

**Diamond Williams**

090539-GU

**From:** Paxton, Lucinda (CAO) [LPAXT01@miamidade.gov]  
**Sent:** Friday, March 18, 2011 5:56 PM  
**To:** Filings@psc.state.fl.us; Anna Williams; Martha Brown; fself@lawfla.com; mwilliam@agresources.com; Spierce@agresources.com  
**Cc:** Gillman, Henry (CAO)  
**Subject:** In Re: Petition for approval of Special Gas Transportation Service Agreement...(090539 GU):  
**Attachments:** MOT SUMMARY FINAL ORDER\_001.pdf

- a) The name, address, telephone number and email for the person responsible for the filing is:

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- b) The filing is made in Docket No. 090539-GU  
 c) The document is filed on behalf of Miami-Dade County  
 d) The total pages in the document is 99 pages  
 e) The attached document is Miami-Dade County's Motion For Summary Final Order Approving Special Gas Transportation Service Agreement and Imposing Sanctions on Florida City Gas and Incorporated Memorandum of Law  
 f)

*Cindy Paxton*

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DOCUMENT NUMBER-DATE

01866 MAR 21 =

FPSC-COMMISSION CLERK

3/21/2011



**COUNTY ATTORNEY  
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March 18, 2011

**VIA ELECTRONIC FILING**

Ms. Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
Room 110, Easley Building  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 090539-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Miami-Dade County is an electronic version of Miami-Dade County's Motion For Summary Final Order Approving Special Gas Transportation Service Agreement And Imposing Sanctions on Florida City Gas and Incorporated Memorandum of Law in the above referenced docket.

Thank you for your assistance in this filing.

Sincerely yours,

A handwritten signature in black ink, appearing to read "H. N. Gillman".

Henry N. Gillman  
Assistant County Attorney

c: Parties of Record

DOCUMENT NUMBER-DATE

01866 MAR 21 =

FPSC-COMMISSION CLERK

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 Miami-Dade Water and Sewer Department.

DOCKET NO. 090539-GU

DATED: March 17, 2011

**MOTION FOR SUMMARY FINAL ORDER APPROVING SPECIAL GAS TRANSPORTATION SERVICE AGREEMENT AND IMPOSING SANCTIONS ON FLORIDA CITY GAS AND INCORPORATED MEMORANDUM OF LAW**

Miami-Dade County, by and through its undersigned counsel, hereby moves that the Florida Public Service Commission ("Commission" or "PSC") enter an order summarily approving the gas transportation agreement between Miami-Dade County ("Miami-Dade" or "County") and Florida City Gas ("FCG") which is the subject of this proceeding and imposing sanctions on Florida City Gas and provide such other relief as the Commission deems just and proper and as support for this motion states as follows:

**I. INTRODUCTION**

This matter involves the Commission's approval of a Special Gas Transportation Agreement between FCG and Miami-Dade. The Commission's Order Establishing Procedure ("Procedural Order"), confirms at page 7 that at the hearing to be held in this proceeding **"friendly cross-examination will not be allowed."** Order No. PSC 10-0714-PCO-GU issued on December 7, 2010, as amended by First Revised Order Establishing Procedure, Order No. PSC-10-0729-PCP-GU on December 13, 2010, as amended by Second Revised Order Establishing Procedure, Order No. PSC-11-0110-PSC-GU issued on February 9, 2011 (emphasis added)..

After 2 1/2 years of dispute, the filing of direct testimony, and the filing of rebuttal testimony, FCG has not presented a scintilla of evidence to identify its original capital

investment in the incremental facilities serving Miami-Dade. It is impossible to calculate the incremental cost of serving Miami-Dade without evidence establishing FCG's original investment in the incremental facilities serving Miami-Dade.

Based upon the undisputed facts, FCG has failed to corroborate its assertions that the rates provided in the 2008 Agreement are insufficient to cover FCG's cost of serving Miami-Dade.

Moreover, the undisputed facts reflect a litany of actions by FCG which rise to the level of bad faith including misrepresentations to Commission Staff and Miami-Dade, mismanagement by FCG, violations of Commission recordkeeping rules and the terms of FCG's tariff; violation of the Prevention of Performance Doctrine; failure to provide complete answers to discovery requests by Miami-Dade and Commission Staff; and improper use of rebuttal testimony; all of which may be considered by the Commission in determining whether to approve the 2008 Agreement and to impose sanctions including penalties against FCG.<sup>1</sup>

## **II. LEGAL STANDARD**

1. Pursuant to Rule 28-106.204, Florida Administrative Code, and Rule 1.510, Florida Rules of Civil Procedure, the Commission may enter a Summary Final Order or Summary Judgment for Miami-Dade if there is no genuine issue of any material fact.

2. The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. See Order No. 05-0702 at page 12; Order No. 03-1469. Section 120.57(1)(h), Florida Statutes, provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that: (1) no genuine issue as to any material

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<sup>1</sup> Miami-Dade incorporates herein by reference its Motion to Strike Rebuttal Testimony of David A. Heintz and Motion to Compel Discovery and to Impose Sanctions.

fact exists, and (2) that the moving party is entitled as a matter of law to the entry of a final summary order. Rule 28-106.204(4), Florida Administrative Code, states that "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact."

3. Under Florida law, it is well established that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985). A summary judgment cannot be granted unless the facts are so crystallized that nothing remains but question of law. *Id.* "The party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact." *Green v. CSX Transportation, Inc.*, 626 So. 2d 974 (Fla. 1st DCA 1993). However, when a party establishes that there is no material fact relating to any disputed issue, the burden shifts to the opponent to demonstrate the falsity of the showing. *See* Order No. 03-0528, at page 8.

### **III. UNDISPUTED FACTS**

#### **A. NEGOTIATION, REVIEW, EXECUTION AND SUBMISSION OF 2008 AGREEMENT TO COMMISSION**

4. On August 28, 2008, the President of FCG, Henry P. Linginfelter, signed a Special Gas Transportation Service Agreement (the "2008 Agreement") with Miami-Dade.<sup>2</sup>

5. The 2008 Agreement was signed following a year of negotiations by the parties and review of the terms and rates in the 2008 Agreement by FCG and its parent, AGL Resources', marketing, regulatory, accounting, legal, and senior executive management.

6. On November 13, 2008, FCG filed the 2008 Agreement with the Florida Public Service Commission (the "FCG Petition") in Docket No. 08-0672-GU. Section 11 of the FCG

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<sup>2</sup> The 2008 Agreement was subsequently ratified by the Miami-Dade County Board of County Commissioners.

Petition, in addition to attesting to the fact that "FCG will recover its cost to serve Miami-Dade County via the rates charged to Miami-Dade County," further states as follows:

The agreement provisions are justified, are in the best interest of FCG and do not harm FCG's ratepayers because (a) FCG will recover its cost to serve Miami-Dade County via the rates charged to Miami-Dade County, (b) serving Miami-Dade County removes from the general body of ratepayers costs that would otherwise be allocated to those ratepayers in the absence of the agreement, (c) losing Miami-Dade County as a customer would be detrimental to the general body of ratepayers, and (c) Miami-Dade County negotiated the agreement at arm's length with FCG and Miami-Dade County approved the agreement as being in the best interest of Miami-Dade County and its citizenry.

7. PSC Staff made some inquiries of FCG concerning the rates and associated revenues set forth in the Agreement. FCG responded to these inquiries and rescinded its prior statement that the rates and revenues covered its incremental cost of service. However, FCG continued to assert that the 2008 Agreement should be approved by the PSC as FCG and FCG's other customers would still derive benefits from the Agreement.

**B. FCG WITHDRAWAL OF PETITION AND TREATMENT OF MIAMI-DADE INCLUDING THREATENING TO TERMINATE SERVICE, TERMINATE AMENDED AGREEMENT AND UNILATERALLY CHARGE HIGHER RATES**

8. Subsequently and without prior explanation or notice to Miami-Dade, FCG filed a Notice of Withdrawal of Petition on February 16, 2009 thus withdrawing the FCG Petition and, consequently, the 2008 Agreement from the Commission's consideration. FCG asserts that it withdrew the FCG Petition after it determined that the rates set forth in the 2008 Agreement did not recover FCG's incremental cost of providing service to Miami-Dade. See FCG Direct Testimony of Carolyn Bermudez at p. 3 (a copy of which is attached as Appendix A hereto).

9. FCG informed Miami-Dade that the PSC would not approve the rates in the Agreement since the rates would not produce revenue sufficient to cover FCG's cost to serve

Miami-Dade. PSC's communication was based on information solely provided by FCG. FCG further provided Miami-Dade with a single sheet of paper (Exhibit \_\_ (CB-1) which FCG alleged to provide its current incremental cost to serve Miami-Dade. Miami-Dade requested documentation to support the alleged costs but FCG has yet to provide any such documentation.

