

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

REBUTTAL TESTIMONY

OF

JOSEPH A. RUIZ

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

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MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 Q. ARE YOU THE SAME JOSEPH A RUIZ WHO SUBMITTED DIRECT
2 TESTIMONY ON BEHALF OF MIAMI-DADE COUNTY IN THIS
3 PROCEEDING?

4 A. Yes, I am.

5 Q. DO YOU WISH TO REBUT ANY PART OF THE DIRECT TESTIMONY
6 OF FCG WITNESSES BERMUDEZ AND WILLIAMS?

7 A. Yes. As a preliminary matter, though, I ask the Commission to consider why
8 the FCG managers and other personnel who participated substantively in and are
9 privy to the extensive negotiations which resulted in the executed 2008
10 Agreement and the First Amendment to the 1998 Agreement are not presented
11 by FCG to testify, under oath and subject to question by the Commission and
12 cross-examination by Miami-Dade?

13 Q. CAN YOU RECONCILE FCG'S NUMEROUS ADMISSIONS OF
14 MISMANAGEMENT WITH AGL/FCG'S PRIOR ASSURANCES TO
15 THE COMMISSION THAT FCG'S MANAGEMENT WOULD EXCEL
16 UNDER AGL OWNERSHIP?

17 A. No, I cannot. FCG/AGL assured the Commission in Docket No. 060657-GU
18 that AGL would provide better, more efficient, more professional services to
19 FCG's Florida customers than the prior owner. In approving FCG's request for a
20 positive acquisition adjustment in Order No. PSC-07-0913, the Commission
21 stated, under the heading "More professional and experienced managerial,
22 financial, technical and operation resources," that:

23 "[AGL/FCG] contends that this experience in operating a
24 natural gas utility benefits FCG's customers and allows
25 [AGL/FCG] to develop a number of best practices and

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1 metric measurements with regard to operations, inventory
2 management, productivity improvements, safety and
3 reliability. [AGL/FCG] also states that FCG has been able
4 to tap into the expertise and employ these techniques and
5 processes to enhance the operation of the FCG system and
6 it has been able to take advantage of the synergies to reduce
7 costs and deploy advanced technologies which allow
8 additional efficiency gains for work processes in the field.

9 We have no evidence to the contrary."

10 The repeated admissions by Mr. Williams and Ms. Bermudez of FCG mistakes,
11 irresponsibility and mismanagement in relation to the 2008 Agreement and the
12 First Amendment to the 1998 Agreement, which were signed 4 years after AGL
13 had bought FCG, refute any claim by FCG/AGL to superior management ability
14 and efficiency.

15 **Q. YOU SUGGEST THAT FCG'S WITNESSES ADMIT TO MISTAKES**
16 **AND ACTS OF MISMANAGEMENT. CAN YOU IDENTIFY THOSE**
17 **ADMISSIONS FOR THE COMMISSION?**

18 A. Yes. The following list identifies the admissions by FCG's witnesses of FCG
19 mistakes and mismanagement. It is inconceivable to me as a former officer and
20 director of public companies that they and their shareholders would not be held
21 financially responsible for their mistakes and, I would submit, irresponsible
22 behavior, predominantly in their own words:

<u>Witness</u>	<u>Page(s)</u>	<u>Admission</u>
Melvin Williams	5	"It does not appear that NUI Corporation submitted the [1998 Agreement] to the

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1 PSC for its approval." FCG did not submit
2 the 1998 Agreement to the Commission
3 either.

4 Melvin Williams 6 First Amendment to 1998 Agreement
5 should have been submitted by FCG to
6 PSC for approval, but it was not.

7 Melvin Williams 6 "it became clear that the rate in the [2008
8 Agreement] would not meet the minimum
9 rate requirements in our tariff. . . ."

10 Melvin Williams 9 "In retrospect, the internal approval
11 process at FCG that was in place at the
12 time the [2008 Agreement] was negotiated
13 and executed was flawed."

