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090539-GU

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To: Filings@psc.state.fl.us
Cc: Shannon Pierce; Floyd Self; David Hope; Henry Gillman; Anna Williams; Connie Kummer; Martha Brown
Subject: Docket No. 090539-GU
Attachments: 2011-01-31, 090539, FCG Petition for Full Commission Assignment.pdf

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The Docket No. is 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

This is being filed on behalf of Florida City Gas

Total Number of Pages is 7

Florida City Gas' Petition for Full Commission Assignment

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FPSC-COMMISSION CLERK

1/31/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Special Gas)
Transportation Service Agreement with)
Florida City Gas by Miami-Dade County)
Through the Miami-Dade Water and)
Sewer Department)
_____)

Docket No.: 090539-GU
Filed: January 31, 2011

**FLORIDA CITY GAS' PETITION FOR
FULL COMMISSION ASSIGNMENT**

Florida City Gas ("FCG") hereby petitions the Florida Public Service Commission ("Commission"), pursuant to Section 350.01(6), Florida Statutes, to assign the hearing in the above-captioned Petition of the Miami-Dade Water and Sewer Department ("MDWASD") to the full Commission. In furtherance of this petition for full Commission assignment, FCG states as follows:

1. This proceeding was initiated by MDWASD on its petition filed December 14, 2009, seeking the Commission's determination as to its jurisdiction, approval, and enforcement of the 2008 Natural Gas Transportation Services Agreement ("2008 TSA") between FCG, a natural gas public utility regulated by this Commission, and MDWASD. In Order No. 10-0671-PCO-GU, dated November 5, 2010, the Commission ruled that as a matter of law it had the exclusive jurisdiction to determine whether the 2008 TSA should be approved. The Commission has subsequently identified ten issues to be resolved by the Commission at its formal evidentiary hearing now scheduled for March 23-24, 2011.

2. According to the Commission's Case Management System, there are three Commissioners presently assigned to this matter: Commissioner Arthur Graham, Chairman; Commissioner Ronald Brisé; and Commissioner Julie Brown.

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3. Section 350.01(6), Florida Statutes, provides that “a person regulated by the Public Service Commission and substantially affected by a proceeding” may petition the Commission that the proceeding be assigned to the full Commission. “In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations, regulatory policies, conservation, economy, competition, public health, and safety of the area involved.” The present case fully meets these statutory criteria for assignment to the full Commission, and FCG respectfully requests that it now be assigned to the full Commission as further explained herein.

4. FCG and its customers shall be substantially affected by any decision in this case and the potential impact of this case on MDWASD’s customers is equally substantial. The 2008 TSA would require that FCG provide natural gas transportation service to three of MDWASD’s water and wastewater plants for a ten year period at rates that are both substantially below its otherwise lowest applicable tariff rates and below the incremental cost of service. Taken at face value, the rates in the 2008 TSA if approved would cost MDWASD approximately \$110,000 per year. However, at the currently charged tariff rates, the difference between the 2008 TSA rates and FCG’s tariff rates is approximately \$650,000 per year, and the accumulated total difference between what has been billed and what has been paid is now in excess of \$800,000. By the time of a final order, the disputed amounts at issue between the 2008 TSA rates and the tariff rates could be two million dollars or more.

5. The customers affected by this case are numerous. FCG has over 100,000 customers in Florida, primarily in the southeast part of the state with a substantial number in Miami-Dade County. MDWASD, by its prefiled testimony in this matter, has represented that it serves over two million people. By virtue of MDWASD being a customer of FCG, any decision affecting FCG will ultimately impact MDWASD's customers.

6. The issues presented in this matter are unique, and overall, present a case of first impression that would benefit from the full consideration by the entire Commission. While the Commission has extensive experience and precedents in determining costs and setting rates, the facts in this case present especially complex questions for the Commission. Under the special facts of this case, the Commission's determination of the cost of service, the availability of a viable bypass alternative, whether the 2008 TSA's rates cover the cost of service, and whether the 2008 TSA should or should not be approved involve mixed questions of fact and policy that are highly disputed by the parties. There are three different questions that involve the interpretation of FCG's tariff and the application of the utility's competitive rate adjustment provisions. There is also an issue regarding the potential disallowance of the differential between the 2008 TSA rates and the incremental cost of service, a matter that alone merits the full consideration by the entire Commission because of its potential impact on FCG's customer and stockholders. Inclusion of the remaining Commissioners in the decision making process of this case is of great public importance because of the regulatory policies established, followed, or reversed in this docket may have an effect on FCG's rates, revenues, and ability to serve MDWASD and other customers through special service arrangements. The enforceability of a special service agreement for natural gas transportation that is below cost would be setting a major new policy with serious implications for every regulated public utility in the state.

7. The urgency of this matter cannot be understated. While some two years has elapsed since the present dispute between the parties began, the combination of customers impacted by this dispute and the growing dollars at issue makes this a critically important matter and timely resolution is very important. While evidentiary hearings are scheduled for March 23-24, 2011, there is still sufficient time for all the members of the Commission to become fully versed in this matter as the hearing is more than 50 days away and the parties on Friday just filed their rebuttal testimony. This request is very different from the situation in Order No. PSC-97-0377, issued April 7, 1997 (Docket Nos. 960235-WS and 960283-WS) where the Commission denied a request to refer the hearing to the full Commission because granting the request would delay the hearing by four months – here, there will be no delay in a final decision by assigning the case to the full Commission.

8. The regulatory policies established, followed, or reversed in this docket may have an effect on future cases before the Commission because the instant matter concerns whether the Commission should enforce a special agreement for natural gas transportation that is below cost, below FCG's Commission-approved tariff rate, below FCG's Commission-approved rate of return, and that would cause an inequity with FCG's general body of ratepayers. As stated previously, these are unique issues of first impression and important public policy that should be decided by the entire Commission. The overall circumstances here are very similar to those in Order No. 99-2438 (Docket No. 991462; December 13, 1999) where the Commission granted the request to assign that case to the full Commission.

WHEREFORE, Florida City Gas respectfully requests that the Commission assign this matter for hearing by the entire Commission.

Respectfully submitted this 31st day of January, 2011.



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CERTIFICATE OF SERVICE

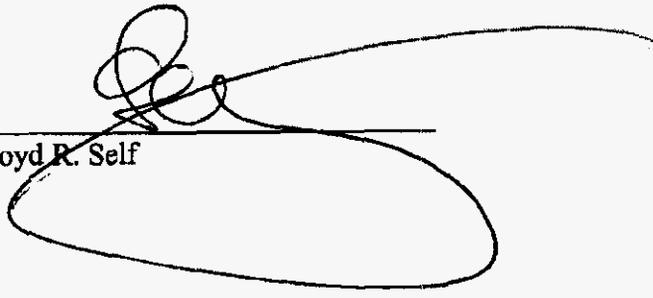
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 31st day of January, 2011.

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