

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Miami-Dade County through
The Miami-Dade Water and Sewer Department
for Approval of Special Gas Transportation
Service Agreement with Florida City Gas

Docket No. 090539-GU

(FULL VERSION)

DIRECT TESTIMONY

OF

JOSEPH A. RUIZ

**ON BEHALF OF MIAMI-DADE COUNTY WATER AND SEWER
DEPARTMENT**

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DIRECT TESTIMONY
OF
JOSEPH A. RUIZ, JR.
TO
THE STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

RE: In re: Petition of Miami-Dade County through
The Miami-Dade Water and Sewer Department for Approval of Special Gas
Transportation Service Agreement with Florida City Gas

Docket No. 090539-GU

December 29, 2010

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MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 Q: PLEASE STATE YOUR NAME AND ADDRESS.

2 A: My name is Joseph A. Ruiz, Jr. and my business address is 3071 SW 38th Avenue, Miami,
3 Florida 33146.

4 Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

5 A: I am employed by Miami-Dade County and I am currently the Deputy Director for
6 Operations for the Miami-Dade Water and Sewer Department.

7 Q: WHAT ARE YOUR RESPONSIBILITIES AS DEPUTY DIRECTOR FOR
8 OPERATIONS?

9 A: I am responsible for all Department operations including water production (8 plants, 100
10 wells and nearly 6000 miles of transmission mains); wastewater collection (4000 miles of sewer
11 pipe, 1035 pump stations and 3 treatment plants); all support services, including general
12 maintenance of all facilities and properties, customer service, finance, accounting, human
13 resources, IT, laboratories, security and 2,428 employees.

14 Q: PLEASE PROVIDE YOUR EDUCATION AND WORK BACKGROUND.

15 A: I have a bachelor's degree from the University of Miami and over 35 years of experience in
16 both the public and private sector serving in a variety of responsible positions. In the public
17 sector I have served as Division Chief, Assistant Director, and Deputy Director of several
18 departments as well as Assistant County Manager. In the private sector I served as an officer
19 and director of domestic and international public companies engaged in the provision of
20 environmental services.

21 Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

22 A: The purpose of my testimony is to set forth the facts regarding Miami-Dade's gas
23 transportation agreement with Florida City Gas which I will refer to as the 2008 Agreement.

24 Q: PLEASE BRIEFLY DESCRIBE THE WATER AND SEWER DEPARTMENT.

25 A: The Miami-Dade County Water and Sewer Department which I will refer to as "the

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1 Department" is a department of Miami-Dade County and is administered by a Director, County
2 Manager and County Mayor. The Department is governed by the Miami-Dade County Board of
3 County Commissioners which consists of 13 members. The Department is the fourth largest
4 water and sewer utility in the country and it is considered the largest water utility in the
5 Southeast United States with approximately 418,000 retail customers and 14 municipal
6 wholesale customers. It provides safe and clean drinking water to over 2,000,000 people in
7 Miami-Dade County. The Department owns and operates three regional water treatment plants
8 and three regional wastewater treatment plants. Over the past 30 years, the Department took
9 over the operations of the City of Miami's Water and Sewer Authority along with many small
10 private water utilities.

11 **Q: WHAT DOES THE DEPARTMENT USE NATURAL GAS FOR?**

12 A: On a daily basis, the Department treats an average of 320 million gallons of raw water. Lime
13 is necessary to soften the water and for over fifty years, the Department and its predecessors
14 have used lime kilns for making lime. These kilns recycle calcium carbonate to provide about
15 50% of our lime needs. The lime kilns operate 24 hours per day, 7 days a week, 365 days per
16 year. The kilns were converted from liquid fossil fuels to natural gas in the mid- 1980s. The
17 gas is transported to both the Alexander Orr Water Treatment Plant and the Hialeah-Preston
18 Water Treatment Plant. The gas is also used to fuel several generators at the plants and is
19 occasionally utilized to enhance the quality of methane gas at the Department's cogeneration
20 facility at the South Dade Wastewater Treatment Plant.

