

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 090539-GU**

**FLORIDA CITY GAS**

**REBUTTAL TESTIMONY OF MELVIN WILLIAMS**

1 **Q. Please state your name and business address.**

2 A. My name is Melvin Williams. My business address is Florida City Gas, 955 East  
3 25<sup>th</sup> Street, Hialeah, Florida, 33013.

4 **Q. Are you the same Melvin Williams who previously filed direct testimony in**  
5 **this case on behalf of Florida City Gas (“FCG” or the “Company”)?**

6 A. Yes, I am.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. I will be responding to direct testimony filed by the Miami-Dade County Water  
9 and Sewer Department (“MDWASD”) regarding the 2008 Natural Gas  
10 Transportation Service Agreement (“2008 TSA”) that is at issue in this docket.  
11 First, I will address some general introductory issues regarding the basic facts in  
12 the case, the testimony beyond the scope of this docket, and why the Commission  
13 should not approve a document with rates that otherwise would not be approved.  
14 Then I will specifically address the testimony regarding the bad faith claims made  
15 by the MDWASD witnesses, the absence of any viable bypass information, and  
16 the various tariff issues raised by the MDWASD witnesses.

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1 Q. **Will there be any rebuttal testimony from any other witnesses on behalf of**  
2 **FCG?**

3 A. Yes. In addition to Ms. Bermudez, who provided direct testimony, FCG is also  
4 sponsoring the rebuttal testimony of Mr. David Heintz with Concentric Energy  
5 Advisors (“Concentric”).

6 Q. **Do you have any exhibits associated with your rebuttal testimony?**

7 A. Yes. I will be sponsoring Exhibit \_\_ (MW-5), Melvin Williams letter to  
8 MDWASD regarding the need for bypass information.

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10 **Initial Issues**

11 Q. **Do you have any general comments about the MDWASD direct testimony**  
12 **before you address the specific issues for rebuttal?**

13 A. Yes. Overall, there is no real dispute as to the basic historical facts. Where we  
14 disagree is with MDWASD’s interpretation of those events and the ill intent and  
15 motivations they ascribe to FCG’s actions. We also disagree as to their  
16 recommended solution – MDWASD is asking this Commission to throw out all  
17 the rules and statutes, ignore the cost of providing service, and approve rates that  
18 fail to recover their costs.

1 **Q. Some of the MDWASD direct testimony involves legal analysis and argument**  
2 **regarding rates, the CRA, and the Commission's jurisdiction in this matter.**  
3 **Can you address this testimony?**

4 A. I am not an attorney, so our legal counsel will respond to any legal arguments or  
5 positions made by MDWASD in its testimony at the appropriate time and in the  
6 appropriate manner. I would only note that in a 21 page order the Commission  
7 has already resolved the fundamental jurisdictional questions and determined as a  
8 matter of law that it has the exclusive jurisdiction to resolve the issues in this case.

9 **Q. Any other initial responses to the MDWASD testimony?**

10 A. Yes. The Company continues to be ready and willing to reach an acceptable  
11 agreement with MDWASD that complies with the applicable legal and regulatory  
12 requirements. We are just as unhappy with the turn of events that have lead to the  
13 current proceeding as MDWASD is. It is very embarrassing for me as the  
14 executive now responsible for this utility to have to discuss in detail the series of  
15 poor business decisions that led to the present dispute. For me, the issue is what  
16 do we now do: do we continue arguing about an agreement that clearly cannot be  
17 supported by the Company's current tariff or do we work together to develop a  
18 rate that this Commission can approve that meets all of the applicable  
19 requirements? Therefore, the Company respectfully requests that the Commission  
20 deny MDWASD's request to approve the current agreement and direct the parties  
21 to develop an agreement that meets the applicable legal and regulatory  
22 requirements if MDWASD does not want to continue to pay tariff rates.

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**Bad Faith Claims**

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**Q. Several of the MDWASD witnesses take the Company to task for not evaluating the rates in the 2008 TSA or performing a cost analysis of the rates. How do you respond to this testimony?**

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A. I am disappointed that we did not properly execute the business processes necessary to ensuring that the rates contained in the 2008 TSA met the applicable regulatory requirements and the terms of the Company's tariff. As the new executive coming into this situation, the key point for this Commission to know is that we have learned from this experience and have taken the necessary actions to ensure the proper management of all special service agreements. As Ms. Bermudez testified, once we identified this issue we immediately examined FCG's existing special service arrangements to ensure that they met the necessary requirements. Throughout this process we were able to work with our customers and develop a solution for each of them to meet their business needs while ensuring our compliance with the governing regulatory requirements.