10. In March, 2009, Melvin Williams of FCG threatened to terminate gas transportation service to Miami-Dade unless it agreed to negotiate and pay higher rates than the rates which FCG agreed to and accepted in the 2008 Agreement. FCG informed Miami-Dade that the PSC would not approve the rates in the Agreement since the rates would not produce revenue sufficient to cover FCG's cost to serve Miami-Dade.

11. Miami-Dade refused to agree to pay higher rates to FCG than the rates which FCG had agreed to accept in the 2008 Agreement. Miami-Dade requested that FCG re-file the 2008 Agreement or join Miami-Dade in submitting the 2008 Agreement to the PSC but FCG refused.

12. In July 2009, FCG notified Miami-Dade that FCG would charge the rate set forth in a tariff schedule which FCG alleges would apply to the transportation service it is rendering on Miami-Dade's behalf in lieu of the rates agreed to by the parties in the 2008 Agreement.

13. The tariff schedule that FCG unilaterally began charging Miami-Dade is eight (8) times higher than the costs incurred under the rates negotiated between Miami-Dade and FCG in the 2008 Agreement. Miami-Dade questioned FCG's authority to charge Miami-Dade at a different class of service and after initially paying the new rate under protest, began paying the 2008 rates and placing the disputed amount in a segregated account.

**C. QUESTIONS CONCERNING VALIDITY OF INCREMENTAL COST INFORMATION**

14. Miami-Dade also questioned the accuracy of the costs reflected in the sheet which FCG provided in February 2009. For instance, the costs reflected on the sheet indicated that FCG's incremental cost to operate the facilities serving Miami-Dade had increased by more than 2,500% between 1998 and 2008. The costs indicated on the sheet also suggested that FCG's cost of depreciation had increased by more than 400% during such period.

15. FCG has offered no explanation for these alleged cost increases nor has FCG ever provided any support for them from its books and records.

16. Miami-Dade long ago requested that FCG produce documents to support (a) its alleged original investment in the incremental facilities serving Miami-Dade; and (b) FCG's alleged incremental cost of operating and maintaining such facilities as well as providing billing and customer service for Miami-Dade. To date, FCG has failed to produce a single document to support its alleged cost of serving Miami-Dade.

17. During an informal meeting among PSC Staff and representatives of Miami-Dade and FCG held on March 11, 2011, FCG admitted that it had not located any record or book support that would corroborate the original capital investment or operating costs which FCG has been alleging to exist for the past 2 1/2 years of this dispute.<sup>3</sup> See Affidavit of Jack Langer, a copy of which is attached hereto as Appendix B.

18. FCG representatives, after 2 1/2 years of this dispute, admitted that they had recently requested boxes from FCG storage and had been exploring their contents for several

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<sup>3</sup>FCG representatives suggested that FCG had located documentary support for its incremental investment in the facilities serving one of Miami-Dade's three locations, the Black Point facility. However, Miami-Dade contributed the funds to FCG to construct those facilities so FCG does not have any investment in them.

weeks. The representatives further indicated that they had requested additional boxes which they now must examine, with the hope of being able to advise the parties of their contents by Monday or Tuesday, March 14 or 15, 2011.

19. Miami-Dade has appeared before the PSC, the PSC pre-hearing officer as well as attended numerous informal meetings with PSC Staff and representatives of FCG for nearly 2 1/2 years. During this time, Miami-Dade has unfailingly stated that FCG had not presented a single document or a single notation from its records which supports FCG's alleged incremental costs, the sole costs at issue and upon which this entire proceeding is being held.

20. FCG waited 2 1/2 years before advising the PSC, through its Staff, and Miami-Dade that it had not located any book or record support for its alleged incremental costs (which as noted earlier FCG alleges had inexplicably risen exponentially since 1998).

21. FCG did not even initiate proper due diligence to search for original cost documents or continuing property records necessary to establish its incremental cost to serve Miami-Dade until several weeks ago -- after this dispute has raged for nearly 2 1/2 years. In fact, FCG has objected to Miami-Dade's most recent request for supporting cost information stating that for FCG to provide the information would be "expensive," "excessively time consuming," "excessive" and "unnecessary." See FCG response to Miami-Dade Document Request No. 20, attached hereto as Appendix C.

22. Despite Miami-Dade requests and, more recently, PSC Staff requests for support of FCG's alleged incremental costs, FCG failed until recently to inform anybody that it was unable to locate any supporting documents.

23. It is clear that FCG has acted in bad faith throughout this proceeding and, indeed, throughout the course of this dispute in an attempt to relieve itself of its obligations under the

2008 Agreement and to obtain higher rates from Miami-Dade. FCG has violated all notions of fairness and fair dealing by affirmatively advocating against approval of the 2008 Agreement which its President signed after many months of negotiation involving a number of members of FCG management and both in-house and outside counsel for FCG and its parent, AGL. FCG neglected to act with due diligence for 2 1/2 years to identify book or record evidence which could have corroborated FCG's alleged incremental costs to serve Miami-Dade. These actions too, violate the Prevention of Performance Doctrine, violate applicable Commission rules (Rule 25-7.014, F.A.C.) and constitute a breach of the 2008 Agreement by FCG.

**D. MIAMI-DADE'S PETITION FOR APPROVAL OF 2008 TRANSPORTATION AGREEMENT**

24. Against FCG's wishes, Miami-Dade County filed the Petition which is the subject of this proceeding on December 14, 2009 to obtain Commission consideration of the 2008 Agreement, or otherwise have the Commission acknowledge that the 2008 Agreement was not within the Commission's jurisdiction.

25. FCG subsequently petitioned the PSC to intervene in this proceeding, which intervention was approved by the PSC.

26. Since intervening in this proceeding, FCG has advocated for the PSC to reject the 2008 Agreement and confirm FCG's authority to charge Miami-Dade a tariff rate which would impose on Miami-Dade costs which are approximately eight (8) times higher than the costs incurred under the rates negotiated between Miami-Dade and FCG in Article VII of the 2008 Agreement.

27. As stated previously, FCG filed the 2008 Agreement and subsequently withdrew the Agreement from PSC consideration prior to the PSC ever having had the opportunity to

approve it because FCG unilaterally determined that the 2008 Agreement would not produce revenue sufficient to cover FCG's incremental cost to serve Miami-Dade.

28. A party cannot unilaterally take steps to render an agreement void and thus avoid performance of the agreement's terms.

29. FCG's withdrawal of the 2008 Agreement from PSC consideration made it impossible for the Agreement to be approved by the PSC within 180 days of its signing.

**E. MISREPRESENTATIONS AND FLAWED ANALYSIS FOR INCREMENTAL COST OF SERVICE STUDY BY FCG INCLUDING IN DISCOVERY RESPONSES**

30. Prior to the filing of direct or rebuttal testimony, Miami-Dade and FCG appeared before this Commission on a number of occasions in this docket and a related docket (Docket No. 100315) to discuss aspects of the 2008 Agreement. Several informal meetings also have been held among the parties and Commission Staff. The parties attended a pre-hearing issue identification hearing in this proceeding before the pre-hearing officer on December 8, 2010.

31. On each of these occasions, Miami-Dade has informed the Commission and Commission Staff that FCG never has presented any document or study which contradicts FCG's initial statements in Section 11 of the FCG Petition that the rates in the 2008 Agreement are sufficient to recover FCG's incremental costs. Miami-Dade repeatedly has informed the Commission and its Staff that FCG: (a) had not conducted a proper incremental cost of service study; (b) had not presented any proof of FCG's investment in the incremental facilities used to provide service to Miami-Dade; and (c) had not presented any proof of FCG's incremental operations, maintenance, customer service, billing or other costs necessary to provide service to Miami-Dade.

32. On December 13, 2010, the prehearing officer issued Order No. 10-0730, the "Order Determining Issues for Hearing" in this proceeding. Issue No. 2 is, "What are FCG's

incremental costs to serve MDWASD's gas transportation requirements for the Alexander Orr, Hialeah-Preston, and South Dade Wastewater Treatment plants, respectively?"

33. In FCG's response to Miami-Dade interrogatory no. 11, delivered to Miami-Dade on September 8, 2010, FCG witness Carolyn Bermudez admits that "FCG has not done a cost of service study to determine the incremental cost to serve any of the three Miami-Dade Plants." (See Exhibit \_\_\_ (JAR-1), a copy of which is attached to this motion as Appendix D).