14 Melvin Williams 9 "The level of checks and balances that are
15 now in place were absent such that [FCG]
16 did not engage in a complete and proper
17 evaluation of the terms and conditions of
18 the [2008 Agreement] prior to its
19 execution."

20 Melvin Williams 9 "The renegotiation process at that time was
21 very compartmentalized and there was no
22 analysis of the cost of service request by
23 [Miami-Dade] during the term of the [2008
24 Agreement]."

25 Melvin Williams 9 "Importantly, the individuals directly

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involved in the negotiation did not seek a review by other key departments to determine compliance with the current tariff or other business requirements of [FCG]."

Melvin Williams 10

"there had not been any substantive analysis at the time of the [2008 Agreement] negotiation."

Melvin Williams 10-11

"[FCG] management realized that the rate in the [2008 Agreement] did not meet the current minimum standard for covering at least the incremental cost of service applicable to [Miami-Dade]."

Melvin Williams 11

"we did not foresee the Commission approving a below cost rate in violation of our tariff or its rules and statutes."

Melvin Williams 11

"each month that service under the [2008 Agreement] continued, the impact of this below cost service on our general body of ratepayers continued to grow."

Melvin Williams 14

"Protracted litigation over a fatally flawed service agreement works to no one's benefit. I felt as if we had made it clear that the old rate was not sufficient to meet the minimum cost of service standards"

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1 Melvin Williams 16 "The rate established in 1999 applicable to
2 service to [Miami-Dade] does not recover
3 the incremental cost of service for [FCG]
4 to provide service to [Miami-Dade]"

5 Melvin Williams 17 "we need to develop new tariff language
6 that would permit such a rate because the
7 KDS tariff language does not meet the
8 facts present in our service to [Miami-
9 Dade]."

10 Melvin Williams 17 "[FCG] regrets the assumptions that have
11 led to this dispute between the parties . . .
12 While [FCG] has admitted its mistakes in
13 how the [2008 Agreement] negotiations
14 were monitored and subsequently
15 executed, the mistake was known and
16 clearly communicated to [Miami-Dade] as
17 early as February 2009."

18 Carolyn Bermudez 3 "the [2008 Agreement] should be denied
19 and the rates not enforced as they do not
20 recover FCG's cost of service."

21 Carolyn Bermudez 5 "The document I reviewed purported to be
22 an extension agreement that was signed by
23 Eddie Delgado [an FCG employee in our
24 marketing department, who] had
25 apparently negotiated with [Miami-Dade]

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and executed the document without the knowledge of FCG's then-Vice President and General Manager."

Carolyn Bermudez 6 "Q. Did you analyze the proposed rate for the [2008 Agreement]? A. No. Based on my cursory review, the rates in the [2008 Agreement] were the same rates that were included in the [1998 Agreement] for which there had never been an issue."

Carolyn Bermudez 7 "the rates in the [1999 Agreement] and [2008 Agreement] did not and do not cover the cost of service attributable to service to [Miami-Dade]."

Carolyn Bermudez 9 "Q. Regarding FCG's efforts to get [Miami-Dade] to negotiate a new agreement that would cover its cost, did you prepare any new cost studies to develop or substantiate a new rate? A. In connection with any rate negotiations with [Miami-Dade], no."

Carolyn Bermudez 10 "FCG did not conduct an analysis of the rate in the [2008 Agreement] prior to its execution by the parties."

Carolyn Bermudez 11 "FCG does not conduct customer specific or site specific cost studies. Thus, you

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cannot look at our rate case, our surveillance reports and other filings with the PSC, or the books and records of the company to obtain a specific cost of service for [Miami-Dade] collectively or specifically their three plants that we serve."

Carolyn Bermudez 14

"Q. Do the rates in the [2008 Agreement] cover these incremental costs? A. No, they do not."

Carolyn Bermudez 15-16

Ms. Bermudez believes that FCG should have negotiated for rates that fluctuate during the 10 year term of the 2008 Agreement, but it did not do so: "While the capital investment in the plant and facilities to serve [Miami-Dade] may remain unchanged, the expenses to maintain and operate the utility, and hence the facilities to serve [Miami-Dade], generally have increased over time. . . . Because costs change over time, the rate should be set at a level that will allow the utility to recover all of its costs over time."