21 **Q: WERE YOU INVOLVED IN THE DEPARTMENT'S PURCHASE OF NATURAL**
22 **GAS TRANSPORTATION SERVICES FROM FLORIDA CITY GAS?**

23 A: Yes. A year prior to the expiration of the 1998 Agreement with Florida City Gas which I will
24 refer to as "FCG", the Department advised FCG that we wanted to renew the agreement for an
25 additional 10 years at the same contract rate for transportation services. We chose to renew

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1 because at the time we believed it was in the best interest of the County and our customers even
2 though we had the authority and ability to bypass FCG's local distribution system. Greg Hicks,
3 the Department's Chief Procurement Officer, and Jack Langer, the Department's natural gas
4 consultant, kept me apprised of the negotiations for the renewal of the 1998 Agreement. After
5 the 2008 Agreement was executed by FCG and Miami-Dade County, we relied on FCG to
6 obtain PSC approval.

7 **Q: WHAT WAS YOUR REACTION WHEN YOU LEARNED THAT FCG WITHDREW**
8 **ITS APPLICATION FOR PSC APPROVAL OF THE 2008 AGREEMENT?**

9 A: I was surprised and distressed to hear this as my Department was led to believe by FCG that
10 PSC approval was just ministerial, FCG would take care of it and we did not need to be
11 involved. I discussed FCG's withdrawal of the 2008 Agreement from PSC consideration with
12 the Department's Director, John Renfrow, and we did not understand how they could fulfill
13 their obligation to us to act in good faith when FCG withdrew the agreement without getting a
14 ruling from the Commission itself. We felt FCG was acting in bad faith by withdrawing
15 without having the Commission even consider the 2008 Agreement in an effort to force Miami-
16 Dade to pay higher rates.

17 **Q: DID YOU MEET WITH FCG? AND IF SO, WHEN?**

18 A: Yes. Three times, on May 21, 2009, on July 30, 2009 and again on September 28, 2009.
19 Present on May 21 were Melvin Williams, Carolyn Bermudez and Errol West of FCG. Present
20 at the second meeting were Donna Peeples, Cory Menshue, Errol West, and Eddie Delgado of
21 FCG. Present at the third meeting were Donna Peebles, Bryan Batson of FCG and Jose
22 Villalobos, outside counsel for FCG.

23 At the first meeting FCG informed us that PSC staff had told them that the Commission would
24 not approve the agreement. We asked them to provide documentation of this assertion, in
25 writing, and they said they would but they never did. When we later met again with their

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1 representatives, we asked FCG to refile the 2008 Agreement for PSC approval and support us in
2 having the agreement, including the rates, approved. We expected them to go to the PSC and
3 help us obtain approval of the Agreement as a matter of good faith to carry out their obligations
4 under the agreement. However, they absolutely refused and instead demanded that we
5 renegotiate the Agreement without any action by the PSC.

6 **Q: WHAT DID YOU DO?**

7 A: Since FCG adamantly refused to submit the agreement to this Commission we eventually
8 submitted it to the PSC for approval ourselves. We believed that the Agreement was valid. We
9 believed that FCG could not claim that the agreement was no longer valid based on the
10 condition in the 2008 Agreement requiring PSC approval within 180 days because the condition
11 was not met solely because FCG had not even given the PSC an opportunity to address the
12 Agreement.

13 **Q: DID FCG'S REPRESENTATIVES PROVIDE ANYTHING TO YOU AT THE**
14 **MEETINGS?**

15 A: Yes. Melvin Williams handed us copies of an undated letter which had an attachment of a
16 chart that suggested it was a comparison of a 1998 Rate Design to 2008 based on FCG's
17 December 2008 Surveillance Report which they suggested was filed with this Commission.

18 **Q: DID MR. WILLIAMS TELL YOU ANYTHING CONCERNING AN FCG RATE**
19 **FREEZE AT THIS TIME?**

20 A: Yes, he told us that FCG obtained a PSC order freezing customer rates for 5 years and that
21 FCG could not agree to the contract rates because the rates do not meet FCG's cost to serve
22 Miami-Dade. This was the first time we had heard this allegation. I also pointed out that FCG
23 said the opposite in its application for Commission approval of the 2008 Agreement when it
24 stated the revenue produced under the 2008 Agreement covered FCG's costs.

25 **Q: DID MR. WILLIAMS EXPLAIN TO YOU HOW FCG ARRIVED AT ITS ALLEGED**

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1 **COST TO SERVE MIAMI-DADE?**

2 A: No. He just showed us the chart and suggested that it was a valid representation of FCG's
3 cost to serve Miami-Dade.