**F. MIAMI-DADE AND FCG DIRECT AND REBUTTAL TESTIMONY AND FCG'S  
ERRONEOUS INFORMATION, MISREPRESENTATIONS AND POOR  
RECORDKEEPING**

34. Miami-Dade and FCG filed direct testimony in this proceeding on December 29, 2010 in accordance with the Order Establishing Procedure, as revised.

35. Miami-Dade presented the direct testimony of five (5) witnesses, including the testimony of expert witnesses Fred Saffer and Brian Armstrong with approximately 60 combined years of experience in utility regulation and ratemaking. Mr. Saffer attempted to provide an incremental cost of service analysis but repeatedly invoked a disclaimer that the analysis' accuracy was constrained by the limited and insufficient information made available by FCG. Both experts explained that: (a) FCG is in sole possession of the information required to conduct a true incremental cost of service study; (b) FCG has failed to ever produce the required information; and (c) the allocation analysis presented by FCG through the date of submission of pre-filed testimony bears no resemblance to a proper cost of service analysis. See pertinent portions of the direct testimony of Miami-Dade witness Saffer and Armstrong in Appendix E, attached hereto.

36. FCG presented the direct testimony of two witnesses. Their testimony indicates that neither of the witnesses possesses experience conducting incremental cost of service studies.

FCG retained no outside cost of service expert to provide an incremental cost study at any time through the date of FCG's submission of direct testimony in this proceeding. FCG witness Bermudez admits in her rebuttal testimony (at page 3, lines 18 through 21) that the allocation analysis she presented in her direct testimony was not an incremental cost of service study. FCG simply refused to conduct such a study through the date of filing its pre-filed rebuttal testimony. See FCG responses to Miami-Dade Interrogatories numbered 1, 11, 12, 13, 14, 34 and 35, attached as Appendix F hereto.<sup>4</sup>

37. Miami-Dade and FCG pre-filed rebuttal testimony on January 28, 2011. All direct and rebuttal testimony is completed in this proceeding. For the first time, nearly 2 1/2 years after signing the 2008 Agreement, FCG presented the rebuttal testimony of a cost of service expert.

38. Neither in FCG's direct or rebuttal testimony nor at any time during the 2 1/2 years of this dispute, has FCG presented any evidence of its original capital investment in the facilities serving Miami-Dade nor evidence of the incremental operations, maintenance, customer service, billing or any other incremental costs which FCG alleges to incur to serve Miami-Dade.

39. In rebuttal testimony, FCG witness Bermudez presents a copy of the sole document upon which FCG relies to establish its original capital investment in the incremental facilities serving Miami-Dade -- a heavily redacted copy of a memorandum dated February 20, 1997 (Rebuttal Exhibit \_\_\_ (CB-6)). At page 3, lines 10 through 15 of her rebuttal testimony, FCG witness Bermudez states:

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<sup>4</sup>Appendix G, attached hereto, provides a litany of additional FCG witness admissions of mistakes and flawed management relating to the 2008 Agreement and this proceeding, as listed in the testimony of Miami-Dade witness Joseph A. Ruiz.

In order to test whether the rates in the 2008 TSA recovered their costs, some type of analysis is required to obtain a reasonable approximation for the relevant costs of service. I used the best available information -- **THE ACTUAL PLANT INVESTMENT BY FCG** and allocation factors and adjustments based upon the Commission's decisions in our last rate case for the class of service applicable to MDWASD (emphasis added).

Later, at page 7, lines 7 through 13 of her rebuttal testimony, Ms. Bermudez attempts to rebut the testimony of Miami-Dade witness Langer, by stating:

Mr. Langer is correct that MDWASD did pay and contribute certain costs associated with the service lines and meters. However, at the same time the Company also incurred some incremental capital costs associated with the high pressure mains for the Alexander Orr and Hialeah plants, \$387,250 and \$833,239, respectively. See my Exhibit \_\_\_ (CB-6, February 20, 1997 Alexander Orr and Hialeah Plant Rate Design Incremental Cost of Service Study). **THESE COSTS ARE INCLUDED AS THE BASIS OF MY ANALYSIS** (emphasis added).

40. Miami-Dade has reviewed the non-redacted text of the memorandum relied upon by witness Bermudez as the basis for her analysis. Copies of the redacted memorandum, Exhibit \_\_\_ (CB-6), and the complete memorandum are attached hereto as Appendix H.<sup>5</sup>

41. Contrary to the rebuttal testimony of FCG witness Bermudez, the \$387,250 and \$833,239 indicated in the memorandum do not represent FCG's "actual plant investment" nor represent FCG's "incremental capital costs associated with the high pressure mains for the Alexander Orr and Hialeah plants." Instead, these amounts are bypass cost estimates made by FCG engineers at or about the date of the correspondence, 1997. Under the heading "Incremental Cost Rate," the memorandum clearly states:

These rates were developed by obtaining an estimated cost, both capital and operating for possible bypass at both locations. Our central engineering group prepared these estimates.

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<sup>5</sup>The unredacted memorandum was provided to Miami-Dade only after Miami-Dade requested a copy in the discovery process.

The memorandum then proceeds to refer to "cost estimates" and the cost of "bypass" repeatedly such that it is abundantly clear that the figures presented in the memorandum do not represent "the actual plant investment by FCG," as witness Bermudez apparently would have the Commission believe.

42. The information in Exhibit \_\_\_ (CB-6), which FCG witness Bermudez describes as "the actual plant investment by FCG," is nothing of the sort. FCG clearly has misrepresented to the Commission and Miami-Dade the content of Exhibit \_\_\_ (CB-6). Exhibit \_\_\_ (CB-6) does not provide the original investment information which it is purported to provide. FCG has failed to present one scintilla of evidence after completion of direct and rebuttal testimony as to FCG's original capital investment in facilities serving Miami-Dade.

43. On rebuttal, FCG produced the testimony of a cost of service expert, David A. Heintz, who relies exclusively on the information provided to him by FCG, and specifically the original investment information contained in Ms. Bermudez's Exhibit \_\_\_ (CB-6) as the foundation for his testimony (see Heintz Exhibit \_\_\_ (DAH-2)).<sup>6</sup> Mr. Heintz mistakenly believes that the estimates of bypass costs contained in Exhibit \_\_\_ (CB-6) represent FCG's "fixed costs or the investment that FCG has made in the facilities that were built in order to transport and meter MDWASD's natural gas use" (rebuttal at page 7, lines 10 through 12). As explained above, the investment costs used by Mr. Heintz and reflected in his cost of service exhibit reflect 1997 engineering estimates of potential bypass costs, not FCG's original

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<sup>6</sup>FCG's rebuttal witness Heintz relies completely upon information supplied to him by FCG to conduct his cost of service study, and specifically Exhibit \_\_\_ (CB-6), to establish FCG's original investment in the facilities serving Miami-Dade. Miami-Dade's interrogatory no. 22 requested that FCG "please provide all documents received by witness Heintz establishing FCG's investment in the two miles of incremental pipe serving Miami-Dade." FCG responded as follows: "Other than the information contained in Exhibit \_\_\_ (CB-6), already in MDWASD's possession, there are no other responsive documents."

investments made in 1985 when service to Miami-Dade began. Clearly, the rebuttal testimony of witness Heintz does nothing to remedy FCG's failure to present any evidence of its original investment in the incremental facilities serving Miami-Dade.

44. On March 11, 2011, an informal meeting was held among Commission Staff and representatives of FCG and Miami-Dade. FCG witness Bermudez admitted that FCG still has not been able to locate continuing property records or other documents to establish FCG's original investment in the incremental facilities necessary to serve Miami-Dade's Alexander Orr or Hialeah plants. FCG apparently has located documents establishing the cost of incremental facilities serving Miami-Dade's South Dade Wastewater Treatment Plant at the Black-Point location, however, Miami-Dade contributed the funds to FCG to build such facilities. FCG has not made any investment in them (see this admission in FCG response to Miami-Dade interrogatory no. 19, attached hereto as Appendix I).

45. FCG witness Bermudez indicated during the March 11 meeting that she had requested boxes from FCG storage in the past several weeks in an attempt to locate records, both continuing property records and documents such as purchase orders, contracts, etc. to corroborate FCG's alleged investment in the incremental facilities serving Miami-Dade. No explanation was offered as to why FCG waited until this late date to even attempt to locate records relating to the facilities serving Miami-Dade. This information was requested by Miami-Dade as early as March 2009 at a meeting with FCG. FCG never informed Miami-Dade that it had not even attempted to locate this information. It is clear that FCG knew at the time it filed direct and rebuttal testimony that locating original cost documents to corroborate its alleged capital investment in the incremental facilities serving Miami-Dade would be difficult. In fact, FCG objected on March 1, 2011, to Miami-Dade's most recent request for corroborating

incremental cost information stating that to comply with Miami-Dade's request would be "expensive," "excessively time consuming," "excessive," and "unnecessary." See FCG Responses to Miami-Dade Requests for Production No. 20, 21 and 22, attached hereto as Appendix J.

