well. Thank
3 you.

4 Mr. Self.

5 **MR. SELF:** In Issue 5, they can discuss what
6 they think the standards are for approval, just as we
7 will argue what the standards are for approval and why
8 it shouldn't be approved. So they can discuss all of
9 that there. That is subsumed.

10 **COMMISSIONER SKOP:** All right. Very well.
11 Ms. Kummer or Ms. Williams, just briefly because we have
12 got a lot of these to move through.

13 **MS. WILLIAMS:** I agree that it's hard to have
14 a specific list of standards that the Commission will
15 look at. I think the Commission will look at the
16 contract as a whole, consider it in the public interest,
17 and I think that what the Commission considers will be
18 different in every case. I think when the parties will
19 have some idea of what the Commission did consider, and
20 what it does look at, and what standards it does apply
21 will be when they issue their order. And then in the
22 body of that order it will show what the Commission
23 values, sees as important, and includes in its
24 deliberative process about whether or not to include
25 that. So I don't think it's needed as an extra issue.

1 **COMMISSIONER SKOP:** All right. Very well.
2 And also staff feels that it would be subsumed in the
3 broader issues?

4 **MS. WILLIAMS:** Yes, especially agreed Issue 5.

5 **COMMISSIONER SKOP:** Okay. And just briefly to
6 Mr. Armstrong's point. Again, absent express statutory
7 authority as to what the criteria would be, such as in a
8 need determination proceeding for a power plant where
9 you have some express authority, you know, generally the
10 Commission, based on the record evidence, exercises its
11 discretion pursuant to its statutory authority to make
12 decisions that are in the public interest. So I think
13 that, you know, the Commission will exercise its
14 discretion and judgment as it deems fit based on the
15 record evidence pursuant to its statutory charge.

16 With respect to Issue 12, the standards,
17 again, as staff has articulated, as Mr. Self has brought
18 forth, those are arguments that need to be made for the
19 Commission to consider when it renders its decision, and
20 I don't think that it's appropriate to have that as a
21 stand-alone issue. I think it is subsumed within the
22 broader issues that have been mentioned. So certainly
23 at least latitude for Miami-Dade as well as Florida City
24 Gas to argue what the standards should apply, and then
25 the Commission should consider within its briefs or

1 prefiled testimony. So Issue 12 will not be coming in.

2 Issue 13, how should incremental costs be
3 defined for purposes of this proceeding. Again, I think
4 the same argument holds true for 13 and 14, but we will
5 consider 13.

6 Mr. Gillman, you're recognized, briefly.

7 **MR. GILLMAN:** Mr. Armstrong will also address
8 that.

9 **MR. ARMSTRONG:** Commissioner Skop, and I
10 could -- in the hopes of expediting, 13 to 18, my
11 comments would be the same. We have -- you've made it
12 abundantly clear, and we appreciate that, that we will
13 have the opportunity to present evidence, we will have
14 the opportunity to, to, you know, request and hopefully
15 get on the record what exactly these costs are for 13 to
16 18. And as long as we know that that is going to be
17 something specifically addressed and we'll have an
18 opportunity to review, you know, you've covered it,
19 Commissioner. So I can anticipate you're going to
20 reject the issues. And, you know, the company [sic], as
21 long as we have those rights, the company [sic] would
22 agree to -- I mean, the County would agree to withdraw
23 those issues at this point in time.

24 **COMMISSIONER SKOP:** Okay. All right. Well,
25 it, it seems essential to establish what the incremental

1 cost of service is to, to be able to obtain the
2 incremental parts of, of developing that, that cost
3 number. And so, again, defining those as separate
4 issues I think is overkill, noting that we have the
5 discovery process, the prefiled testimony, the
6 cross-examination process, the evidentiary hearing, the
7 post-hearing briefs, as well as the, the global issues
8 that these are all subsumed under.

9 So, Mr. Self, on Issue 13, any comments before
10 I make my ruling?

11 **MR. SELF:** No, Commissioner. I agree.

12 **COMMISSIONER SKOP:** Okay.

13 **MR. SELF:** No, Commissioner. I agree. 13 to
14 18 are all subsumed within existing issues, certainly
15 appropriate for discovery and testimony, and there will
16 be lots of discussion about these, I'm sure.

17 **COMMISSIONER SKOP:** Okay.

18 **MR. GILLMAN:** Commissioner, based on your
19 comments, the County would withdraw 13 through 18.

20 **COMMISSIONER SKOP:** Okay. Very, very well.

21 **MR. GILLMAN:** In light of the fact that they
22 will be, they're subsumed.

23 **COMMISSIONER SKOP:** That, that would expedite
24 things because they are subsumed. And otherwise I would
25 be inclined to disallow them as specific issues. So

1 that takes care of 13 through 18. They will not be
2 issues, but they are subject to discovery and testimony.
3 Specifically what has been framed as Issues 15 through
4 18 that Miami-Dade just withdrew, I would expect that
5 that would be appropriate for discovery, interrogatories
6 and testimony. So I'll let y'all handle it that way.

7 **MR. GILLMAN:** When you say, when you say
8 they're not issues, they're not separately delineated
9 issues.

10 **COMMISSIONER SKOP:** Not separately delineated
11 issues. They are subsumed --

12 **MR. GILLMAN:** But they are still issues that
13 could be addressed, will be addressed.

14 **COMMISSIONER SKOP:** They're subsumed within
15 the broader global issues that have been mentioned
16 ad nauseam here. But it preserves Miami-Dade as well as
17 Florida City Gas's right to pursue discovery
18 interrogatories, testimony on those specific issues as
19 they are subelements of the broader issue that is in
20 consideration by the Commission.