4 **Q: DID YOU DISCUSS WHAT RATE SCHEDULE APPLIES TO THE COUNTY?**

5 A: Yes. We believed the Flexible Gas Schedule applies to us because natural gas service is not
6 a monopoly service in Miami-Dade County. We also advised him that the County has a viable
7 alternative in the form of bypass of FCG's two miles of pipe. We have authority from FERC
8 and the ability to bypass FCG's local distribution system and obtain the gas transportation
9 service directly from Florida Gas Transmission's statewide distribution system. In fact, this is
10 one of the reasons FCG's predecessor, City Gas, agreed to the contract rate in 1998 which was
11 in effect for 10 years.

12 **Q: WHY DIDN'T FCG AGREE WITH HAVING THE FLEXIBLE GAS SCHEDULE
13 APPLY?**

14 A: Mr. Williams stated that the Flexible Gas Schedule would not allow FCG to collect money
15 from FCG's other customers and Ms. Peebles stated that the PSC had ordered them to charge a
16 higher tariff rate, but she could not provide us written proof of such statement and FCG never
17 has provided a copy of a Commission order although I asked for it.

18 **Q: MIAMI-DADE WITNESS ARMSTRONG IDENTIFIES EXHIBIT _____ (BPA-1)
19 WHICH CONTAINS COPIES OF COMMISSION STAFF CORRESPONDENCE WITH
20 FCG IN JANUARY, 2009. HAVE YOU REVIEWED THAT EXHIBIT?**

21 A. Yes, I have.

22 **Q. DO YOU HAVE ANY COMMENTS AS TO ITS CONTENTS?**

23 A. Yes, I do. On behalf of Miami-Dade and our elected Board of County Commissioners who
24 are elected to represent the best interests of the 2,000,000 residents of the County served by the
25 Water and Sewer Department, we are mystified by the Commission Staff's focus on the best

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1 interest of FCG and the “general body of [FCG’s] customers” without an apparent thought as to
2 the best interest of Miami-Dade and our customers. It is likely that FCG and the Water and
3 Sewer Department share a high percentage of the same customers. Given this circumstance, a
4 Commission Staff recommendation for the Commission not to approve the 2008 Agreement, if
5 adopted by the Commission, will harm these customers. By the same token, Staff’s direction to
6 FCG to go back to my Department to force us to pay higher rates, buttressed by Commission
7 Staff’s assertion that the Commission would not approve the 2008 Agreement, would also result
8 in harm to our customers. Why would Commission Staff neglect to suggest the alternative
9 where the 2008 Agreement is approved by the Commission but FCG is required to absorb the
10 difference between the revenue generated under the Agreement’s rates and FCG’s cost to serve?
11 That is, if there is a difference between these amounts and the costs to serve are higher than the
12 Agreement revenue, which Miami-Dade does not concede? This is the alternative which would
13 result in no harm to Miami-Dade customers and FCG’s other customers, many of whom are the
14 same people. However, Commission Staff not only neglected to acknowledge this alternative in
15 its communications with FCG but refused to agree with Miami-Dade that this alternative should
16 be identified as a specific issue in this proceeding. Again, Miami-Dade has been mystified by
17 these Staff actions.

18 **Q: WHAT IS MIAMI-DADE'S COST TO BYPASS FCG'S DISTRIBUTION SYSTEM?**

19 A: The most recent quotation is approximately \$650,000 for Orr and \$1.2 million for Hialeah.

20 **Q: PLEASE EXPLAIN WHY A BYPASS IS A VIABLE OPTION FOR THE COUNTY?**

21 A: Bypass is a viable option because of the proximity of FGT lines to our facilities, less than 50
22 feet for Orr Plant to connect to FGT line and 2 miles for Hialeah plant, and the relatively short
23 return on investment, and the fact that we already have FERC approval for bypass.

24 **Q: WHAT IS THE PAYBACK PERIOD FOR THE BYPASS?**

25 A: At the rate FCG is currently attempting to charge Miami-Dade it is less than two years.

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1 Q: ARE YOU AWARE THAT FCG ADVISED COMMISSION STAFF IN ONE OF ITS
2 JANUARY 9, 2009 RESPONSES TO A STAFF INTERROGATORY THAT MIAMI-
3 DADE BYPASS COSTS WOULD BE CONSIDERABLY HIGHER THAN THE COST
4 YOU HAVE PRESENTED?