46. After nearly 2 1/2 years of dispute, FCG finally admits to the Commission, Commission Staff and Miami-Dade that it has not located any continuing property records, accounting records, construction contracts, invoices, or other documents necessary to establish FCG's original capital investment in the facilities serving Miami-Dade's Alexander Orr or Hialeah plants.<sup>7</sup>

47. The gravity of these admissions should be weighed by the facts that: (a) Miami-Dade long ago requested that FCG identify the amount of its incremental investment in the

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<sup>7</sup>On February 17, 2011, in response to Commission Staff interrogatory no. 18, FCG first disclosed and admitted that it is unable to provide any documents to corroborate the alleged \$387,250 and \$833,239 investment in the incremental facilities serving Miami-Dade's Alexander Orr and Hialeah plants, respectively. FCG's response to Staff interrogatory no. 18 is attached hereto as Appendix K, and states:

Response: The Depreciation expense for Alexander Orr, Hialeah Water Plant and South District using the 1999 Rate Design was taken from Carl Palermo's (Former NUI/ETG Marketing employee) memo dated February 20, 1997, in which he describes the development of the transportation rate for Alexander Orr Water Plant and Hialeah Water Plant. A copy of this memo was attached to the rebuttal testimony of Ms. Bermudez as Exhibit \_\_\_ (CB-6). This memo is the sole document relied upon for the 1999 rate design numbers appearing in CB-1 and CB-2. FCG provided this analysis, originally, for some perspective as to the rate design analysis that was developed in December 2009. FCG is in the process of attempting to locate the original records from 1997-1999 to verify the information contained in the February 20, 1997, memo, but so far we have not been able to locate any additional documents.

This response prepared by or under the supervision of Carolyn Bermudez, Region Manager for Florida City Gas.

facilities serving Miami-Dade and further requested that FCG provide copies of the documents confirming such investment -- but FCG refused to provide such information to Miami-Dade (see FCG responses to Miami-Dade interrogatory nos. 16, 18 and 21 and document requests 20, 21, 22 and 27, attached as Appendix L hereto); and (b) at no time during the prior appearances before the Commission, or informal meetings among the parties and Staff, did FCG ever admit that it could not produce this information.<sup>8</sup>

48. The nonchalance of FCG reflected in its refusal to respond to Miami-Dade's standard and legitimate discovery requests is startling. Commission Rule 25-7.014(5), Florida Administrative Code, entitled "Records and Reports in General" states that a utility shall furnish any information concerning its facilities or operations which may be requested for determining rates and judging the practice of the utility. The Commission has recognized that the intention of the rule is to "ensure that a utility can justify the level of plant that is being used to provide service." Petition for Increase in Rates by Florida Division of Chesapeake Utilities Corp., Docket No. 090125, Order No. 10-0029 (issued January 14, 2010) at page 12. The Commission further noted that a utility may request a rule waiver when compliance with the rule would create a substantial hardship or would violate principles of fairness. Id. (citing § 120.542, Fla. Stat.). FCG has never requested such a waiver in this proceeding.

49. FCG has failed to produce the evidence which is absolutely necessary to establish FCG's original incremental capital investment in facilities serving Miami-Dade. Without evidence of FCG's original investment, FCG cannot prove that the rates and revenues derived by FCG under the 2008 Agreement are insufficient to cover FCG's incremental costs.

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<sup>8</sup>The situation is no better regarding FCG's incremental expenses. After nearly 2 1/2 years of this dispute, FCG has failed to produce any evidence of its incremental expenses other than surveillance report allocations using dubious allocation factors apparently from stale rate case information.

50. As Commission Staff interrogatory number 84 to FCG makes clear, other utilities, including FCG's predecessor, regulated by the Commission have for many years satisfied their respective burden to provide evidence establishing incremental costs through "cost of service studies which included a detailed estimate of operations and maintenance (O&M) expenses." See Staff interrogatory no. 84 included in Appendix M, hereto. After 2 1/2 years of this dispute, FCG has failed to even attempt to conduct the analyses required to provide the Commission or Miami-Dade with detailed estimates which other utilities routinely provide.<sup>9</sup>

51. There is no explanation for FCG's failure, 2 1/2 years ago, to perform the incremental cost analysis routinely performed by utilities to identify incremental operating, maintenance, billing and customer service costs incurred to serve Miami-Dade (see Appendix M for a list of sample incremental cost studies presented by utilities, including FCG, in the past).

52. FCG was required to determine its incremental cost of serving Miami-Dade prior to signing the 2008 Agreement pursuant to requirements contained in its tariff, yet FCG simply ignored such requirement.

53. The facts presented in this Motion reveal that Miami-Dade has been forced to spend tens of thousands of dollars to litigate matters at this Commission which should never have been litigated. FCG initially recognized that the rates and corresponding revenue to be derived from the 2008 Agreement are sufficient to cover its costs of serving Miami-Dade. Only after FCG refused to conduct a standard incremental cost of service analysis did FCG contest

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<sup>9</sup>The Commission's Procedural Order prohibits "friendly cross-examination." Responses to Staff's latest discovery requests, even if prepared by FCG and provided to Staff and Miami-Dade in a timely manner, are not part of FCG's testimony and cannot be entered into the record unless the prohibition against friendly cross-examination in the Procedural Order is to be ignored and violated. The Procedural Order also provided Commission Staff the opportunity to file testimony in this proceeding. However, Staff chose not to sponsor any witness or testimony in this proceeding.

whether the revenue was sufficient to do so. FCG has refused to present any documents which corroborate FCG's alleged capital and other incremental costs of providing service to Miami-Dade. Although this corroborative information is critical evidence in this proceeding, until a few weeks ago FCG refused to even exercise due diligence in seeking such information in its books and records on the basis that it would be "expensive," "excessively time consuming," "excessive" and "unnecessary" to provide this corroborative evidence. FCG belatedly retained a cost of service expert to conduct a study which utilities often conduct in due course. However, the information relied upon by FCG's cost of service witness is flawed.

54. FCG admits, after 2 1/2 years of litigation, that it is unable to produce continuing property records or other accounting records, nor construction contracts, invoices or other proof of capital expenditures to prove its investments in the incremental facilities serving Miami-Dade's Alexander Orr and Hialeah plants.<sup>10</sup> FCG misrepresented the contents of the sole document presented in its pre-filed testimony to identify its capital investments in such facilities. See Petition of West Florida Natural Gas Corp. for an Increase in Rates and Charges, Docket No. 850503, Order No. 16549 (issued September 5, 1986) (Commission reduced utility's return on equity by fifty (50) basis points for mismanagement and misrepresentation of facts in addition to

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<sup>10</sup>FCG's failure to maintain accurate and complete continuing property records also violate Commission rules and constitutes poor utility management. See Rule 25-7.014, F.A.C., "Records and Reports in General"; and Rule 25-7014(5), F.A.C. Miami-Dade notes that the Commission previously has noted FCG's problems complying with regulatory requirements concerning continuing property records. See Request for approval of change in depreciation rates by City Gas Co., Docket No. 030222, Order No. 03-1147 (issued October 14, 2003). FCG apparently has failed to correct its non-compliance to date and should be held accountable for such non-compliance in this proceeding. The Commission has penalized utilities which have failed to maintain complete and accurate books and records. See Petition for Increase in Rates by Florida Division of Chesapeake Utilities Corporation, Docket No. 090125, Order No. 10-0029 (issued January 14, 2010); West Florida Natural Gas, Docket No. 850503, Order No. 16549 (issued September 5, 1986). The Commission's authority to reduce a utility's return on equity for utility mismanagement has been upheld by the Florida Supreme Court. See Gulf Power Co. v. Wilson, 597 So. 2d 270, 272-74 (Fla. 1992).

a further reduction of ten (10) basis points for the utility's failure to maintain adequate continuing property records.)

55. Similarly, FCG has never provided any evidence to establish its specific costs incurred to serve Miami-Dade -- operating, maintenance, billing or customer service; nor any competent evidence to explain its proposed alternative allocation method or the validity of the costs allocated.

### G. ARGUMENT

It is clear that for the past 2 ½ years of this dispute, FCG has not produced a shred of evidence of its original cost of the facilities serving Miami-Dade's plants. Also, there is absolutely no evidence in the record that the revenues received by FCG using the rates in the 2008 Agreement do not cover FCG's incremental costs to serve Miami-Dade.<sup>11</sup> Additionally, FCG has also failed to provide the actual incremental costs of serving Miami-Dade which is a paramount issue in this case. FCG's direct and rebuttal testimony relies on a heavily redacted internal memo which is misrepresented by FCG's witness and an 8-year old rate case as support for FCG's assertion that FCG's "cost study" should be accepted and that the 2008 rates do not cover FCG's incremental costs to serve Miami-Dade's plants. FCG's position can only be described as "incredible" and does not raise any genuine issue of fact.