Carolyn Bermudez 16

"Q. Does the contract rate in the 2008 Agreement allow FCG to recover FCG's

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incremental cost to serve [Miami-Dade]?
Are the incremental costs that you have developed for service to [Miami-Dade] covered by the price in the [2008 Agreement]? A. No, as I have already testified, they do not."

Carolyn Bermudez 17

"FCG's KDS tariff schedule provides that 'the rate shall not be set lower than the incremental cost the Company incurs to serve the Customer. The charge shall include any capital recovery mechanism. The charge shall be determined by the Company based on Company's evaluation of competitive and overall economic market conditions. . . .'" FCG did none of these things, according to FCG's witnesses.

Carolyn Bermudez 5

"I found that the tariff references were not correct, and so I changed the three tariff references in the draft document to the 'Contract Interruptible Large Volume Transportation Service Rate Schedule' ('CI-LVT') to read as the 'Contract Demand Service Rate Schedule.'" [KDS Rate Schedule]

Carolyn Bermudez 18

"Q. The [2008 Agreement] references that
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1 the tariff authority for the service is
2 Contract Demand Service ("KDS") Rate
3 Schedule. Is this appropriate tariff
4 reference? A. No, it is not. . . . [i]t does
5 not apply to the facts and nature of service
6 from [FCG] to [Miami-Dade] in the case
7 of the [2008 Agreement]. [Miami-Dade]
8 did not increase its throughput as part of
9 the new agreement, and thus, the KDS
10 tariff as written does not apply to the [2008
11 Agreement]."

12 Carolyn Bermudez 19

"the rate charged to [Miami-Dade] under
13 the [2008 Agreement] is below the cost of
14 service. Pursuant to our tariff and the
15 Commission's rules, we are prohibited
16 from offering service below our cost of
17 service."

18 **Q. HOW DO YOU BELIEVE THE COMMISSION SHOULD RESPOND TO**
19 **THESE ADMISSIONS OF MISTAKES AND MISMANAGEMENT?**

20 A. The Commission should approve the 2008 Agreement, including the rates, and
21 hold FCG and its shareholders accountable for its misdeeds. FCG admissions
22 that it did not engage in a complete and proper evaluation of the terms and
23 conditions of the 2008 Agreement prior to signing it; did not re-evaluate its cost
24 of providing the service to Miami-Dade prior to signing it; did not involve "key
25 people" in the negotiations or the negotiation process with Miami-Dade, despite

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1 the long list of FCG and AGL management personnel and counsel who actually
2 were involved, including FCG's President; and specifically identified the wrong
3 KDS Rate Schedule as the tariff schedule to include in the 2008 Agreement, in
4 no way support FCG's transparent attempt to use this Commission's procedures
5 to escape its contractual obligations under the 2008 Agreement. The simple
6 facts that FCG is (1) affirmatively opposing Commission approval of the
7 contract it signed; (2) attempting to escape its contractual obligations to Miami-
8 Dade; and (3) advocating for continued recovery from other customers of
9 unsubstantiated costs under the CRA mechanism if the 2008 Agreement is
10 approved, are not only vivid demonstrations of mismanagement and bad faith,
11 but also unethical conduct, in my opinion.

12 **Q. DO YOU HAVE ANY COMMENTS RELATING TO MS. BERMUDEZ'**
13 **TESTIMONY AS TO HOW FCG TREATED OTHER CUSTOMERS**
14 **WHO ONCE HAD SPECIAL CONTRACTS WITH FCG?**

15 **A.** Yes. Ms. Bermudez testifies that after FCG signed the 2008 Agreement and this
16 dispute arose, FCG refused to renew its special contracts with other
17 transportation customers. Whatever FCG has done with those customers is not
18 relevant to this proceeding, except to highlight the fact that FCG did renew its
19 agreement with Miami-Dade in a signed contract.