5 A: Yes. FCG advised Staff that Miami-Dade cost to bypass the Alexander Orr Water Treatment
6 Plant was \$2,370,000; to bypass the Hialeah plant was \$3,595,160; and to bypass the Black
7 Point plant was \$2,880,000. These cost estimates are excessive and were self-serving at the
8 time they were provided by FCG to Commission Staff as it is clear that in January 2009, FCG
9 and Staff had been discussing whether the contract rates were too low and Staff's
10 encouragement to FCG to negotiate higher rates from Miami-Dade, as reflected in Commission
11 Staff's statement to FCG on January 15, 2009, in Exhibit _____ (BPA-1 at page 2.)

12 Q: WHO REQUESTED THE MAY 21, 2009 MEETING WHICH YOU REFERRED TO
13 EARLIER?

14 A: FCG.

15 Q: AT THE MAY 21, 2009 MEETING, WHO DID YOU MEET WITH AND WHAT DID
16 THEY TELL YOU?

17 A: Jack Langer, Greg Hicks, my assistant Vivian Guzman and I met with Melvin Williams,
18 Carolyn Bermudez and Errol West. Mr. Williams said the month to month contract extension
19 that Miami-Dade and FCG had agreed to pending Commission action on the 2008 Agreement
20 could not continue under the contract rates. Mr. Williams also said that in order to obtain PSC
21 approval of the special contract, the rates must cover FCG's cost of providing service to the
22 Water and Sewer Department.

23 Q: DID MR. WILLIAMS IDENTIFY FCG'S COST OF PROVIDING SERVICE TO
24 THE DEPARTMENT?

25 A: Not in my mind. The letter that Mr. Williams gave us included revised rates that reflected an

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1 | alleged increased cost of providing service based on the previous 3 month therm consumption.

2 | There was no support provided for this information, no information about FCG's investment in
3 | the incremental pipe that FCG uses to serve us, no information about the incremental increase in
4 | FCG's operating cost or billing cost to serve us, really no substantiation at all of FCG's
5 | incremental costs. We doubted from the beginning whether the information Mr. Williams gave
6 | us at this meeting actually represented FCG's cost of service, incremental or otherwise.

7 | **Q: WHAT DID YOU TELL MR. WILLIAMS AND FCG?**

8 | A: We stated Miami-Dade's position that we have a binding agreement and before considering
9 | any change we would require formal PSC rejection of the 2008 Agreement -- after FCG
10 | supported us in good faith in persuading the Commission to approve the agreement, including
11 | the rates.

12 | They responded by informing us that they would be sending us a notice of intention to terminate
13 | the month to month extension. In reply, we made it clear to them that we were analyzing all
14 | options including not purchasing any gas transportation from them at all.

15 | **Q: PLEASE DESCRIBE WHAT OCCURRED AT THE NEXT MEETINGS WITH FCG.**

16 | A: On July 30, 2009 and again on September 28, 2009 we requested that FCG agree to file the
17 | 2008 Agreement jointly with the Department in the hope that we jointly could obtain PSC
18 | approval.

19 | **Q: WHAT WAS FCG'S RESPONSE?**

20 | A: They absolutely refused. They did not respond to our subsequent letter repeating this request.
21 | Instead, we received an invoice from FCG in July 2009 that included several new exorbitant
22 | charges.

23 | **Q: WHAT WERE THE NEW CHARGES?**

24 | A: The new charges included new service rates and a Demand Rate; Margin Rate; and CRA
25 | Rate which we had not been charged previously on each of the four accounts we have with

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1 FCG.

2 **Q: WHAT IS THE APPROXIMATE INCREASE BETWEEN THE AMOUNT THE**
3 **DEPARTMENT WAS INVOICED BY FCG SINCE JULY 2009 AND WHAT IT WAS**
4 **PREVIOUSLY INVOICED UNDER THE 1998 AGREEMENT AND AMENDMENT?**

5 A: It is approximately a 670% increase each year based on a tariff rate unilaterally applied by
6 FCG.

7 **Q: AS FCG'S LARGEST TRANSPORTATION CUSTOMER, DO YOU BELIEVE THE**
8 **DEPARTMENT HAS BEEN TREATED FAIRLY BY FCG?**

9 A: No.

10 **Q: WHY NOT?**

11 A: They have bargained in bad faith. We made every attempt to ensure that the negotiations for
12 the 2008 Agreement were conducted properly, on time, by properly authorized individuals and
13 executed by FCG before we submitted the agreement to our Board of County Commissioners
14 for their approval. We asked for and received written assurance from FCG that their
15 representatives were authorized to negotiate the terms, their attorneys reviewed and negotiated
16 the language with our attorneys and their President executed the agreement. Although they had
17 numerous opportunities, they never advised us of any problems or concerns with the contract
18 rates or in regard to their cost of service. Nevertheless they have chosen to ignore all of this and
19 refuse to acknowledge their contractual responsibilities.