21 Okay. So that takes us to Issue 19 at this
22 point. And Issue 19 is currently disputed and framed as
23 whether FCG should have performed an incremental cost of
24 service study prior to entering into a special contract
25 for gas transportation services. And I'll look to

1 Mr. Gillman briefly, then Mr. Self, and then I want to
2 go to Staff on this issue because I think it does have
3 some merit.

4 **MR. GILLMAN:** This goes to the fact that City
5 Gas, you know, has provided different numbers with
6 regard to their incremental cost, and yet in their
7 answers to interrogatories they've specifically stated
8 that they've never performed an incremental cost of
9 service study. And, you know, we think it's important
10 for the Commission to address whether such a study
11 should have been performed prior to them entering into
12 this contract with us, with the County, especially when
13 City Gas has represented to the Commission and to the
14 Staff and to the County that the rate that they agreed
15 to meets their incremental cost, and yet there's been no
16 cost of service study performed.

17 **COMMISSIONER SKOP:** Okay. Mr. Self, and then
18 briefly to Staff.

19 **MR. SELF:** I think the issue is irrelevant.
20 But as a practical matter, Commissioner, it's going to
21 be discussed in the course of Issues 1, 2 and 5, all of
22 them or at least one of them. So I, I think the, I
23 think this point is a position and it's subsumed within
24 1, 2 or 5.

25 **COMMISSIONER SKOP:** Okay. To Commission

1 Staff, and, again, you know, if we were entertaining the
2 adoption of Issue 19, I think the wording, you know, you
3 know, calls for a conclusion as it's currently worded.
4 I think that you could probably reword it, "Did FCG
5 perform an incremental cost of service study prior to
6 entering," which is either a yes or a no as to be argued
7 by the parties, but I'd like to hear Staff's position.

8 **MS. WILLIAMS:** Staff's position on Number 19
9 is that that could be addressed under whether or not the
10 agreement should be approved, which is agree to Issue 5,
11 or Issue 30, when we get to that, if that does end up
12 coming in. If it were to stay, we would suggest
13 neutralizing the language such as you have proposed.

14 **COMMISSIONER SKOP:** Okay. On Issue 19, based
15 on hearing from the parties and hearing from Commission
16 Staff, I think that it could be subsumed, but I think it
17 also is a relevant question. I think that the language
18 would need to be neutralized. So what I would propose
19 is allowing Issue 19 as modified to state, "Did FCG
20 perform an incremental cost of service study prior to
21 entering into a special contract for the gas
22 transportation services?"

23 I'll look briefly to Mr. Gillman, then to
24 Mr. Self, but that's likely to be my ruling.

25 **MR. ARMSTRONG:** Very briefly, Commissioner.

1 We appreciate that. The modification would be fine.
2 You know, we certainly see this as an issue. In many
3 cases the Commission has issues of utility management,
4 and if a mismanagement is found, the utility is held
5 accountable and responsible for that activity and action
6 on their part, and that's what we're seeking in this, in
7 this issue to present to the Commission. And I can name
8 a number of orders where mismanagement represents poor
9 quality of service, and there's -- again, the utility is
10 held accountable. So we appreciate your issue.

11 **COMMISSIONER SKOP:** Okay. Well, I don't want
12 to get into the merits, but, again, I think it's a fair
13 question to ask because it's relevant to what's at issue
14 in the proceeding. But I wanted to be neutral so it's
15 not accusatory as it was proposed because it seems to
16 draw a conclusion for facts not yet in evidence. So I
17 just want to make it so it's a palatable issue, and I'll
18 look briefly to Mr. Self.

19 **MR. SELF:** Thank you, Commissioner. I'm still
20 opposed to the issue. I absolutely agree that the
21 revised language is more neutral and, to the extent
22 we're talking language for issues, more appropriate.

23 Again, I think they're more than able to argue
24 this under Issue 5 because that's what this really goes
25 to as to whether the contract should be approved or not.

1 And this is going to be something that they're going to
2 want to argue as a reason for why the contract should be
3 approved. So if you get a yes or a no answer to this, I
4 don't think that gets you any place in terms of the
5 Commission making decisions next year.

6 **COMMISSIONER SKOP:** And I appreciate your,
7 your thoughts and inputs on that. I think that
8 obviously it's like one of those -- as you stated,
9 Issues 1 through 4 get you to 5, which are some
10 background. And I think that this is properly framed as
11 rewritten as one of those background issues, even if
12 it's a yes or no, but it allows the respective parties
13 to argue, yes, we did, no, they didn't, or however the
14 parties choose to address that.

15 So what I would ask Staff to do is what's been
16 identified as disputed Issue 19 to be reworded, "Did FCG
17 perform an incremental cost of service study prior to
18 entering into a special service contract for gas
19 transportation" -- "prior to entering into a special
20 contract for gas transportation services," be included
21 but in one of those issues before Issue 5. So you're
22 going to have to kind of renumber those, but that seems
23 to be a background issue.

24 So when Staff gets into renumbering these
25 things, do you know what I'm kind of getting at?

1 **MS. WILLIAMS:** Uh-huh.

2 **COMMISSIONER SKOP:** Just because it says 19,
3 it won't be 19 in the final list of issues. And I would
4 expect it would come before Issue 5 that's been agreed
5 to already.

6 **MS. WILLIAMS:** Yes. Could I get you, however,
7 to repeat what you said? I've got -- I had rewritten
8 the issue and had "entering into the 2008 agreement with
9 Miami-Dade." So I didn't quite catch what your new
10 language was -- into the special service contract.

11 **COMMISSIONER SKOP:** No. For -- the, the
12 language as framed or revised would be, "Did FCG perform
13 an incremental cost of service study prior to entering
14 into a special contract for gas transportation
15 services?"