Based on the undisputed facts, pre-filed testimony, attached exhibits, pleadings and answers to interrogatories, Miami-Dade is entitled to a summary final order approving the 2008 Agreement because no genuine issue as to any material fact exists and Miami-Dade is entitled as a matter of law to the entry of a final summary order.

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<sup>11</sup> The production of any evidence at this time would be untimely and prejudicial to Miami-Dade.

Contrary to FCG's lack of evidence to support its assertion that the rates do not cover its incremental costs, there is an abundance of evidence of FCG's bad faith, lack of fair dealing and misrepresentations to Commission Staff and Miami-Dade throughout this proceeding and in Docket No. 080539. A litany of mistakes and instances of mismanagement are identified in Appendix G hereto. The bad faith conduct also includes FCG unilaterally withdrawing the initial petition for Commission approval and unilaterally charging Miami-Dade a rate that is eight (8) times higher than the rates in the 2008 Agreement. The egregious conduct of FCG also includes FCG renegeing on an agreement executed by its President, vigorously opposing the approval of the 2008 Agreement after providing misinformation to Commission Staff and poor recordkeeping for the account of its largest transportation customer. FCG's reprehensible conduct cries out for this Commission to impose sanctions on FCG and provide relief to Miami-Dade as this Commission deems appropriate.

The Prevention of Performance Doctrine has long been recognized by the Florida courts. The Prevention of Performance Doctrine holds that a party to an agreement cannot avoid its obligations under the agreement by taking affirmative steps to render the agreement ineffective or impossible to perform.

As a matter of contract law and long-standing Florida precedent, FCG is precluded from engaging in acts that would frustrate performance of its promise to transport gas for Miami-Dade at the 2008 Agreement rates.<sup>12</sup> Under the prevention of performance doctrine, where a party contracts for another to do a certain thing, he thereby impliedly promises that he will himself do nothing which will hinder or obstruct that other in doing the agreed thing. See Sharp v.

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<sup>12</sup>Even a delay of performance may be a breach under long-standing Florida Supreme Court precedent. Schroeder v. Annenberp, 4 So. 2d 866 (Fla. 1941); Sharp v. Williams, 192 So. 476 (Fla. 1940); Rutig v. Lake Jem Land Co., 20 So. 2d 497 (Fla. 1945); Winter Garden Citrus Growers' Asso. v. Willits, 151 So. 509 (Fla. 1933).

Williams, 192 So. 476 (Fla. 1939); Hanover Realty Corp. v. Codomo, 95 So. 2d 420 (Fla. 1957). Indeed, if the situation is such that the cooperation of one party is a prerequisite to performance by the other, there is not only a condition implied in fact qualifying the promise of the latter, but also an implied promise by the former to give the necessary cooperation. Sharp, 192 So. 476 (Fla. 1939). Put simply, a party to an agreement who prevents performance cannot take advantage of his own wrong. Walker v. Chancey, 117 So. 705 (Fla. 1928); Hart v. Pierce, 125 So. 243 (Fla. 1929).

Based on the undisputed facts above, this Commission should find that FCG breached the 2008 Agreement and has acted in bad faith in with respect to the 2008 Agreement by making material misrepresentations to Commission Staff and Miami-Dade and violated principles of good faith and fair dealing.

#### CONCLUSION

Much time, expenses and resources have been spent on a dispute that should never have been litigated. It is only due to FCG's unwillingness to abide by a valid contract which was compounded with FCG's misrepresentations, mistakes and fatal flaws in its cost of service analysis. FCG is the regulated utility and should be held to the standards and requirements of all regulated utilities. The Commission should not condone FCG's egregious conduct in this matter but instead should require FCG to comply with its obligations and approve the 2008 Agreement and assess sanctions and penalties against FCG as the Commission deems just and proper.

WHEREFORE, based on the foregoing, Miami-Dade respectfully prays that the Commission:

- (a) enter a Summary Final Order granting this motion;

(b) approve the 2008 Agreement retroactive to the date FCG terminated the Amendment to the 1998 Agreement;

(c) order FCG to refund to Miami-Dade any funds previously paid to FCG in excess of the rates established in the 2008 Agreement;

(d) order FCG to reimburse Miami-Dade for all of its attorney fees and costs in this proceeding and related proceedings;

(e) find that FCG breached the 2008 Agreement;

(f) find that FCG has acted in bad faith with respect to the 2008 Agreement and violated principles of good faith and fair dealing;

(g) find that FCG has made material misrepresentations to Commission Staff and Miami-Dade in this proceeding and related proceedings;

(h) find that FCG has violated Commission rules by engaging in poor and incomplete recordkeeping;

(i) impose such sanctions as fit and proper to penalize FCG for the pattern of egregious mismanagement and misrepresentation in which it has engaged; and

(j) provide such other relief to Miami-Dade as the Commission deems just and proper.

Respectfully submitted,

R.A. CUEVAS, JR.

By: s/Henry N. Gillman  
Henry N. Gillman  
Assistant County Attorneys  
Florida Bar No. 793647  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, Suite 2810  
Miami, FL 33128  
Telephone: 305-375-5151  
Fax: 305-375-5611  
Email: [hgill@miamidade.gov](mailto:hgill@miamidade.gov)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing have been furnished  
by electronic mail this 18<sup>th</sup> day of March, 2011 to the following:

Anna Williams, Esq.  
Martha Brown, Esq.  
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s/Henry N. Gillman  
Henry N. Gillman

APPENDIX A

EXCERPT OF DIRECT TESTIMONY OF CAROLYN BERMUDEZ

1 plants. I will demonstrate that consistent with Florida PSC requirements and the  
2 cost of service methodology approved in the company's last rate case in 2003 that  
3 the only proper analysis or approach for determining the incremental cost to serve  
4 the MDWASD is through a system-wide cost of service study updated with  
5 present expenses and historic net utility investment in the facilities to the  
6 MDWASD plants. Accordingly, the 2008 TSA should be denied and the rates not  
7 enforced as they do not recover FCG's cost of service. I discuss MDWASD's  
8 failure to provide the Company with any viable bypass information and the  
9 various applicable tariff provisions that are relevant to service to MDWASD, both  
10 in a contract environment as well as the appropriate tariff rate charges in the  
11 absence of a contract. In addition, I discuss the benefits to customers of the  
12 Competitive Rate Adjustment ("CRA") and why it is important to the utility's  
13 ability to meet its revenue requirements. Finally, I discuss how much money  
14 MDWASD owes FCG for its failure to pay the tariff rates.

15 Q. What exhibits are you presenting in this proceeding?

16 A. I am responsible for the following exhibits:

<u>Exhibit No.</u>	<u>Description</u>
17 CB-1	1999 Rate Design-November 2008 Surveillance Report
18	Rate Design Comparison ("Attachment 1" to Data
19	Request Response No. 1)
20	Backup to "Attachment 1"
21 CB-2	December 2009 Incremental Cost Analysis
22 CB-3	November 2010 Incremental Cost Analysis
23 CB-4	MDWASD Unpaid Amounts
24 CB-5	

**APPENDIX B**

**AFFIDAVIT OF JACK LANGER**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In re: Petition of Miami-Dade County through  
The Miami-Dade Water and Sewer Department      Docket No. 090539-GU for  
Approval of Special Gas Transportation  
Service Agreement with Florida City Gas

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**AFFIDAVIT OF JACK LANGER**

STATE OF FLORIDA            )  
  )SS  
COUNTY OF MIAMI-DADE )

BEFORE ME, appeared Jack Langer, being duly sworn, deposes and says:

1.     My name is Jack Langer and I have personal knowledge of the facts in this Affidavit.

2.     On March 9, 2011, the Office of the General Counsel provided notice of an informal meeting between Staff of the Public Service Commission and the parties in the above-styled case. A copy of the Notice is attached hereto as Exhibit "1".

3.     Staff allowed the parties and their representatives to attend the meeting telephonically.

4.     The meeting was held on March 11, 2011 and I attended telephonically.

5. The persons that attended on behalf of Florida City Gas ("FCG") was Floyd Self and Shannon Pierce, counsel for FCG, Carolyn Bermudez, Region Manager for FCG, and David Heintz, FCG's consultant regarding cost of service.