20 **Q: I SHOW YOU EXHIBIT _____ (JAR-1) TITLED "FLORIDA CITY GAS**
21 **RESPONSE TO MIAMI DADE INTERROGATORY NO. 11." PLEASE DESCRIBE**
22 **THE EXHIBIT.**

23 A: This exhibit is a copy of FCG's response to a Miami-Dade interrogatory asking about the
24 incremental cost to provide transportation service to Miami-Dade. This response which was
25 received on September 8, 2010, was the first time that FCG admitted that it had not performed

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1 an incremental cost of service study to determine the incremental cost to serve any of the three
2 Miami-Dade plants.

3 **Q: WHY IS THIS EXHIBIT IMPORTANT FOR THE COMMISSION TO CONSIDER?**

4 **A:** FCG's admission that it did not conduct an incremental cost of service study is important to
5 consider because of FCG's prior actions.

6 First, at no time during negotiations with Miami-Dade did FCG suggest that the 2008
7 Agreement rates were in any way insufficient. FCG's President, Hank Lingenfelter, signed the
8 2008 Agreement after it was reviewed by not only FCG management and counsel, but also
9 management and counsel of FCG's parent, AGL.

10 Second, FCG originally filed the 2008 Agreement with the Commission by petition dated
11 November 13, 2008. Section 11 of FCG's petition states, "The agreement provisions are
12 justified, are in the best interest of FCG, and do not harm FCG's ratepayers because FCG will
13 recover its cost to serve Miami-Dade County via the rates charged to Miami-Dade County..."

14 Third, after submission of the FCG petition, Commission staff asked FCG to provide certain
15 information, including incremental cost of service information, related to the transportation
16 service to be rendered under the 2008 Agreement. FCG presented alleged incremental cost of
17 service data to Commission Staff in response to staff's questions. The alleged cost of service
18 data is what originally prompted staff concerns regarding the adequacy of the 2008 Agreement
19 rates.

20 Fourth, subsequent information provided by FCG indicated that FCG did not perform an
21 incremental cost of service study to prepare the information it provided to Commission staff but
22 instead performed some sort of revenue allocation apparently based upon revenue derived from
23 transportation customers. As Miami-Dade's witness Fred Saffer explains in his testimony, a
24 revenue allocation is not an incremental cost of service study.

25 **Q: DID FCG EVER SHARE THE COMMISSION STAFF'S QUESTIONS OR FCG'S**

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1 **RESPONSES WITH MIAMI-DADE?**

2 A: No. Miami-Dade did not receive any information until after FCG unilaterally decided to
3 withdraw its application to the Commission concerning the 2008 Agreement. At that point, we
4 started to inquire as to the basis for FCG's actions. Only then did it become apparent that FCG
5 was trying to get out of its obligation to Miami-Dade and to force us to pay more to FCG than
6 they had agreed, without question, to accept from us. Now, FCG is attempting to have Miami-
7 Dade pay more than \$1 million each year to FCG for the use of less than two miles of
8 incremental piping necessary to transport our gas to us. This is outrageous conduct which I
9 have never experienced in more than 35 years of business in both the public and private sectors.

10 **Q: FCG SUGGESTS THAT THE 2008 AGREEMENT WAS TERMINATED AFTER**
11 **180 DAYS PASSED FROM THE SIGNING OF THE AGREEMENT. DOES MIAMI-**
12 **DADE AGREE WITH FCG'S POSITION? -**

13 A: Absolutely not. Article I of the 2008 Agreement does provide that the agreement shall not
14 be effective if not approved by the Commission within 180 days. However, FCG waited
15 approximately 75 days after the execution date before even filing the 2008 Agreement with the
16 Commission. As I noted earlier, FCG did not communicate with Miami-Dade all that was
17 going on relating to the Commission staff questions and FCG voluntarily withdrew the 2008
18 Agreement from the Commission approximately 90 days after it was filed. FCG's withdrawal
19 of the 2008 Agreement from the Commission made it impossible for the Commission to
20 approve the agreement. FCG cannot be permitted to void the terms of the 2008 Agreement by
21 its own acts which made it impossible for the 180 day term to be complied with. FCG also
22 should be held accountable for these actions by the Commission when considering approval of
23 the 2008 Agreement and the rates specified in it.