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1    **Q.    The MDWASD witnesses claim that throughout this process that FCG acted**  
2           **in bad faith. Do you agree?**

3    A.    Absolutely not. As I have said, while our process and procedures were lacking,  
4           no one at the Company ever had the intent to mislead MDWASD, charge them  
5           more than their cost of service, or to do harm their customers or ours. In 2008  
6           FCG and MDWASD both assumed that the rates recovered the cost of service.  
7           When FCG determined that this was not true, our efforts were only directed to  
8           developing a special rate that would cover its costs. This is why we met face to  
9           face with Mr. Hicks and Mr. Langer on February 11, 2009, before we withdrew  
10          the original filing to have the 2008 TSA approved. This is why we met with and  
11          continued to try to work with the MDWASD officials in the following months to  
12          obtain the necessary information that would enable us to develop a rate that would  
13          satisfy our obligations as a regulated utility.

14   **Q.    If that is true, then why are you charging MDWASD the tariff rate today?**

15   A.    The decision to terminate the 2008 TSA was the result of MDWASD's  
16          unwillingness to reach agreement on an acceptable rate that recovered the  
17          incremental cost of service and MDWASD's failure to provide viable evidence of  
18          bypass options that would support a below tariff rate. As a regulated utility we  
19          have a clear obligation to charge only our tariff rates or an *approved* special  
20          service rate. My June 2009 letter notifying MDWASD that we would begin to  
21          charge the GS 1,250K rate was sent after trying for four months to get them to  
22          work with us. We agree that a special agreement rate that recovered its costs

1 would be better than the GS 1,250K rate. Absent an approved special service rate,  
2 the only alternative is to place MDWASD on the appropriate tariff rate *just as we*  
3 *do with every other customer*. We remain committed to working with them to  
4 negotiate a going forward solution without further litigation subject to all of the  
5 applicable requirements and this Commission's approval of a new agreement as is  
6 required.

7 **Q. Several of the MDWASD witnesses propose that the Commission approve the**  
8 **2008 TSA and that if the rate is below cost then the Company should be**  
9 **responsible for satisfying any difference between the rate and the cost of**  
10 **service. Do you agree?**

11 A. No. The underlying premise of this position is the belief that FCG should be  
12 penalized for signing an agreement along with MDWASD for rates that have  
13 never been approved by this Commission and which do not meet the minimum  
14 cost requirements for approval by this Commission. *Both parties made*  
15 *assumptions about the rates being reasonable*. However, since that assumption  
16 benefits MDWASD, it is MDWASD's position that those rates should be enforced  
17 to the detriment of FCG. To do that, MDWASD is asking this Commission to  
18 approve an agreement that by its terms and this Commission's regulations  
19 requires Commission approval knowing full well that the agreement violates the  
20 Commission's own rules and statutes. That is a penalty being imposed upon the  
21 Company without any wrongdoing by the Company. That is not good business  
22 and not good public policy.

1   **Q.   Turning to some of the specific allegations in the MDWASD testimony,**  
2       **several of the MDWASD witnesses believe that it is wrong for FCG to argue**  
3       **that the 180 day approval language in the 2008 TSA be held against**  
4       **MDWASD, especially since MDWASD relied upon FCG to file and obtain**  
5       **approval for the 2008 TSA. Do you agree?**

6   **A.**   FCG certainly filed the 2008 TSA with the Commission, and we apprised  
7       MDWASD of the docket number and later the Staff data requests and our  
8       concerns about the questions rightfully being asked by the Staff.   But, it is  
9       MDWASD's responsibility to look out for its own interests.   In that regard  
10      MDWASD was well represented throughout this process.   As Mr. Langer states in  
11      his Direct Testimony, he has over 50 years in the natural gas industry and he was  
12      involved in the ownership and operation of FCG prior to 1991 so he's familiar  
13      with the regulatory process.   In fact, he was the one who raised the question as to  
14      whether Mr. Delgado had the authority to sign the agreement, and he was actively  
15      monitoring the progress of the approval process at the PSC.   MDWASD had a  
16      skilled and experienced professional looking out for its best interests along with  
17      the legal oversight and resources of the County Attorney's office.   MDWASD is  
18      responsible for its own inaction with respect to the 180-day time limit in the  
19      agreement.