6. According to the notice, the purpose of the meeting was for Commission Staff to explain Staff's Interrogatory Nos. 22, 83 and 84. Interrogatory No. 22 asks whether FCG knows the amount of FCG's book investment and the age of survivors (average age) by account, that is used to serve the Alexander Orr and Hialeah Water Plants and the South District Wastewater Plant. If FCG knows, it also asks that FCG list, by account name and number, the book and investment and age distribution of survivors (average age) used to serve the plants. Finally, the interrogatory asks FCG to explain the basis for FCG's knowledge, e.g., continuing property records.

7. FCG filed its response on February 17, 2011 and its answer to Interrogatory No. 22 was that "FCG is continuing to research this request and will respond at a later time."

8. In Staff's Fourth Set of Interrogatories issued on February 25, 2011, Interrogatory No. 83 refers to Interrogatory No. 22 and requests FCG to indicate the accumulated depreciation for each account that contains investment used to provide services to the Miami-Dade Water and Sewer Department ("MDWASD") plants.

9. In Interrogatory No. 84, Staff refers to previously approved transportation agreements and flexible gas service tariffs and provides examples of cost of service studies which include detailed estimate of operation and maintenance ("O&M") expenses submitted by various utilities. Staff then asks FCG to provide estimated O&M expenses by activity and associated cost for each MDWASD site for the period of 2008 through 2010, using a format from one of the approved transportation examples listed.

10. During the meeting, Staff emphasized that the examples in Interrogatory No. 84 show the level of detail regarding O&M expenses that Staff wants FCG to provide.

11. During the informal meeting, FCG's representatives admitted that it had not located any record or book support that would corroborate the original capital investment or operating costs which FCG has alleged to exist for over 2 years.

12. FCG's representatives suggested that it had located documentary support in electronic format for only one of the three plants. However, the plant that FCG alleged to have documentary support is the South District Wastewater Treatment Plant which is the facility that Miami-Dade contributed \$300,000 to FCG to construct the facilities.

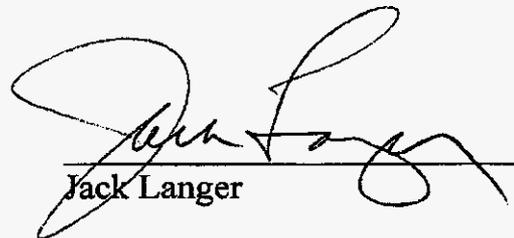
13. FCG's representatives also admitted that they only recently requested boxes from FCG storage and had been exploring their contents for several weeks. Ms. Bermudez stated that more boxes are being requested and FCG would advise of their contents by Monday or Tuesday, March 14 or 15, 2011.

14. As of the date of this Affidavit, Miami-Dade has not received any information regarding FCG's original investment and supporting documentation.

15. The only document that FCG has provided is an internal FCG memo that Ms. Bermudez redacted and represented in her rebuttal testimony as being the original investment costs of the pipe and associated facilities serving the plants.

FURTHER AFFIANT SAYETH NOT.

Under the penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

  
Jack Langer

The foregoing instrument was acknowledged before me this 18 day of March, 2011 by Jack Langer, who is personally known to me and did not take an oath.

*Lucinda Paxton*  
\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires



Lucinda Paxton  
COMMISSION # DD903966  
EXPIRES: AUG. 26, 2013  
WWW.AARONNOTARY.com

State of Florida



*Public Service Commission*

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 9, 2011  
**TO:** All Parties of Record & Interested Persons  
**FROM:** Anna R. Williams, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 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.

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Please note that an informal meeting between Commission Staff and parties in the above captioned docket has been scheduled for:

Friday, March 11, 2011 at 10:00 a.m.  
Gerald L. Gunter Building, Conference Room 382D  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

The purpose of the meeting is to give Commission Staff an opportunity to explain to Florida City Gas Staff's Interrogatory Nos. 22, 83 and 84. Attendance is not required; however, all parties are encouraged to attend. Parties may participate telephonically in this meeting by dialing 1-888-808-6959, Conference Code 4136206. If you have any questions about the meeting, please call Anna R. Williams at (850) 413-6076.

ARW/sh

EXHIBIT 1

APPENDIX C

FCG'S RESPONSE TO MIAMI-DADE COUNTY'S INTERROGATORY NO.20

**REQUESTS**

20. If FCG's answer to Interrogatory No. 45 is yes, please provide any and all continuing property records relating to the incremental pipe serving Miami-Dade's facilities.

**Response:** FCG objects to this request as overly broad, unduly burdensome, expensive, oppressive, and excessively time consuming as written. The original work order and job tickets associated with the plant serving the MDWASD facilities covers the last 15 years and such records are intermingled with all of the other original work order and job tickets for the company. Such paper records are regularly inventoried and stored off site. In order to ensure presentation of all such records associated with service to MDWASD would require a review of every such document for nearly 15 years. Similarly, while the Company's accounting records are today automated and stored in electronic format, the original paper records are likewise voluminous and in off-site storage. Production of these original records is excessive and unnecessary. Notwithstanding but subject to this objection, FCG states: FCG has undertaken an effort to try to retrieve those continuing property records that relate to FCG's service to MDWASD. FCG does not represent that the documents it has located to date are complete. FCG will provide MDWASD with a copy of those records retrieved and identified to date. See Attachment No. 20 to this production request.

21. Please provide any and all documents such as invoices, contracts, requisitions, purchase orders, or any similar documents that establish or corroborate FCG's investment in the incremental two miles of pipe serving Miami-Dade.

**Response:** See the objection and response to POD No. 21 above.

22. Please provide all documents received by witness Heintz establishing FCG's investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** Other than the information contained in Ms. Bermudez's Exhibit \_\_ (CB-6), already in MDWASD's possession, there are no other responsive documents.

23. If FCG's answer to Interrogatory No. 54 is "no", please provide any and all documents that FCG is relying on to establish its investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** See FCG's Response to MDWASD's Third Set of Interrogatories, No. 54.

APPENDIX D

EXHIBIT     JAR-1

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.

APPENDIX E

EXCERPTS OF ARMSTRONG AND SAFFER DIRECT TESTIMONY

DIRECT TESTIMONY OF  
FRED R. SAFFER ON BEHALF OF MIAMI-DADE WATER AND SEWER  
DEPARTMENT

1 **Q. DOES THE ALLOCATION METHODOLOGY YOU HAVE UTILIZED IN THIS**  
2 **COST OF SERVICE EXHIBIT REFLECT GENERALLY ACCEPTED RATE MAKING**  
3 **PRACTICES?**

4 A. Yes. The purpose of utility cost allocation is to provide the best match between costs and  
5 cost responsibility with the data and information available. In this case, the total system costs  
6 allocated to the Company's service to the Department are generally plant related and, therefore,  
7 the gross plant allocation factor I have used provides a reasonable allocation of cost  
8 responsibility. If the Company's detailed accounting records had been available to me, I am  
9 sure the O & M costs associated with the Department service would be less than the level of  
10 those costs I have allocated to that service.

11 **Q. WHY HAVE YOU NOT PROVIDED COST OF SERVICE INFORMATION**  
12 **RELATED TO THE MIAMI-DADE CO-GENERATION PLANT AT THE SOUTH**  
13 **DISTRICT WASTEWATER TREATMENT PLANT?**

14 A. It is my understanding that the gas requirements for that facility are provided by the waste  
15 products from the plant operations and little or no natural gas is required. Moreover, it is my  
16 understanding that Miami-Dade made a contribution in aid of construction to the Company for  
17 the investment required to provide service to that location.

18 **Q. HAVE YOU REVIEWED THE "RATE DESIGN COMPARISON AND MARGIN**  
19 **COMPARISON" CHART FCG PROVIDED TO THE MIAMI-DADE**  
20 **REPRESENTATIVES AT THEIR MEETING ON FEBRUARY 11, 2009?**

21 A. Yes

22 **Q. WOULD YOU DESCRIBE THE INFORMATION PROVIDED IN THAT**  
23 **DOCUMENT AS A VALID COST OF SERVICE STUDY?**

24 A. No. I would not. The information provided in that document is not a valid cost of service  
25 analysis, incremental or otherwise, and, in my opinion, provides the Commission with little or

DIRECT TESTIMONY OF  
FRED R. SAFFER ON BEHALF OF MIAMI-DADE WATER AND SEWER  
DEPARTMENT

1 no viable information with respect to the Company's costs of providing natural gas  
2 transportation service to Miami-Dade. The use of the number of customers as a basis of  
3 allocation does not provide a reasonable relationship between costs and cost responsibility and  
4 the resulting cost allocation significantly overstates the cost responsibility the document was  
5 intended to show.