16 **MR. GILLMAN:** Of course that's with Miami-Dade
17 County. We all know that.

18 **COMMISSIONER SKOP:** All right. So,
19 Ms. Kummer.

20 **MS. KUMMER:** I would, I would just like to
21 specify that prior to the 2008 agreement, is that what
22 we're talking about in that issue?

23 **MS. WILLIAMS:** I think Staff's concern is
24 which contract, which service contract?

25 **MR. GILLMAN:** 2008.

1 **COMMISSIONER SKOP:** Okay. Two thousand --
2 prior to the 2008 -- if Staff can put in what words of
3 wisdom it needs and then I'll nod my head. But just
4 repeat it as Staff wants it. I'll look to the parties.

5 **MS. WILLIAMS:** Okay. Could I make a
6 suggestion just to clarify would be "Did Florida City
7 Gas perform an incremental cost of service study prior
8 to entering into the 2008 agreement with Miami-Dade?"

9 **COMMISSIONER SKOP:** Mr. Self, any problem with
10 that?

11 **MR. SELF:** I think that's fine, or the 2008
12 special contract.

13 **MS. WILLIAMS:** Just to specify --

14 **MR. SELF:** She should be consistent in the
15 language as to how we're referring to the 2008, whatever
16 it is.

17 **COMMISSIONER SKOP:** I agree. And I thought
18 that what I heard from Ms. Williams was directly on
19 point, so I'm fine with it as written. If there needs
20 to be an editorial tweak on keeping consistent language,
21 so be it. I'll leave that to Staff.

22 **MS. WILLIAMS:** Great.

23 **MR. GILLMAN:** We are fine with it,
24 Commissioner. To help to expedite this, we will
25 withdraw Number 20.

1 **COMMISSIONER SKOP:** Okay. All right. But,
2 again, just withdrawing 20 does not preclude Miami-Dade
3 from raising those arguments either in its briefs or in
4 its prefiled testimony. Okay?

5 Any other questions before we move on to
6 disputed Issue 21? And we've got about 25 minutes to
7 cover two pages of issues, so.

8 **MR. GILLMAN:** I may be able to squeeze out
9 'til like 12:10 maybe, perhaps.

10 **COMMISSIONER SKOP:** Okay. Well, I think
11 everyone wants to, to pursue this, but give it the
12 attention it's due.

13 So Issue 21, "Whether a competitive rate
14 adjustment is or should be available to FCG relating to
15 the 2008 agreement." Briefly, Mr. Gillman.

16 **MR. GILLMAN:** Just what's said there, Your
17 Honor. Whether that CRA should be available to them,
18 there's nothing in the agreement regarding the CRA, this
19 competitive rate adjustment.

20 **MR. ARMSTRONG:** Yeah. Commissioner, this
21 really applies to 21 and 22. I mean, and I will assume
22 and just would like a confirmation that this is, you
23 know, subsumed within the comments we've heard from you
24 earlier about the ability to put facts into the record
25 that would, we believe, affect the Commission's

1 consideration of prior issues like should the contract
2 be approved? There are facts that have come to light
3 since this process has been going on where, you know,
4 the company has chosen to start to bill us under a new
5 tariff schedule and stopped collecting a CRA
6 voluntarily, and we believe that those impact the
7 Commission's decision or should impact the Commission's
8 decision. So 21 and 22 are subsumed, we believe, within
9 one, as long as we have a reaffirmation of that fact
10 from the Commission.

11 **COMMISSIONER SKOP:** Okay. And that seems to
12 be -- again, my gut is a lot of these, with one or two
13 exceptions that we need to talk about, seem to be better
14 presented as arguments within briefs and testimony or,
15 you know, the course of discovery. But, again, we, you
16 know, if we can get consensus, we can move through it
17 quickly. But I don't want to deny the parties due
18 process to, you know, have me fully informed before I
19 rule on the merits as to what issues come in or stay
20 out.

21 So, Mr. Self, briefly on Issues 21 and/or 22,
22 because I think Mr. Armstrong addressed both of those.

23 **MR. SELF:** Commissioner, I believe we do need
24 a CRA issue in the case, and in fact Issue 36 is the one
25 additional issue that we had proposed. I'm not wedded

1 to any particular language. 36 in particular, my
2 verbiage got way wordier than it should be. But we need
3 a CRA issue because certainly when you talk about
4 incremental costs, when you talk about the contract
5 rate, bypass, what tariff, should the contract be
6 approved, I don't think it's inherently obvious in any
7 of those that there's a CRA aspect to all of this.
8 I'm -- if, if all we do today is agree there is some CRA
9 issue, you know, the language in 21 may be better than
10 my language in 36. I just think, given the fact that
11 the CRA isn't inherent in the contract itself, it's not
12 even mentioned in the contract, I just think the
13 Commission needs a CRA issue. Because, as Mr. Armstrong
14 pointed out and as is clear from 22, the utility did
15 stop charging its customers the CRA rate when we started
16 charging Miami-Dade the tariff rate. And so the
17 consequences of that decision need to be addressed by
18 the Commission, and as well as what happens on a
19 going-forward basis.

20 **COMMISSIONER SKOP:** All right. Very well.
21 And I think that that's a fair point. I think that, you
22 know, Issue 36 as proposed by Florida City Gas
23 certainly, I'll look to Staff here, but Issues
24 21 through 24 generally speak to the CRA, as does 36.
25 So with this I'll look to Commission Staff as to what is

1 Staff's preference whether we should adopt Issue 36 or
2 adopt Issues 21 through 24 or neither. So Ms. Williams
3 or Ms. Kummer.