1    **Q.    But didn't the Commission Staff tell Mr. Langer he did not need to do**  
2           **anything?**

3    A.    It does not matter what may or may not have been said. MDWASD is responsible  
4           for taking care of its own business just like any other customer would be.  
5           MDWASD had a professional consultant in Mr. Langer plus the extensive  
6           resources of the County Attorney's office. Mr. Langer represented MDWASD,  
7           not the Commission Staff. Any failure to intervene or otherwise protect  
8           MDWASD's interests cannot be blamed on the Commission Staff. Further, the  
9           timing of any such comment from the PSC Staff was before the rate problem  
10          developed, before we were in communication with MDWASD about the rate  
11          problem, and before I met with Mr. Langer and Mr. Hicks to explain why we  
12          needed to withdraw the agreement.

13                 I left the February 11, 2009 meeting with Mr. Hicks and Mr. Langer  
14                 believing that they were going to work with us to develop a rate that would  
15                 recover the cost of service and so there was no harm in withdrawing the 2008  
16                 TSA from the Commission. If Mr. Hicks and Mr. Langer left our meeting with  
17                 the belief that they were not going to work with us, then knowing of our intent to  
18                 withdraw they should have acted to protect their interests and should not have  
19                 waited to file the agreement until ten months later in December.

20    **Q.    Did FCG withdraw the 2008 TSA because of the Commission Staff?**

21    A.    No. Commission rules require that the Commission approve special contracts  
22           *before* they can become effective and binding. The PSC Staff's substantive review

1 of the MDWASD agreement filed by FCG produced probative questions about the  
2 compliance of the agreement with the Commission's rules and the Company's  
3 tariff. These questions led FCG to review the terms of the contract at a higher  
4 level, which led to the realization that the 2008 TSA did not comply with our  
5 tariff. The Staff's questioning, and subsequent statements that it was unlikely that  
6 the 2008 TSA could be recommended for approval, led the Company to make its  
7 own determination that the most appropriate course of action was to withdraw it  
8 and seek an alternative commercial arrangement with MDWASD that met all of  
9 the regulatory requirements governing such below tariff rate service. Because of  
10 the Staff's due diligence, regardless of what the Staff may have thought or said, it  
11 was FCG's determination that the rates would not recover the cost of service. We  
12 certainly could have proceeded to have the Commission vote on the 2008 TSA,  
13 but in good faith we could not ask for the approval of an agreement that we knew  
14 was not compliant with the requirements. While we should have figured that out  
15 earlier, once we did we could not in good faith ask the Commission to continue.

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17 **Viable and Documented Bypass**

18 **Q. During the period when you were attempting to negotiate a new rate with**  
19 **MDWASD, did you ask for bypass information?**

20 A. Yes. For example, see my Exhibit \_\_ (MW-5), which is my letter to Greg Hicks  
21 and David Hope at MDWASD regarding the need for bypass information.

1 **Q. Was it provided to the Company at any time before the discovery phase of**  
2 **this current proceeding?**

3 A. No. MDWASD did not provide any information in 2008 when they asked to  
4 extend the 1998 TSA and they did not give us any in 2009 when we attempted to  
5 negotiate a new agreement that recovered our costs.

6 **Q. Mr. Ruiz, at page 6 of his Direct Testimony, states that MDWASD's most**  
7 **recent quotation to bypass FCG "is approximately \$650,000 for Orr and \$1.2**  
8 **million for Hialeah." In addition, Mr. Langer, at page 12 of his Direct**  
9 **Testimony, states that he estimates the costs to serve these two plants to be**  
10 **\$650,000 for Orr and \$1.2 million for Hialeah. Do you have any response to**  
11 **these numbers?**

12 A. To date, MDWASD has not provided the Company with any viable evidence of  
13 economic bypass alternatives. Neither of these witnesses provides any  
14 documentation with their testimony regarding these numbers.