24 **Q: HOW IS MIAMI-DADE DAMAGED BY FCG'S ACTIONS?**

25 A: Since August 2008 when Hank Lingenfelter signed the 2008 Agreement, the Department

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1 | relied on the contract rates in the 2008 Agreement in budgeting its operations expenses. Had
2 | we known that FCG was not going to charge us the same rates as in the 1998 Agreement from
3 | October 2007, when FCG's representatives first agreed to continue the same rates as set in the
4 | 1998 Agreement, Miami-Dade would have begun planning and constructing the bypass to its
5 | facilities and not expended the great deal of time and money needed to defend its position in
6 | this proceeding.

7 | Also, I previously mentioned that the Department is governed by a 13-member Board of County
8 | Commissioners. The Board approved the 2008 Agreement with the contract rates that Hank
9 | Linginfelter, as President, signed on behalf of FCG. FCG's business decision, to the extent the
10 | Commission or its staff may believe it was imprudent, should not be remedied by the
11 | Commission at the expense of the 2,000,000 people served by the Department in Miami-Dade.

12 | **Q. HAS COMMISSION STAFF EXPLAINED ITS CONCERNS REGARDING THE**
13 | **2008 AGREEMENT TO MIAMI-DADE REPRESENTATIVES?**

14 | A. Yes. Staff's primary concern resulted from what Staff members described as the
15 | Commission's duty to protect the financial integrity of the utilities which the Commission
16 | regulates. Staff also has been adamant that the Commission is responsible for protecting the
17 | best interests of FCG's customers. Staff suggests that the Commission cannot allow other FCG
18 | customers to pay costs which may be incurred by FCG to transport gas for Miami-Dade.
19 | However, at no time have I heard Staff suggest that the Commission also must protect the
20 | interests of Miami-Dade, FCG's largest transportation customer, and the 2,000,000 residents of
21 | Miami-Dade County. If the Commission allows FCG to breach its agreement with Miami-Dade
22 | and charge higher rates to Miami-Dade, it is the Department and the 2,000,000 residents of our
23 | County who are adversely affected.

24 | These facts lead Miami-Dade and the elected Miami-Dade representatives of 2,000,000
25 | residents to wonder whether Commission Staff would have demonstrated such a reluctance to

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1 recommend approval of the 2008 Agreement if the rate provided in it permitted FCG to earn far
2 in excess of its cost to transport the gas to Miami-Dade. If Miami-Dade had not been as
3 diligent, thorough and judicious in negotiating the lowest rate possible on behalf of our
4 customers and residents, would Commission Staff or the Commission disapprove such an
5 agreement on the basis that the rate was too high? Miami-Dade, its experts, counsel and
6 representatives are not aware of any situation or occurrence where the Commission disapproved
7 a regulated utility's contract to provide special services for a third party, particularly a local
8 government, on the basis that the utility had negotiated a rate that was too high. As I will
9 explain in a minute, Miami-Dade notes that Commission Staff appear to have no problem with
10 FCG's attempt to charge Miami-Dade exorbitant rates, which were never set by the Commission
11 with the transportation services rendered to Miami-Dade in mind, either as to revenue generated
12 or costs incurred. Also, as Miami-Dade's witnesses Saffer and Armstrong testify, the
13 Commission apparently has let FCG recover hundreds of thousands of dollars from its other
14 customers during years that the 1998 Agreement was in effect, allegedly to make up for the
15 under-recovery of FCG's cost to serve Miami-Dade. Miami-Dade questions how these amounts
16 compare to the much lower costs of service which FCG has identified to Miami-Dade to date as
17 representative of FCG's cost to serve us.

