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090539-GU

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Subject: FW: Attached Image
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Docket No. 090539-GU / 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.

Filed on behalf of Miami-Dade County

Document being filed: Miami-Dade County's Memorandum In Opposition To Florida City Gas' Petition For Full Commission Assignment. Total of 8 pages.

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 FPSC-COMMISSION CLERK

BEFORE THE 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

**MIAMI-DADE COUNTY'S MEMORANDUM IN OPPOSITION TO
FLORIDA CITY GAS' PETITION FOR FULL COMMISSION
ASSIGNMENT**

MIAMI-DADE COUNTY, by and through undersigned counsel, files this
Memorandum in Opposition to Florida City Gas' ("FCG") Petition for Full
Commission Assignment and states as follows:

1. FCG seeks referral of the County's pending Petition for Approval of a
Natural Gas Transportation Service Agreement ("2008 TSA") to the entire
Commission. Currently, hearings are scheduled to be held before three
commissioners, including the Commission Chair.

2. FCG's Petition does not meet the statutory requirements for full
Commission assignment and should therefore be denied.

3. The timing of FCG's request, only weeks before hearings are to be
held and pre-filed testimony is complete, begs the question of what FCG's real
motive for seeking the full Commission to hear this case. Certainly, in this era in
which government and government agencies in particular are expected to act
efficiently and expeditiously, there is no reason to change the hearing panel from
its current three commissioners to all five commissioners. Surely, the other two

commissioners can be used more efficiently.

4. This matter has been pending for over two years beginning when FCG initially filed a Petition to have the 2008 TSA approved by the Commission in November 2008.

5. As FCG has repeatedly indicated, the Commission is not required to engage in a full-fledged rate case in this proceeding. The Commission panel simply is asked to consider a special gas transportation contract matter. No issues of industry wide application are presented in this proceeding.

6. FCG has opposed Miami-Dade's request in a separate docket, 100315, for the Commission to consider the revenue impact from this special contract on the basis that the associated revenues will not and could not materially impact FCG's rate of return. Now FCG represents something entirely different to this Commission.

7. In July 2009, FCG voluntarily terminated the Competitive Rate Adjustment ("CRA") it was charging its other customers, apparently under the assumption that the County would pay the additional revenue which FCG had been collecting from its general body of customers. The CRA mechanism is a utility-specific mechanism, not a mechanism implemented by Commission rule or Florida statute. A Commission decision in this proceeding, based on the facts presented by the parties, will affect only the parties.

the parties, will affect only the parties.

8. During the past year, the parties have provided extensive information to PSC Staff. FCG also provided information to PSC Staff in the previous proceeding styled as Docket 080672-GU.

9. The parties have met on several occasions to discuss the preliminary list of issues and had two hearings before the Commission: in September 2010 regarding Miami-Dade's complaint filed against FCG in Docket No. 100315-GU; and in October 2010 in the pending docket regarding whether the 2008 TSA was exempt from Commission jurisdiction. During these hearings, FCG never mentioned any of the listed statutory criteria nor raised any questions or concerns that three Commission members could not adequately address this matter. In fact, Commission Staff Member Connie Kummer stated that she viewed the contract at issue as nothing more than a "customer specific rate schedule."

10. On December 8, 2010, the prehearing officer held a status conference in which the parties had an opportunity to address all issues. Again, FCG did not state that this is a matter of such critical importance or precedential value that it must be heard by the full Commission nor did FCG raise any concerns regarding the composition of the panel that would hear this matter.

11. At the status conference, FCG also knew that the term of the original prehearing officer, Commissioner Nathan Skop, was ending on December 31,

2010. Although FCG was well aware of the ten issues in the Order Determining Issues for Hearing, FCG did not request that this matter be referred to the full Commission. At the time, the three commissioners hearing the matter were Commissioner Skop, Chairman Arthur Graham and Commissioner Ronald Brisé.