6 **Q. HAS FCG PROVIDED ANY COST OF SERVICE DATA OR OTHER**  
7 **INFORMATION THAT WOULD JUSTIFY ITS WITHDRAWAL OF THE 2008**  
8 **AGREEMENT FROM COMMISSION CONSIDERATION?**

9 A. No. None of the information provided by the Company that I have reviewed would support  
10 the Company's claim that the rates in the 2008 Agreement do not recover the FCG costs. It  
11 appears that the only support for the Company's action is the unsubstantiated statement by a  
12 Commission Staff member that she would not recommend that the Commission approve the  
13 Agreement.

14 **Q. DO YOU HAVE OTHER CONCERNS WITH THE COMPANY'S WITHDRAWAL**  
15 **OF THE 2008 AGREEMENT FROM CONSIDERATION BY THE COMMISSION?**

16 A. Yes. I am concerned that, on the basis of a statement by the FPSC Staff, the Company  
17 withdrew from Commission consideration the 2008 Agreement that was signed by the Company  
18 President. In my opinion, the Company's reaction to unsubstantiated statements by the FPSC  
19 Staff represents the Company's agreement to a direct and unwarranted intervention in the  
20 Company's operations. If, after the Company President had signed the 2008 Agreement the  
21 Company became concerned that the annual revenues from service to the Department would not  
22 be sufficient, the Company should have left the approval or rejection of the 2008 Agreement  
23 rates up to the Commission after an evidentiary hearing.

24 **Q. BASED ON THE CHRONOLOGY OF EVENTS IN THIS PROCEEDING, IS IT THE**  
25 **OBLIGATION OF FCG OR THE DEPARTMENT TO PROVIDE EVIDENCE IN**

DIRECT TESTIMONY OF  
FRED R. SAFFER ON BEHALF OF MIAMI-DADE WATER AND SEWER  
DEPARTMENT

1 **SUPPORT OF THE COMPANY'S COST TO PROVIDE SERVICE TO MIAMI-DADE?**

2 A. It is my understanding that, during the negotiations for the 2008 Agreement, the FCG  
3 representatives never indicated to the Miami-Dade representatives, either by direct statement or  
4 implication, that in their opinion the proposed rates were too low and would not recover the  
5 Company's costs. Since the withdrawal of the 2008 Agreement from Commission  
6 consideration was a unilateral act by the Company (in fact FCG never gave Miami-Dade any  
7 notice of its intent to withdraw the application for Commission approval) it is my opinion that  
8 FCG has the obligation to provide the Commission with evidence in support of its cost of  
9 service claim, following generally accepted rate-making practices. However, for the purposes  
10 of this proceeding, Miami-Dade has provided the Commission with adequate cost support for  
11 the Department's claim that the 2008 Agreement rates provide the Company with adequate cost  
12 recovery and, therefore, are just and reasonable.

13 **Q. BASED ON YOUR EXPERIENCE IN THE UTILITY COST OF SERVICE AND**  
14 **RATE MAKING FIELD, HAS FCG PROVIDED THE PROOF NECESSARY TO**  
15 **ESTABLISH ITS COST-BASED RATES FOR NATURAL GAS TRANSPORTATION**  
16 **SERVICE TO MIAMI-DADE?**

17 A. No. While I have referred to the information provided by FCG in its response to the Miami-  
18 Dade document production request No. 1 above, that response did not provide proof of the  
19 Company's investment in facilities for service to Miami-Dade. Bald statements such as the  
20 Company's in its response to the Miami-Dade interrogatory would never be acceptable in the  
21 regulatory jurisdictions I have practiced in during the past 30 years.

22 **Q. HAVE YOU REVIEWED THE TESTIMONY OF MIAMI-DADE WITNESS**  
23 **ARMSTRONG RELATING TO THE COMMISSION'S AUTHORITY AND**  
24 **DISCRETION TO APPROVE THE 2008 AGREEMENT?**

25 A. Yes and I concur with Mr. Armstrong's conclusions.

**DIRECT TESTIMONY OF BRIAN P. ARMSTRONG ON BEHALF OF  
MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 basis that FCG was under-recovering costs in these amounts from the revenue  
2 produced under the 1998 Agreement. These amounts are far in excess of the  
3 costs which even FCG has suggested as its cost to serve or incremental cost to  
4 serve Miami-Dade. Based on the testimony and preliminary cost of service  
5 study presented by Miami-Dade witness Fred Saffer, FCG's incremental cost of  
6 serving Miami-Dade is far, far below this amount and below the rates  
7 established in the 2008 Agreement. Therefore, when you add the revenue paid  
8 to FCG by Miami-Dade to the amount FCG had been collecting for years from  
9 other customers under the CRA mechanism, it is clear that FCG has been  
10 collecting a large windfall of hundreds of thousands of dollars each year. This  
11 fact should be considered by the Commission in approving the 2008 Agreement  
12 and the rates provided in it while having FCG absorb the difference, if any,  
13 between the rates generated under such rates in the future and FCG's  
14 incremental cost of serving Miami-Dade.

15 **Q. DOES MIAMI-DADE'S COST OF SERVICE WITNESS SAFFER**  
16 **AGREE WITH THE POSITIONS OF MIAMI-DADE AS YOU HAVE**  
17 **JUST EXPRESSED THEM?**

18 **A.** Yes. Mr. Saffer testifies that he concurs in each of these positions based upon  
19 his many years of service in many proceedings and in several states as a cost of  
20 service expert. Mr. Saffer further presents evidence that the revenue derived by  
21 FCG under the 2008 Agreement rates does indeed cover FCG's true incremental  
22 costs.

23 **Q. HAS FCG EVER IDENTIFIED ITS ORIGINAL INVESTMENT IN THE**  
24 **INCREMENTAL FACILITIES IT USES TO SERVE MIAMI-DADE?**

25 **A.** Yes. In response to Staff's second date request, FCG identified the original cost

**DIRECT TESTIMONY OF BRIAN P. ARMSTRONG ON BEHALF OF  
MIAMI-DADE WATER AND SEWER DEPARTMENT**

1 to serve Miami-Dade's Hialeah plant as \$833,239 and the original cost to serve  
2 Miami-Dade's Alexander Orr plant as \$387,250. Miami-Dade witness Langer  
3 calls the accuracy of these alleged amounts of FCG investment in the  
4 incremental facilities serving Miami-Dade into question. FCG has not produced  
5 for Miami-Dade any copies of continuing property records, bills, construction  
6 contracts, contributed property records, cash or in kind, or any other documents  
7 to substantiate these figures, nor to establish their depreciated book value.

8 FCG should be required to produce these documents to substantiate these  
9 alleged investments before they are included by this Commission in the  
10 calculation of FCG's incremental cost to serve Miami-Dade.

11 **Q. HAS FCG PROVIDED MIAMI-DADE THE INFORMATION**  
12 **NECESSARY TO DETERMINE THE NET PLANT IN SERVICE VALUE**  
13 **OF FCG FACILITIES NECESSARY TO SERVE MIAMI-DADE?**

14 **A.** No. FCG has informed Miami-Dade in response to interrogatory number 18  
15 that FCG

16 "does not depreciate individual assets, but rather assets are  
17 depreciated as a class based upon additions and removals  
18 from service. Since individual assets are not individually  
19 depreciated, it is not possible to state whether the pipelines  
20 to the three Miami-Dade plants have been fully depreciated  
21 or not."

22 FCG's assertion that it is "not possible" to determine the depreciated value of the  
23 incremental pipes serving Miami-Dade is not true. While FCG failed to identify  
24 the original cost of such pipes when Miami-Dade asked for such information in  
25 interrogatory number 21, FCG did provide its alleged original cost information

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1 to Commission Staff.

2 With the original cost information in hand, FCG simply needs to review its  
3 continuing property records to determine the date that the pipes were placed into  
4 service. If FCG can identify the pipes' original cost, it should be able to identify  
5 the plant in service date. With these two pieces of information, unless FCG has  
6 replaced the pipes, which Miami-Dade has never seen done, it is certainly  
7 possible to determine the depreciated value of FCG's pipes.

8 FCG simply appears to wish to avoid presenting the information for  
9 consideration as the net plant in service value is a critical component for  
10 determining FCG's true incremental cost to serve Miami-Dade. Finally, as I will  
11 make clear later in this testimony, FCG is required by its tariff to present this  
12 information and should be held accountable for its failure to do so before even  
13 signing the 2008 Agreement.