18 **Q. FCG HAS INFORMED MIAMI-DADE THAT IT IS CHARGING RATES**
19 **IDENTIFIED IN ITS GS-1250K SCHEDULE SINCE JULY, 2009. PLEASE EXPLAIN**
20 **MIAMI-DADE'S REACTION TO THIS INFORMATION?**

21 A. We were shocked and felt we were being further mistreated by FCG. Miami-Dade believes
22 that the terms of either the 1998 Agreement or the 2008 Agreement should be enforced pending
23 completion of this proceeding, the issuance of a Commission order addressing all issues and the
24 resolution of the possible appeal of the exemption and other issues. The 1998 Agreement rates
25 which preexisted the 2008 Agreement are identical. Miami-Dade believes that FCG should

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1 continue to accept such rates as payment in full for transporting gas for Miami-Dade. Instead,
2 by its own bad acts, FCG made it impossible for the Commission to consider the terms of the
3 2008 Agreement in a timely manner. FCG now seeks to impose a tariff rate on Miami-Dade
4 which increases FCG revenues by 680%. As I just noted, even the information provided by
5 FCG to date to Commission Staff and Miami-Dade does not establish a cost basis that would
6 justify the application of such a rate to Miami-Dade. Miami-Dade has pointed these facts out to
7 the Commission Staff, but hardly receives any recognition of the inequity involved. Miami-
8 Dade requested that the Commission initiate a rate investigation through which we hoped to
9 have the Commission recognize the low cost incurred and high revenue received by FCG
10 associated with the services provided to Miami-Dade under the rates now unilaterally imposed
11 by FCG as well as the recovery which FCG has been authorized to receive under the
12 Competitive Rate Adjustment discussed by Miami-Dade's other experts, which combined
13 appear to result in exorbitant profits. However, the Commission rejected our request.
14 In summary, on the basis of these facts, Miami-Dade is concerned about our ability to be treated
15 fairly and our ability to pay only the rates we bargained for with FCG during a protracted
16 negotiation period.

17 **Q. IF THE COMMISSION BELIEVES THAT FCG AGREED TO TRANSPORT GAS**
18 **FOR MIAMI-DADE AT A RATE WHICH IS TOO LOW, DO YOU BELIEVE THAT**
19 **MIAMI-DADE SHOULD BE FORCED TO PAY HIGHER RATES TO FCG?**

20 A. Absolutely not. Miami-Dade should be able to pay the rate we bargained for and which FCG
21 agreed to accept from us. If there is a difference between the revenue derived by FCG under the
22 2008 Agreement rates and FCG's incremental cost to serve Miami-Dade, then FCG should
23 absorb the difference. Miami-Dade and our customers should not be forced to pay more to
24 FCG.

25 **Q: ARE THERE ANY OTHER FACTS WHICH MIAMI-DADE BELIEVES THE**

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1 **COMMISSION SHOULD CONSIDER TO DETERMINE WHETHER THE 2008**
2 **AGREEMENT SHOULD BE APPROVED AT THE SPECIFIED RATES?**

3 A: Yes. FCG identified the rate schedule which is included in the 2008 Agreement, the
4 "Contract Demand Service Rate Schedule." FCG and Miami-Dade acknowledged to each other
5 that the 2008 Agreement was required to include terms which deviate from the terms set forth in
6 that schedule. FCG and Miami-Dade therefore entered the 2008 Agreement as a special
7 contract. Subsequent to filing of the 2008 Agreement and Commission Staff's questions, the
8 issue of whether the rates provided in the Agreement cover FCG's incremental cost of service
9 surfaced. FCG should be responsible for satisfying this "incremental cost" criteria if it applies
10 to the 2008 Agreement and should the revenue derived under the 2008 Agreement's rates not
11 fully cover such incremental cost. Miami-Dade and Miami-Dade's customers should not be
12 forced to pay FCG more than FCG's President agreed to accept from Miami-Dade for
13 transportation service. If a revenue shortfall exists, the Commission should approve the 2008
14 Agreement, including the rates contained in it, and require the shareholders of FCG to absorb
15 any differences which may exist between the revenue paid to FCG under the 2008 Agreement
16 rates and the incremental cost of service established in this proceeding.

17 Cumulatively, when all of FCG's bad acts in relation to the 2008 Agreement and Miami-Dade
18 are considered, which I will now summarize, there does not appear to be any other reasonable or
19 justified result.