12. Following the expiration of Commissioner Skop's term, Chairman Graham became the prehearing officer and Commissioner Julie Brown was appointed to the hearing panel.

13. The only other significant change since the status conference hearing in which the issues were discussed and approved by the prehearing officer is the filing of direct and rebuttal testimony by the parties. FCG's witnesses have admitted in their direct and rebuttal testimony to a variety of instances of mismanagement, but such admissions hardly can be considered of generic, industry-wide application. The Commission routinely considers the appropriate penalty or other resolution when a utility is found to have mismanaged a contract, failed to keep appropriate records or engaged in other acts or omissions to the detriment of the utility's customers.

14. For example, FCG admits that it failed to conduct an incremental cost of service study even though the tariff that FCG voluntarily and deliberately chose to include in the 2008 TSA required such a study. Also, FCG admits that its management either did not review or did not properly review the Agreement prior

to having FCG's President execute it. FCG did not consider its investment in the two miles of incremental pipe serving Miami-Dade when it signed the 2008 TSA. These management lapses occurred notwithstanding that negotiations took over one year prior to its execution.

15. The fact that FCG admits that it is guilty of mismanagement and may have made imprudent business decisions neither excuses FCG from its contractual commitment nor rises to the level of requiring the full Commission to hear this matter.

16. FCG repeatedly claims that the 2008 TSA revenue is "below cost." Cost of service is not a unique concept and determining FCG's cost of serving Miami-Dade in this proceeding does not call for any special methodology, it is straightforward rate-making. Resolution of this cost of service issue certainly is not of great public importance.

17. FCG's constant refrain that the rates are "below cost" does not make it so and does not make the calculation of FCG's incremental cost of serving Miami-Dade a "major new policy" or "matter of great public importance" especially where the disputed annual amount is less than .002% of FCG's \$90,000,000 in annual revenues, according to FCG's financial records.

18. A possible resolution by the Commission panel is the imputation of revenue to FCG. FCG suggests that the amount to be imputed could be as much as

\$650,000. The Commission imputed \$300,000 of revenue against FCG in its last rate case for a very similar investment in a pipeline to serve additional customers and FCG did not even request Commission reconsideration of the issue. Clearly, the financial impact to FCG's shareholders, less than .01% of FCG's annual revenues, and only twice the amount of the revenue which FCG already is required to impute by Commission order, is not material to FCG.

19. FCG also asserts that the loss of revenue will result in FCG not recovering its Commission-approved rate of return. However, the Commission-approved rate of return is not a guaranteed return but rather only an opportunity for FCG to achieve that rate of return. FCG may make business decisions that result in not receiving the full amount of the Commission-approved rate of return.

20. FCG acknowledges that it has learned valuable lessons from its many mistakes during this proceeding but the primary question remains whether FCG should be held accountable for those business mistakes or exculpated and absolved by the Commission for instances of admitted mismanagement which defy belief.

21. Approving the 2008 TSA will not adversely affect FCG's ability to serve MDWASD and other customers through special contracts since it is within FCG's own control in how it negotiates future contracts.

22. This Commission should not allow FCG to manipulate the regulatory process as a means to avoid a business contract especially where there is evidence

that the revenue received from MDWASD under the 2008 TSA meets or exceeds FCG's incremental cost to serve MDWASD.

23. Finally, the remaining statutory criteria do not provide support for assignment to the full Commission. There are no issues of conservation, economy, competition, public health or safety to be decided in this proceeding. In fact, the economic considerations weigh against having an additional two members of the Commission sit on the panel as it only serves to increase Commission expenses including additional staff time, resources and cost.

Based on the foregoing, Miami-Dade County respectfully requests that FCG's Petition for Full Commission Assignment be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by email and U.S. Mail this 3rd day of February, 2011 to:

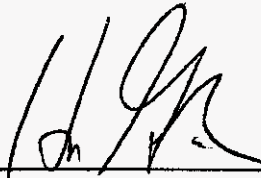
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