20 **Q. FCG WITNESS BERMUDEZ TESTIFIES AT PAGE 16 OF HER**
21 **DIRECT TESTIMONY THAT "ANY PRICE PAID BY [MIAMI-DADE]**
22 **SHOULD NOT BE SET AT COST AS IT EXISTS AT THAT TIME,**
23 **ESPECIALLY FOR A LONGER TERM, TEN YEAR CONTRACT.**
24 **BECAUSE COSTS CHANGE OVER TIME, THE RATE SHOULD BE**
25 **SET AT A LEVEL THAT WILL ALLOW THE UTILITY TO RECOVER**

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1 **ALL OF ITS COSTS OVER TIME." DO YOU HAVE ANY COMMENTS**
2 **CONCERNING HER SUGGESTIONS?**

3 A. Yes. This testimony is absurd. FCG signed the 10-year agreement with Miami-
4 Dade. Any competent utility manager understands the concept of price
5 escalators and indexes in their numerous forms. This Commission should
6 recognize that the 2008 Agreement was presented to both AGL and FCG
7 management and counsel, both in house and outside counsel, and was signed by
8 FCG's President, Henry Lingenfelter, after months of negotiations and after both
9 a letter agreement and First Amendment to the 1998 Agreement were negotiated
10 and signed.

11 Ms. Bermudez wishes the Commission to simply ignore the fact that FCG and
12 Miami-Dade have signed a contract. Utilities enter long-term contracts covering
13 a variety of subject matters all of the time. If escalating costs are truly a
14 concern, the utility is beholden to seek a clause in the contract which allows the
15 price or costs identified in the contract to fluctuate or be "indexed" over the
16 course of the contract's term. FCG did not request such a mechanism in the
17 1998 Agreement, the First Amendment to the 1998 Agreement, or the 2008
18 Agreement. If cost fluctuation truly was a concern of FCG, then FCG
19 management was not competent to perform the negotiations, including FCG's
20 President, Henry Lingenfelter.

21 On the other hand, if cost fluctuation was less of a concern, neither party may
22 feel the need to suggest price or cost fluctuation or indexing. Giving the actual
23 negotiators for both FCG and Miami-Dade the benefit of the doubt, the
24 negotiators knew that the facilities at issue, less than two miles of pipe and four
25 meters, were minimal. They knew that FCG's true incremental cost to operate,

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1 maintain, bill and provide customer service associated with the service provided
2 to Miami-Dade was minimal. They knew that FCG performed only minimal, if
3 any, maintenance annually on the incremental facilities serving Miami-Dade.
4 This explains FCG's honest estimate of only \$3,500 in incremental O&M costs
5 in 1999. FCG's personnel at that time also presumably knew from their
6 experience in the utility industry that it was unlikely that FCG would be
7 required to invest significant funds in two miles of 25 year old pipe, if any
8 additional investment at all would be required through the course of an
9 additional 10 year agreement. Ms. Bermudez appears to acknowledge this fact
10 at page 15 of her pre-filed direct testimony where she states, "While the capital
11 investment in the plant and facilities to serve [Miami-Dade] may remain
12 unchanged, . . ."

13 I believe that it is likely that FCG's negotiators knew that the facilities in place
14 were depreciating and thus FCG's associated revenue requirement associated
15 with this service likely was decreasing and would continue to decrease over the
16 life of the 2008 Agreement. Miami-Dade's negotiators certainly had knowledge
17 of these facts and would not have agreed to include a price or cost indexing
18 mechanism in the 2008 Agreement.

19 In any event, Ms. Bermudez' suggestion that the Commission can reject the
20 2008 Agreement after FCG negotiated it and its President signed it, based upon
21 her after-the-fact assessment that FCG's President and other FCG and AGL
22 personnel were not competent to negotiate proper terms, has no regulatory
23 precedent from any state that Miami-Dade or its experts are aware of.

24 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

25 **A.** Yes, it does.