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**The Tariff Issues**

17 **Q. The MDWASD witnesses have said that the Commission could approve the**  
18 **2008 TSA under the Flexible Gas Service Rider ("Flex") at Sheet 47 in the**  
19 **Company's tariff. Do you agree?**

20 A. No. You have to read all of the terms of the tariff in its entirety. First, this service  
21 is available only at the Company's option, so a customer cannot unilaterally opt  
22 into this service nor can it be imposed upon the Company. Second, MDWASD is

1 required to provide “a viable economic energy alternative including verifiable  
2 documentation of Customer alternative.” MDWASD has failed to provide such  
3 evidence. Third, “the Company must demonstrate that the Customer served under  
4 this Rate Schedule will not cause any additional cost to the Company’s other rate  
5 classes.” A below cost rate, such as is contained in the 2008 TSA, certainly would  
6 be unfairly subsidized by the remaining FCG customers. Finally, the tariff  
7 specifically provides: “The rate shall not be set lower than the incremental cost  
8 the Company incurs to serve the Customer.” As we have already discussed in all  
9 of the Company’s direct and now the rebuttal testimony, the rates in the 2008 TSA  
10 are lower than the incremental cost of service. Thus, while the Flex Tariff may be  
11 a basis for a new agreement, it cannot be incorrectly applied in an effort to  
12 enforce the 2008 TSA.

13 **Q. Mr. Langer has suggested that it would be appropriate to charge the**  
14 **difference between the 2008 TSA rates and cost to FCG's stockholders**  
15 **pursuant to the Flex Tariff since it provides that “the Company is at risk for**  
16 **the capital investment, not the general body of ratepayers.” Is this**  
17 **reasonable?**

18 A. No. MDWASD is being charged a rate for a service, not for the return of capital.  
19 MDWASD is misconstruing the Flex Tariff. Our tariff is based upon the sound  
20 public policy principal that special contracts can be offered to customers to attract  
21 incremental load, or to prevent the loss of a customer due to an economic bypass,  
22 as in each instance there is a system benefit because such customers pay all their

1 direct costs plus some contribution to system return, as Mr. Heintz further  
2 explains in his rebuttal. The cost of service differential, not the value of the  
3 installed capital, is the charge that is recovered through our CRA. That is why  
4 Commission approval of a special contract is essential, so that our general body of  
5 ratepayers are protected from paying more than they should by the Company  
6 taking on the special contract customer. The business risk the Company  
7 undertakes does not include the risk that installed capital will not be recovered.  
8 As I have already discussed, the 2008 TSA does not meet any of the conditions of  
9 service, especially since the rates are not above the incremental cost of service.

10 In addition to this public policy rationale, as I discussed in response to the  
11 last question, the policy underlying the Flex Tariff is that it is appropriate to hold  
12 the Company at risk for the capital investment only when the rates will at least  
13 recover the incremental cost of service. In addition, the Company would assume  
14 the risk of serving such a customer for some other valid business reason. For  
15 example, we may extend a line to serve a customer in a new development in  
16 consideration for the opportunity to serve other new customers in that  
17 development. Again, the risk being assumed is a business risk, not a penalty for  
18 both parties' failure to ensure that all the requirements for a special service  
19 arrangement were met.

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**Summary**

2 **Q. Please summarize the key points of your testimony.**

3 A. The MDWASD witnesses have asked this Commission to throw out the rules and  
4 approve a special service arrangement where the rates do not recover the  
5 incremental cost of service. FCG did not act in bad faith in agreeing to  
6 MDWASD's request to extend the 1998 TSA or, once discovered, to terminating  
7 the old rates once it became clear that MDWASD was not going to work with us  
8 to develop a new agreement with rates that would comply with the Commission's  
9 regulations. As a part of the 2008 negotiation process, MDWASD never provided  
10 any viable bypass information and to date we still have not been provided that  
11 information. The Company respectfully requests the Commission reject the 2008  
12 TSA and encourage both parties to negotiate an agreement that meets all the  
13 necessary legal and regulatory requirements for an off-tariff rate.

14 **Q. Does this conclude your pre-filed rebuttal testimony?**

15 A. Yes.



## Florida City Gas

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Dear Greg and David:

Florida City Gas appreciates our commercial relationship with Miami Dade Sewer and Water Department (MDSWD). I want to personally assure each of you that we are committed to extending our service to you into the future in an economical manner, and under an agreement that can be approved by the Florida Public Service Commission. I want to and work with you to resolve this matter promptly.