4 **MS. KUMMER:** I think Issue 36 encompasses all
5 of those because that's the bottom line is should they
6 be allowed to collect CRA from anybody based on the,
7 whatever the rates turn out to be in this contract. So
8 I think 36 covers it. I believe they could make all of
9 their arguments under Issue 36.

10 **COMMISSIONER SKOP:** And that's consistent with
11 my thought process. I think 21 through 24 could
12 obviously be briefed, but I think that Issue 36 as
13 proposed by Mr. Self more succinctly addresses the
14 issue. And I'll look briefly to Mr. Gillman as to
15 whether that suits his clients' needs.

16 **MR. GILLMAN:** We're okay with that,
17 Commissioner.

18 **COMMISSIONER SKOP:** Okay. Very well. So
19 Issues 21 through 24 will be excluded. They will be
20 replaced by what has been agreed to by the parties by
21 Issue 36. And I believe that addresses the CRA aspect
22 of the docket.

23 So that takes us to Issue 25, whether the
24 tariff rate that FG or FCG unilaterally opposed on
25 Miami-Dade is unjust, unreasonable, excessive or unduly

1 discriminatory. Not to waste a whole lot of time, I'll
2 hear from the parties, I think that's better suited for
3 arguments rather than a specific issue. And,
4 Mr. Gillman, if you want to briefly respond.

5 **MR. GILLMAN:** As long as we can make the
6 argument. However, the tariff rate that they've imposed
7 on us, as we stated before, ends up costing the County
8 and its ratepayers over 700 percent more than what we
9 agreed to. And so the question becomes does that, is
10 that rate now something that's unjust and unreasonable
11 and excessive, especially in light of the fact that, you
12 know, what the incremental cost is to serve us and what
13 that rate is, there's a huge disparity between those.

14 **COMMISSIONER SKOP:** All right. And Mr. Self
15 in the interest of fairness, and then we're going to try
16 and move through this pretty quickly from here on out.

17 **MR. SELF:** It's an approved tariff rate. I
18 think they can argue what Mr. Gillman just said under
19 Issues 4, 5, 6. So he's certainly free to argue that
20 point, but I think that's already covered. Clearly this
21 language I think is the wrong kind of language for an
22 issue anyway, but that's a different issue.

23 **COMMISSIONER SKOP:** I understand. And just to
24 expedite this, you know, having heard from the parties
25 on Issue 25 -- and, you know, generally speaking --

1 we'll get to 26 through 29 as a block also -- but on 25,
2 that is subsumed within the global issues. Certainly
3 it's central or appears to be central to Miami-Dade's
4 arguments that it would want to raise within its
5 testimony and its, you know, briefs. So you're not
6 precluded from, from arguing that point.

7 But, again, I don't think it's appropriate to
8 have that as an issue and the wording gives me some
9 concern. So I'm going to exclude Issue 25, but preserve
10 the ability of Miami-Dade to argue and advocate for why
11 the, you know, its concerns on that, on that point. So
12 let's look at Issues 26 through 29 as a group.

13 Again, some of the questions there, as we've
14 had the discussion, seem better suited to discovery
15 testimony, cross-examination at hearing and briefs. So
16 I want to hear briefly from the parties as to Issues 26
17 through 29, and then I'll make my ruling on that.

18 So, Mr. Gillman, you're recognized.

19 **MR. GILLMAN:** 26 goes back to whether, you
20 know, what is the proper and appropriate schedule for
21 the County. And in light of the County being the
22 largest transportation customer and, you know, the fact
23 of in light of the, you know, small amount of
24 infrastructure or pipe that, that City Gas has to
25 transport the County's gas to the County. And 27 goes

1 back to whether their increase, you know, their
2 670 percent increase is reasonable. 28, that refers to
3 their obligation to act in good faith with regard to
4 many of their actions. For example, not going ahead and
5 following through and having the Commission two years
6 ago hear this matter and issue a ruling.

7 **COMMISSIONER SKOP:** I don't, don't mean to cut
8 you off. I don't want to get into the matters. I mean,
9 I'm well versed --

10 **MR. GILLMAN:** Okay. And 29, you know, goes
11 back to AGL and their interest in this matter, since AGL
12 is the one that, you know, that bills us, that handles,
13 you know, essentially these accounts.

14 **COMMISSIONER SKOP:** I understand. Mr. Self,
15 briefly.

16 **MR. SELF:** 26, 27 and 28, he used almost the
17 same words that is in Issues 4, 5 and/or 6 as
18 applicable, so those are covered.

19 Issue 29, AGL Resources is not a party to the
20 docket. The Commission doesn't have any jurisdiction
21 over AGL Resources, and so any issue with respect to AGL
22 is irrelevant, inappropriate, it's not within the scope
23 of their complaint, which doesn't name AGL Resources, so
24 we just need to stick to Florida City Gas because that's
25 the regulated utility.

1 **COMMISSIONER SKOP:** Okay. Staff, briefly.

2 **MS. WILLIAMS:** We agree with Florida City Gas.

3 **COMMISSIONER SKOP:** Okay. All right. Very
4 well.

5 On Issues 26, 27, 28, they're subsumed by
6 global issues. The parties are free to, to argue their
7 positions either in prefiled testimony or briefs or
8 discovery, whatever they need to do on those. But on a
9 standalone basis they do not need to be issues as
10 they're subsumed within global issues.

11 Issue 29, I agree with Mr. Self. Unless,
12 Mr. Gillman, you have a compelling argument why AGL
13 Resources should be even involved, I'm going to put the
14 gavel down on that one and say, you know, it seems to me
15 that the, the appropriate party to this proceeding is
16 Florida City Gas, and we should probably limit it to
17 that, not any affiliates or parents. So any concerns or
18 do you concur with Mr. --

19 **MR. GILLMAN:** The concern is the, what amount
20 of costs or revenues flow upstream to AGL. And, you
21 know, to the extent AGL is, you know, it's the Vice
22 President of AGL that signed off on these agreements.