20 To summarize: (1) FCG and AGL agreed to the 2008 Agreement rates after more than a year of
21 negotiations; (2) FCG never suggested to Miami-Dade that there was or could be a problem
22 with the rates; (3) FCG waited 75 days to file the 2008 Agreement with the Commission; (4)
23 FCG's petition asserted that the 2008 Agreement rates cover FCG's cost to serve Miami-Dade;
24 (5) FCG provided Commission staff with information that was not representative of FCG's
25 incremental cost of service for providing natural gas transportation for Miami-Dade; (6) FCG

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1 suggested to Commission Staff that its original representation to the Commission that the 2008
2 Agreement rates covered its cost of service was not accurate but it did so based upon what FCG
3 later admitted was not an incremental cost of service analysis; (7) FCG unilaterally and
4 voluntarily withdrew the 2008 Agreement from Commission consideration after 168 days had
5 expired from the Agreement's effective date and only 90 days after it was filed; (8) FCG
6 withdrew the 2008 Agreement from Commission consideration without first advising Miami-
7 Dade; (9) as a result of FCG's withdrawal of the 2008 Agreement from Commission
8 consideration, it became impossible for the 180 day period for Commission approval to be
9 achieved; (10) obviously encouraged by Commission Staff's direction to go back to Miami-
10 Dade to raise the transportation rates, FCG changed its position from that taken in its
11 application for approval of the 2008 Agreement -- that the Agreement could be exempt from
12 Commission jurisdiction under Commission rules -- to affirmatively opposing Miami-Dade's
13 assertions that the Agreement is exempt -- a self-serving act contrary to FCG's obligation to act
14 in good faith; (11) FCG/AGL's response to Miami-Dade's interrogatory number 10 confirms
15 that AGL exercised poor judgment and questionable due diligence when acquiring FCG -- to
16 quote "FCG is not aware of any specific review of the 1998 Natural Gas Transportation Service
17 Agreement [the 1998 Agreement] as part of the acquisition." The 1998 Agreement is the largest
18 transportation contract that FCG is a party to; (12) FCG has refused to cooperate in good faith
19 with Miami-Dade to attempt to secure approval of the 2008 Agreement, including the rates;
20 (13) FCG did not reveal that it never performed a cost of service study until Miami-Dade filed
21 the 2008 Agreement and FCG responded to Miami-Dade's interrogatories on September 8,
22 2010; (14) FCG unilaterally selected the tariff schedule which it deemed appropriate to amend
23 through the special contract, the 2008 Agreement; (15) FCG, as the regulated entity, is
24 responsible for compliance with its tariff, including its tariff schedules; (16) FCG may have
25 been illegitimately recovering hundreds of thousands of dollars from its other customers for

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2 years through the CRA mechanism based upon the suggestion that FCG's cost of serving
3 Miami-Dade was far in excess of what FCG has suggested to Commission Staff and Miami-
4 Dade to date in this proceeding; and (17) even if the revenue generated under the 2008
5 Agreement does not cover FCG's incremental cost to transport Miami-Dade's gas, which
6 Miami-Dade does not concede, FCG and its shareholders should absorb the difference between
7 the 2008 Agreement revenues and the true incremental cost. Miami-Dade and its residents
8 should not be forced to pay more to FCG than what FCG agreed to accept in the 2008
9 Agreement.

10 **Q: IN YOUR 35 YEARS OF WORKING IN BOTH THE PUBLIC AND PRIVATE**
11 **SECTORS, HAVE YOU EVER SEEN A CONTRACTOR ACT IN THE MANNER**
12 **DISPLAYED BY FCG?**

13 A: Never.

14 **Q: IN YOUR OPINION, SHOULD THE 2008 AGREEMENT BE APPROVED BY THE**
15 **COMMISSION?**

16 A: Yes. The 2008 Agreement and the rates negotiated and set forth in the 2008 Agreement
17 should be approved. If the Commission determines that the revenue generated for FCG under
18 the 2008 Agreement's rates do not cover FCG's incremental cost of service, which Miami-Dade
19 does not concede, FCG and its shareholders should absorb any difference between the revenue
20 derived by FCG under the rates identified in the 2008 Agreement and the true incremental cost
21 of service.

22 Miami-Dade would not understand any reluctance by the Commission to have FCG and its
23 shareholders absorb such an amount, if any exists.

24 Requiring FCG to comply with the terms of a contract which it willingly entered, and refusing
25 to permit FCG to use the Commission's regulatory process to escape performance under the

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1 contract's terms are reasonable and meritorious acts by the Commission.

2 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3 **A: Yes.**

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Docket No. 090539-GU
Florida City Gas Response to Miami-Dade Interrogatory No. 11
Exhibit _____ (JAR-1)

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11. What was the "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant each year between 1998 and 2008?

FCG'S RESPONSE: FCG incorporates objections 7, 8, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has not done a cost of service study to determine the incremental cost to serve any of the three Miami-Dade plants.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, 955 East 25 Street, Hialeah, Florida, 33013.

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