Since our meeting in February, the Company has been involved in an exchange of letters with your consultant, Mr. Jack Langer. Instead of continuing this unproductive exchange, I would like to meet with each of you directly in order to move forward with extending our commercial relationship.

In advance of our meeting, please allow me to address Mr. Langer's most recent letter of April 8, 2009. Our response to each issue he presented is as follows:

**Point 1:** The original contract between the Company and MDSWD was provided under the Contract Demand Service (KDS) section of our tariff. The Company does have a flexible gas service (FGS) tariff. However, our original agreement did not provide for service to MDSWD under that tariff, and at no point during our 10-year service has the Authority been served under the FGS tariff. .

**Point 2:** If MDSWD desires to explore service under the FGS tariff going forward, such service would be provided under the current FCG tariff that became effective on December 7, 2004. The FGS tariff has a number of provisions that would apply to service being initiated for MDSWD.

- a. A customer must have a viable economic energy alternative to service from the Company, and it must provide verifiable documentation that the energy alternative is both available and economically viable. Mr. Langer has not identified that alternative to-date.
- b. When a viable economic alternative exists, the Company must demonstrate to the satisfaction of the Public Service Commission that gas service to its customer at a lower rate based on the alternative source will not cause any additional cost to the Company's other rate classes.
- c. Third, the rate charged to a customer under the FGS tariff "shall not be set lower than the incremental cost the company incurs to serve the customer"; and

- d. Fourth, service under the FGS tariff is not financially supported by the Company's CRA rider, as is service under the KDS tariff under which MDSWD is presently served. The CRA rider provides a subsidy equal to approximately eighty-seven (87%) of the revenues collected by the Company for service to MDSWD.
- e. With the requirement that a FGS tariff customer pay no less than the incremental cost of service, and the fact that CRA support is not available, service to MDSWD under the FGS tariff would require a substantial additional charge over and above our incremental cost of service to make sure the Company's other rate classes will not unduly bear the cost of providing continuing service to MDSWD.

**Point 3:** The contract with MDSWD executed in 1998 has expired, despite Mr. Langer's statements. The ongoing service from the Company is available only on a month to month basis pursuant to the First Amendment to that contract. This extension was necessary only to seek the approval of the Commission to enter into a new agreement. Absent action by the Commission on a revised agreement, due to the objections we highlighted for MDSWD in our January letter (attached) the month to month service will have to expire soon.

**Point 4:** We are current providing service under the First Amendment agreement that became effective July 1, 1998, and we are fulfilling that agreement.

**Point 5:** Under the terms of the First Amendment and New 2008 Agreement, Commission approval is a prerequisite to the any new contract becoming effective. There are no provisions in the FCG tariff that allows service to a customer under a special contract without Commission approval.

**Point 6:** FCG has done all things prudent and necessary to present and support passage of the New 2008 Agreement to the Commission. Approval of the New 2008 Agreement by the Commission will not be forthcoming. The Commission staff has advised the Company that it will make a "unfavorable recommendation" of the new contract as MDSWD does not qualify for service as a KDS customer, and because the proposed rates do not recover, at a minimum, the Company's incremental cost of service. This advice from the Commission staff led to the points we discussed at our meeting with MDSWD in February to begin renegotiations on an agreement that could gain Commission support. The Company believes it to be counterproductive to proceed in a case where a negative outcome is known.

Overall, we agree that MDSWD and the Company negotiated in good faith to arrive at a successor contract last year. The Commission staff supports our efforts to reach an accord with MDWSD in renegotiating the New 2008 Agreement to produce a contract that can meet the Commission's requirements. However, the extension under the First Amendment cannot be extended indefinitely.

Attached is a proposal we have developed under the advice we received from the Commission staff. We believe this new proposal can provide an economical service for MDWSD and can be approved by the Commission. In his letter, Mr. Langer indicates a desire to negotiate a new

agreement that is based on our FGS tariff. We can discuss that approach along with other approaches that will be more economical for MDWSD, once we have verification of the alternative supply.

Our ability to continue service under the current month-to-month arrangement is very limited, and we believe time is of the essence. This is certainly not the manner in which either party envisioned continued service to MDWSD, but I am confident we can arrive at a mutually beneficial resolution of this important matter. Thank you and I look forward to meeting with you soon.

Sincerely yours,



Melvin Williams