23 **COMMISSIONER SKOP:** Okay. Let's --

24 **MR. GILLMAN:** AGL is intertwined, inextricably
25 intertwined in this matter. I'm not sure how you can

1 separate them.

2 **COMMISSIONER SKOP:** All right. Let me, let
3 me -- not to cut you off, but again we are time pressed,
4 so I'm going to try and use my knowledge of what I think
5 you're arguing to articulate and then go briefly to
6 Mr. Self before I make my ruling.

7 I think you've asserted that the President or
8 Vice President of the parent, AGL, signed off on the
9 contract, which would make it relevant. As to the
10 financial interest, are you trying to articulate that in
11 terms of the incremental cost, some of that cost may be
12 allocations burden (phonetic) from the parent down to
13 the subsidiary?

14 **MR. GILLMAN:** Yes.

15 **COMMISSIONER SKOP:** Okay. Mr. Self, to that
16 specific point, because I think that those, while it may
17 not be a separate issue, it may be fair game for
18 discovery.

19 **MR. SELF:** And I would agree, I would agree
20 with that, Commissioner. If we're talking about costs
21 allocated from a parent, affiliate, whatever, FCG, that
22 are into the incremental costs, then that's fair game.

23 **COMMISSIONER SKOP:** Okay. All right. So
24 here's my ruling on Issue 29. It will not be a separate
25 issue. Some elements as it pertains to establishing

1 what the incremental cost should be in terms of
2 corporate allocations may be relevant and ripe for
3 discovery, testimony as the parties see fit. And also
4 who is a signatory to the underlying contract is
5 certainly ripe for discussion. But beyond that, again,
6 I think we need to limit it to those specific points
7 that are relevant to either the underlying contract or
8 the issue as it pertains to establishing what the
9 incremental cost of service is.

10 But beyond that, you know, if we're going to
11 go the CEO made \$10 million a year, I think that's kind
12 of getting outside the scope unless you can tangibly
13 relate it back to that's affecting the incremental cost
14 of service. So I'll give you latitude, but don't, don't
15 overextend on that.

16 **MR. GILLMAN:** I was thinking more of revenues
17 that are, that are sent upstream too.

18 **COMMISSIONER SKOP:** Okay. Cash calls, that's
19 fair game. You know, if it has something to do with
20 affecting what's at issue, with is the incremental cost
21 of service, it should be ripe for discovery, as well as,
22 you know, advocacy as to the costs are higher or lower
23 than they need to be without taking a position on that.
24 But I thought that that was a good vetting by both the
25 parties to, to better understand the position. And so

1 it will not be a separate issue but it is ripe for
2 discovery within certain limitations, as I've
3 articulated.

4 That takes us to Issue 30. Issue 30, I have
5 issues in principle with the way it's written. I will
6 look to Commission staff after hearing from the parties.
7 But as we've discussed and as Mr. Gillman has raised in
8 the separate submittal for the one-page document
9 provided about the legal issue and the ensuing
10 discussion we had about that earlier, Issue 30 does seem
11 to have some merit. So, Mr. Gillman, briefly because I
12 know what your positions are. We've just got to look at
13 the wording.

14 **MR. GILLMAN:** I think I've already stated,
15 Commissioner, just the fact that, you know, to the
16 extent they signed the contract, and I think
17 Mr. Armstrong mentioned before if, if they signed a
18 contract with a third party supplier and they brought
19 the contract to the Commission for approval and the
20 Commission felt that they were, that City Gas had agreed
21 to pay a very high unreasonable amount, City Gas would
22 not be able to pass that on to their customers. They
23 would have to be the ones to absorb that. And the same
24 thing would hold true here.

25 **COMMISSIONER SKOP:** And it seems as if Issue

1 30, you know, begs the question as to, you know, if
2 there is a cost differential, you know, what discretion,
3 if any, should the Commission use to, to address that in
4 the interest of, you know, looking at the, the public
5 interest and as well as the interest of the parties?
6 Mr. Self briefly, then I'm going to go to Staff and see
7 where we fall on this issue.

8 **MR. ARMSTRONG:** Commissioner Skop, can I just
9 mention one thing too? Issue 36 that we agreed to, this
10 seems to be the flip side. And since the, you know, the
11 County has agreed to 36, it would seem that this would
12 be appropriate for the Commission to also consider.
13 Thank you.

14 **COMMISSIONER SKOP:** All right. Mr. Self,
15 briefly.

16 **MR. SELF:** I, I strongly disagree about this
17 issue. I think it goes back to AGL and stuff that's
18 irrelevant. To the extent that there's something in
19 here that is relevant, I think they can already address
20 it within Issue 5.

21 **COMMISSIONER SKOP:** Okay. To Commission
22 Staff, I think we've had some discussion about the
23 similarity of the legal issue and the one-page document
24 to 30, and that Staff had some inclination to concede
25 that Issue 30 might be appropriate but the current

1 wording is not appropriate. So, Ms. Williams, if you
2 could speak to that and Ms. Kummer.

3 **MS. WILLIAMS:** Thank you. Staff does believe
4 that this issue is relevant if it were reworded
5 substantially. The language that Staff would propose
6 would be, "Should the Commission disallow cost recovery
7 for the differential, if any, between Florida City Gas
8 revenue under the 2008 agreement and Florida City Gas's
9 incremental cost to serve Miami-Dade?"

10 The concern that we have with the issue as
11 proposed by Miami-Dade is the, quote, require the
12 company to absorb or require the shareholders to absorb.
13 The Commission can't do that, but the Commission can
14 disallow cost recovery, meaning that they could approve
15 the contract and allow the utility to, as they say,
16 absorb, but I don't like that language, and just not
17 recover the cost from its ratepayers.

18 **COMMISSIONER SKOP:** Great minds think alike.

19 To the parties, Ms. Williams, if you could
20 just repeat the proposed rewording of the issue, and
21 then I'll briefly look to the parties and make my ruling
22 because we've got about ten minutes left.

23 **MS. WILLIAMS:** Okay. The proposed issue would
24 be, "Should the Commission disallow cost recovery for
25 the differential, if any, between Florida City Gas's

1 revenue under the 2008 agreement and Florida City Gas's
2 incremental cost to serve Miami-Dade?"

3 **COMMISSIONER SKOP:** Mr. Gillman, briefly.

4 **MR. GILLMAN:** We accept that.

5 **COMMISSIONER SKOP:** Mr. Self.

6 **MR. SELF:** I need for her to read it one more
7 time. I'm sorry.

8 **COMMISSIONER SKOP:** Ms. Williams, one more
9 time a little slowly.

10 **MS. WILLIAMS:** That's okay. If you need me to
11 stop, let me know.

12 "Should the Commission disallow cost recovery
13 for the differential, if any, between Florida City Gas's
14 revenue under the 2008 agreement and Florida City Gas's
15 incremental cost to serve Miami-Dade?" Did you get it
16 that time?

17 **MR. SELF:** Yes. I appreciate that very much.

18 **MS. WILLIAMS:** Okay. No problem.

19 **MR. SELF:** That language is infinitely better
20 than 30. I still don't think the issue is appropriate.

21 **COMMISSIONER SKOP:** So noted, Mr. Self. I
22 appreciate your comments. After hearing from the
23 parties and Commission Staff, it's my ruling to adopt
24 the revised language for Issue 30. And that will be
25 renumbered as appropriate and inserted in the proper

1 logical order when we consolidate the issues that have
2 been approved. So if it needs to come in before 5 or
3 after 5 or wherever staff deems it to be appropriate so
4 it follows in logical order, that's my ruling.

5 Okay. That takes us to Issues 31, 32, 33, 34,
6 35. I want to take those as a block because again the
7 wording of those issues, it draws conclusions that the
8 language of the issues would probably be offensive to
9 Mr. Self and his client, notwithstanding the fact that
10 they're ripe to be argued if the County so wishes to
11 make those arguments. But I don't believe personally
12 that they need to be separate issues because I think
13 they're subsumed in global issues. But, moreover, it
14 would take us probably an hour to address language
15 changes that would make those more neutral, if at all
16 that could be accomplished.

17 **MR. GILLMAN:** Miami-Dade will agree to
18 withdraw those in light of the fact that they are
19 subsumed under the global issues.

20 **COMMISSIONER SKOP:** All right. Very well.
21 Mr. Self, do you have any objection to that?

22 **MR. SELF:** No objections.

23 **COMMISSIONER SKOP:** All right. Very well. So
24 basically 31, 32, 33, 34, 35 will not be included as
25 separate issues. They may be argued by the parties as

1 they deem appropriate. 36 has already been included.

2 So I believe, Staff, that takes us to one
3 remaining issue, which is on the document provided by
4 Miami-Dade, the one-page submittal this morning. I
5 think we've addressed the additions to Issue 1 which we
6 denied. We denied the replacement of Issue 2, we denied
7 the addition of Issue 4a, which seems to offer potential
8 solutions as next step alternatives but presents due
9 process arguments in this docket.

10 I think we covered the legal issue at the top
11 of the page as it pertains to part of it being subsumed
12 and part of it being covered within Issue 30 which we
13 just addressed.

14 So I believe that leaves us with only one
15 remaining issue, and that's the new issue at the bottom
16 of that page, and I just want to refresh my memory on
17 Staff's position, the position of the parties, then I
18 think we're content to bring this in for a landing. So
19 Ms. Williams.

20 **MS. WILLIAMS:** With respect to the new issue,
21 it's Staff's position that, A, the language is not
22 neutral nor is it objectively worded. And, two, that
23 this issue could be presented as an argument properly
24 under Issue 5 or Issue 30 that you've voted to include.

25 **COMMISSIONER SKOP:** Very well. Mr. Gillman.

1 **MR. GILLMAN:** Well, maybe we can reword it to
2 make it more neutral, but we think it's important that
3 the prior conduct of FCG be taken into account and be
4 heard by the Commission and actually specifically
5 addressed by the Commission. And this, again, maybe we
6 can reword it, but there should be an issue before the
7 Commission that would address their, their action.

8 **COMMISSIONER SKOP:** All right. Mr. Self,
9 briefly.

10 **MR. SELF:** At best it's an argument under 5
11 and/or 30.

12 **COMMISSIONER SKOP:** Thank you. After hearing
13 from the parties and Commission Staff, I tend to agree
14 with Commission Staff as well as Mr. Self that it is a
15 proper argument to be made. I think that upon making
16 that argument, certainly that would be sufficient to put
17 the Commission on notice as to past conduct and the
18 Commission could draw its own inferences based upon the
19 arguments from both parties. But to have that as a
20 separate issue I don't feel is appropriate because I
21 feel that it is subsumed, but, you know, certainly ripe
22 for making an argument as, as the parties see fit as to
23 why that past conduct is either relevant or not relevant
24 in terms of the Commission's deliberations.

25 And, Ms. Williams, do you have anything to add

1 before we move forward?

2 **MS. WILLIAMS:** I have a question about Issue
3 31.

4 **COMMISSIONER SKOP:** Okay.

5 **MS. WILLIAMS:** If we could just very quickly,
6 I know that Miami-Dade said that they withdrew
7 voluntarily Issues 31 through --

8 **COMMISSIONER SKOP:** 35.

9 **MS. WILLIAMS:** -- 35. But is it my
10 understanding you ruled that they could still present,
11 regarding Issue 31, testimony about potential
12 overearnings?

13 **COMMISSIONER SKOP:** Again, if they want to --
14 my intent of my ruling, and, you know, I'm certainly --
15 you know, I make mistakes, so I'm certainly willing to
16 entertain additional discussion if I've overlooked a
17 salient point.

18 However, my intent was to allow them to raise
19 that argument, if they wish to do so. But, again, given
20 the speculative nature, we're not in a rate proceeding,
21 we're not in an overearnings proceeding. But, you know,
22 it seems as if -- you know, I don't want to preclude
23 them from making an argument because I don't want it to
24 be an appellate issue of denial of due process, but that
25 doesn't necessarily mean that it's ripe for this docket.

1 **MS. WILLIAMS:** Thank you. That was the
2 clarification I was looking for.

3 **COMMISSIONER SKOP:** All right. Any concerns
4 from the parties on that? Okay. All right. All right.

5 So my ruling as it pertains to the new issue
6 sought to be introduced by Miami-Dade in its one-page
7 submittal this morning is to deny that as a separate
8 issue because it's subsumed within the global issues,
9 and they can argue that, present those arguments as the
10 parties deem appropriate.

11 So I believe that concludes all of the issues
12 before us, unless I've overlooked something. And I'll
13 look to the parties. Any other issues that we need to
14 discuss before we move on?

15 Mr. Self, you're recognized.

16 **MR. SELF:** Thank you, Commissioner. I'm good
17 with the issues. I want to bring up something new, if
18 this is the time to do that.

19 **COMMISSIONER SKOP:** Very briefly.

20 **MR. SELF:** Okay. On the procedural order that
21 was issued yesterday, and I understand from Staff there
22 was a newer version issued today, on page four with
23 respect to discovery, the order says, "Further, any
24 specific objections to discovery, to a discovery request
25 shall be made within 15 days of service of the discovery

1 request." I would like to ask that that be taken out as
2 a requirement. In all the years I've been doing this,
3 that's a gigantic waste of time. My managing partner is
4 happy for us to do that, but it doesn't make clients
5 happy. I've never, ever seen anybody raise anything
6 that came out of those preliminary objections because we
7 have a 20-day response time on the discovery responses
8 at which time we have to obviously provide objections
9 and responses at that period of time. That's the
10 document that people, to the extent that they want to do
11 motions to compel or whatever, that's the document you
12 would use, not the preliminary objections. Telling the
13 other side I'm going to -- because I end up objecting to
14 everything. And, like I said, it's a great billable
15 hour exercise, but it's, it's not fair to the other
16 party or the clients.

17 **COMMISSIONER SKOP:** It's just a blanket global
18 objection I guess.

19 All right. Mr. Gillman, to Mr. Self's
20 suggestion, and then I'll look to Commission Staff.

21 **MR. GILLMAN:** Just to understand, you're
22 referring to specific objections to discovery requests?
23 And what you want, Floyd, is to have the Rules of Civil
24 Procedure apply.

25 **MR. SELF:** Yeah. When, when you make your

1 response, you would give objections to the extent you're
2 going to object to any of the responses. In the past I
3 think they've referred to this as like preliminary
4 objections. Well, if I tell you I'm going to object to
5 everything and then five days -- before you could file a
6 motion or do anything, I'm going to give you the actual
7 document that has my real objections and responses, so.

8 **MR. GILLMAN:** I tend to agree.

9 **COMMISSIONER SKOP:** All right. To Commission
10 Staff.

11 **MS. WILLIAMS:** I think this is something we've
12 always put in there. But if the parties wanted to agree
13 to waive it, I think it would be fine, so long as
14 there's some way that it could come to Commission
15 Staff's attention that there was an objection to
16 specific requests.

17 **COMMISSIONER SKOP:** All right. Ms. Helton,
18 anything to add to that?

19 **MS. HELTON:** I agree with Mr. Self that this
20 is a process that is sometimes, sometimes abused. I
21 think we have gone back and forth over my time here at
22 the Commission with respect to whether we include that
23 language in the orders establishing procedure or not. I
24 am comfortable, given that there's a 20-day turnaround
25 time for discovery, in my mind it makes sense,

1 especially since the parties agree to remove that
2 requirement from this particular proceeding. I might
3 not always agree in the future.

4 **COMMISSIONER SKOP:** All right. Very well.
5 And we don't want this to be a trend setting exercise.
6 The reason that the provision will be stricken from the
7 Order Establishing Procedure is that the parties have
8 waived that specific provision. But as Ms. Helton has
9 articulated, during my four years on the bench, I've
10 seen, I don't want to say abuse but, you know, it seems
11 like every time something is filed it's just a global
12 blanket objection, which really means nothing because
13 you cite no basis for objection. It's just a
14 placeholder followed by the separate piece of paperwork.
15 So it's, as Mr. Self indicated, it's probably good for
16 billable hours but good for little value to the clients.

17 **MR. SELF:** I think when -- I think it was
18 Commissioner Davidson that came up with this a long,
19 long time ago in a PSC far, far away. It may have made
20 some sense when you were responding in 30 days. But,
21 like I said, in five days before the other side could
22 put together a motion to compel or anything you'd have
23 the actual responses and --

24 **COMMISSIONER SKOP:** All right. Mr. Gillman,
25 briefly.

1 **MR. GILLMAN:** Going to a different subject
2 similar.

3 **COMMISSIONER SKOP:** Okay.

4 **MR. GILLMAN:** Going to the schedule that we
5 have on page nine, I see that December 20th is the date
6 for direct testimony. And we would just respectfully
7 request a brief extension of time for that.

8 **COMMISSIONER SKOP:** What, what extension are
9 you requesting, to what date?

10 **MR. GILLMAN:** Well, at least five days for
11 providing that direct testimony.

12 **COMMISSIONER SKOP:** Okay. Well, we've got the
13 Christmas holiday in between there. Ms. Williams,
14 briefly. I don't have a docket calendar in front of me,
15 but --

16 **MS. WILLIAMS:** I don't either. I would
17 suggest that that is something we can do via phone and
18 the parties and agree to possibly shift the dates a
19 little bit.

20 **COMMISSIONER SKOP:** What's the, the lead time
21 in terms of impacting Staff's scheduling that Staff may
22 have problems with in terms of taking this to hearing?
23 Do we have margin? I don't want to put you on the spot,
24 but it boils down to that. If Staff doesn't, if Staff
25 doesn't have margin in the schedule, the schedule is

1 what it is, but.

2 **MS. WILLIAMS:** It was our understanding this
3 is the schedule, but we can try to work with the parties
4 to make changes. And if so, we can then come to you for
5 a revision to the OEP.

6 **COMMISSIONER SKOP:** All right. Very well.
7 Mr. Self, if, if you don't have a problem with that,
8 we'll seek to try and accommodate the parties within the
9 range of margin that the Commission has. But with the
10 holidays approaching, I don't know when this, thank you,
11 I don't know when this is set for hearing, but, you
12 know, I think that if, if the Commission Staff has the
13 margin, we'll work with the parties to accommodate that.
14 And I'll freely sign it, if the parties --

15 **MR. GILLMAN:** And that is one of the issues.
16 You know, with the holidays coming up, you know, that we
17 need some additional time.

18 **COMMISSIONER SKOP:** I understand. And we've
19 tried to accommodate that. I think we had an issue last
20 year when Public Counsel needed a little bit more time
21 with all the dockets and things that were going on. So
22 if we have the margin and it does not inconvenience or
23 disadvantage Staff, we'll try and accommodate it to the
24 best of our ability.

25 **MR. GILLMAN:** Thank you.

1 **MR. SELF:** For the record, I'm okay with a
2 couple of days and we can, we'll work that out.

3 **COMMISSIONER SKOP:** Days are okay. Weeks,
4 that gets a little bit dicey.

5 So, Ms. Williams, anything to add?

6 **MS. WILLIAMS:** And I think we're okay with
7 working. We just wanted to get the OEP out there so
8 that the parties could have, get started and have some
9 idea of what's expected of them.

10 **COMMISSIONER SKOP:** Okay. So what the plan of
11 attack is is by waiver of the parties we've agreed to
12 strike the 15-day preliminary objection thing. There's
13 still some critical dates for discovery -- I mean,
14 filing the testimony, I'm sorry, not discovery, but the
15 testimony filing date. And Staff will work with the
16 parties and then they'll issue a revised Order
17 Establishing Procedure and I think that'll address both
18 the concerns I've heard. And if I've got that wrong,
19 somebody speak up now. Okay. Good.

20 All right. So I think that takes care of all
21 the issues. Staff, are there any other issues or any
22 other matters that we need to consider prior to
23 adjourning?

24 **MS. WILLIAMS:** Staff has none.

25 **COMMISSIONER SKOP:** Okay. To the parties,

1 anything?

2 **MR. GILLMAN:** We have none.

3 **MR. SELF:** Nothing further. Thank you.

4 **MR. GILLMAN:** Thank you very much.

5 **COMMISSIONER SKOP:** Okay. And then the order
6 memorializing the decisions will be issued, and I'll
7 look to Staff to that. I imagine it would come in short
8 order, but we've discussed a lot. But, Ms. Williams, if
9 you could briefly speak to that.

10 **MS. WILLIAMS:** It's coming as soon as I can
11 write it. I'll have it -- I'm trying to get it out as
12 quickly as possible so that the parties know and have in
13 writing what needs, how the testimony needs to be
14 defined. So I'll try to get that as soon as I can.

15 **COMMISSIONER SKOP:** All right. Very well.

16 With that, I just want to commend the parties.
17 Obviously the parties are trying to protect their
18 positions. I understand that. I go to great lengths to
19 try to have status conferences or prehearings, sometimes
20 they go for hours, but it's important to me to, you
21 know, to hear from all the parties, have a thorough
22 vetting so that everyone gets a fair process and the
23 Commission can make the best decision on the merits.
24 This is my last status conference or prehearing, so I
25 appreciate the cooperation of the parties in making that

1 a pleasant event. And it looks like we'll try and get
2 everything, everyone out of here on time. But before we
3 depart, I want to wish everyone a Happy Holidays and a
4 prosperous New Year. So thank you, and we stand
5 adjourned.

6 (Status Conference adjourned at 12:04 p.m.)
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1 STATE OF FLORIDA)
 2 : CERTIFICATE OF REPORTERS
 COUNTY OF LEON)

3 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR,
 4 Official Commission Reporters, do hereby certify that
 the foregoing proceeding was heard at the time and place
 herein stated.

5 IT IS FURTHER CERTIFIED that we stenographically
 6 reported the said proceedings; that the same has been
 transcribed under our direct supervision; and that this
 7 transcript constitutes a true transcription of our notes
 of said proceedings.

8 WE FURTHER CERTIFY that we are not a relative,
 9 employee, attorney or counsel of any of the parties, nor
 are we a relative or employee of any of the parties'
 10 attorneys or counsel connected with the action, nor are
 we financially interested in the action.

11 DATED THIS 13th day of December, 2010.

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