14 **Q. COMMISSION STAFF NOTIFIED FCG ON JANUARY 15, 2009, THAT**  
15 **STAFF DID NOT BELIEVE THE CONTRACT DEMAND SERVICE OR**  
16 **"KDS" RATE TARIFF APPLIES TO FCG'S SERVICE PROVIDED**  
17 **UNDER THE 2008 AGREEMENT. DO YOU HAVE ANY COMMENTS**  
18 **IN THIS REGARD?**

19 **A.** Yes. As other Miami-Dade witnesses have testified, FCG unilaterally changed  
20 the tariff rate schedule identified in the 2008 Agreement. The 1998 Agreement  
21 referred to the Large Volume Interruptible Rate Schedule, the original draft of  
22 the 2008 Agreement referred to the Large Volume Interruptible Rate Schedule  
23 and FCG, basically at the last minute of negotiations changed the tariff rate  
24 schedule identified in the 2008 Agreement to the Contract Demand "KDS" Rate  
25 Schedule.

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1 "[p]rior to the initial receipt of service hereunder, unless  
2 agreed otherwise, Customer [Miami-Dade] shall reimburse  
3 Company [FCG] in accordance with the terms of the  
4 Transportation Service Agreement [1998 Agreement,  
5 Amendment, 2008 Agreement], for the cost of any facilities  
6 which are constructed, acquired, or expanded by the  
7 Company [FCG] to receive or deliver Customer's [Miami-  
8 Dade's] gas. All facilities required to provide service,  
9 under each applicable Rate Schedule shall be designed,  
10 constructed installed, operated, and owned by Company  
11 [FCG], unless otherwise agreed to by Company [FCG]."

12 This section further states:

13 "Company's [FCG's] execution of a Transportation Service  
14 Agreement under each applicable Rate Schedule may be  
15 conditioned on Customer's [Miami-Dade's] agreement to  
16 pay the total incremental cost of such facilities as specified  
17 herein and in the Service Agreement."

18 This section of the tariff is important as FCG has failed to produce documents  
19 proving its investment in the incremental facilities constructed to transport gas  
20 on Miami-Dade's behalf. As I testified earlier, the Commission should require  
21 that this proof be presented as FCG was obligated to determine its incremental  
22 cost to serve Miami-Dade before it voluntarily agreed to sign the 2008  
23 Agreement and before it agreed to the rates contained in it. Miami-Dade should  
24 not be held accountable by this Commission for FCG's violation of its own tariff  
25 obligations.

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1 Q. MIAMI-DADE'S INTERROGATORY NUMBER 6 TO FCG ASKED FCG  
2 TO "DESCRIBE OR EXPLAIN THE DUE DILIGENCE FCG AND AGL  
3 [RESOURCES] PERFORMED IN DETERMINING THE CONTRACT  
4 RATES IN THE 2008 AGREEMENT." CAN YOU ADVISE THE  
5 COMMISSION AS TO FCG/AGL'S RESPONSE AND HOW SUCH  
6 RESPONSE IS RELEVANT IN THIS PROCEEDING?

7 A. Yes. A copy of FCG/AGL's response to Miami-Dade's interrogatory 6 is  
8 provided in Exhibit \_\_\_ (BPA-3) under cover page titled, "FCG/AGL Response  
9 Concerning Due Diligence Performed Prior To Signing 2008 Agreement." In  
10 pertinent part, FCG's response is as follows:

11 "The contract executed in 2008 extended the overall terms  
12 and conditions of service from the original contract, subject  
13 to the review and approval of the PSC prior to becoming  
14 effective. At the time, no further analysis on the impact on  
15 the general body of ratepayers was deemed necessary as the  
16 contract impact through the CRA had been reviewed and  
17 approved annually by the PSC."

18 I am truly surprised by this response. Based upon my 25 years of experience  
19 advising and managing both public and private utilities, it is inconceivable that  
20 FCG would exercise such nonchalance in entering a long-term gas  
21 transportation agreement with its largest natural gas transportation customer.  
22 Please recall that at the time the 2008 Agreement was being negotiated, FCG  
23 was aware that it was recovering more that \$740,000 from other FCG customers  
24 through the Competitive Rate Adjustment or "CRA" associated directly with the  
25 2008 Agreement. FCG surely had an obligation to perform thorough due

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1 diligence before continuing this level of recovery from other customers,  
2 assuming that such recovery was appropriate in the first place. Despite this fact,  
3 FCG admits again in response to Miami-Dade interrogatory number 11 that:

4 "FCG has not done a cost of service study to determine the  
5 incremental cost to serve any of the Miami-Dade plants."

6 FCG's failure to reexamine its cost to serve Miami-Dade, as required by FCG's  
7 tariff, as I demonstrated earlier, and as a matter of reasonable due diligence  
8 before signing such a significant agreement is shocking.

9 Finally, and what is perhaps most disturbing, FCG admits that its cavalier  
10 attitude toward calculating the cost it has incurred and will continue to incur to  
11 serve Miami-Dade is founded upon its ability to recover any costs above the  
12 amount Miami-Dade pays from FCG's other customers through the CRA  
13 mechanism. This is unacceptable conduct and reflects poor management.

14 During 2009, after FCG informed Miami-Dade that the Amendment to the 1998  
15 Agreement was terminated and FCG would begin charging Miami-Dade the  
16 rates identified in FCG's GS-1250K Rate Schedule, FCG informed Commission  
17 Staff that it no longer would seek recovery through the CRA of any shortfall  
18 between its cost of service and Miami-Dade's payments. No doubt this  
19 announcement was made based upon FCG's belief that the Commission would  
20 not approve the 2008 Agreement but instead would force Miami-Dade to pay  
21 higher rates, perhaps as exorbitantly high as the rates under the GS-1250K Rate  
22 Schedule. FCG should not be permitted to escape responsibility for its complete  
23 derogation of its responsibilities to the Commission, to Miami-Dade, and to its  
24 other customers, who in large part also are Miami-Dade's customers, to exercise  
25 due diligence in compliance with the requirements of its tariff and good utility

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1 management practices before entering a substantial agreement with its largest  
2 transportation customers.

3 Finally, I further note the admission by FCG/AGL in response to Miami-Dade  
4 interrogatory number 10 that they were "not aware of any specific review of the  
5 [1998 Agreement]" as a part of AGL's acquisition of FCG. Having participated  
6 in the purchase and sale of perhaps a billion dollars worth of utility facilities to  
7 date, it is not conceivable that the transportation agreement between the utility  
8 to be acquired and its largest customer, an agreement set to expire soon after the  
9 anticipated closing of the acquisition, would not receive significant scrutiny  
10 from AGL and FCG. This admission is further evidence of the lack of diligence  
11 exercised by FCG/AGL in regard to the 2008 Agreement. Miami-Dade should  
12 not be held accountable for FCG's irresponsible and poor management conduct.  
13 The Commission should approve the 2008 Agreement and require FCG to  
14 absorb the difference, if any, between the revenue received from Miami-Dade  
15 and FCG's cost of serving Miami-Dade.

16 **Q. MIAMI-DADE WITNESS HICKS HAS TESTIFIED THAT  
17 REGARDLESS OF WHETHER THE COMMISSION APPROVES THE  
18 RATES IN THE 2008 AGREEMENT, THE COMMISSION SHOULD  
19 APPLY NEW RATES IT MAY DETERMINE ONLY PROSPECTIVELY  
20 FROM THE DATE A COMMISSION ORDER BECOMES FINAL. DO  
21 YOU AGREE WITH HIS PROPOSAL AS A MATTER OF GOOD  
22 POLICY?**

23 **A.** Yes. Mr. Hicks proposes that if the 2008 Agreement and associated rates are  
24 not approved that they should remain in place at least until a new rate is  
25 established. Therefore, he proposes that the Commission order FCG to refund

APPENDIX F

FCG RESPONSES TO MIAMI-DADE COUNTY'S INTERROGATORIES  
1, 11, 12, 13, 14, 34 AND 35

## INTERROGATORY OJECTIONS AND RESPONSES

1. List the 10 largest natural gas transportation customers served by FCG during the past 5 years and for each customer provide the annual number of therms transported; whether the pipeline(s) is solely dedicated for the customer; the annual incremental cost to serve the customer and how the incremental cost was determined.

**FCG'S RESPONSE:** FCG incorporates objections 5, 8, 12, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has numerous natural gas transportation customers all of which take service pursuant to an approved tariff service and pay the applicable tariff rate. As is discussed more fully in response to Interrogatory Nos. 11-13, FCG does not perform customer-specific incremental cost studies so the incremental cost to serve each such customer does not exist. Further, as tariff service and rate customers, under the PSC's rules and regulation FCG is not required to calculate the incremental cost to serve such tariff customer. As such, identification of such customers, the number of therms transported annually, the incremental cost to serve each customer, and whether the pipeline is dedicated to serve each such customer is irrelevant.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, Florida City Gas, 955 East 25<sup>th</sup> Street, Hialeah, Florida, 33013.

FCG is not aware of any specific review of the 1998 Natural Gas Transportation Service Agreement as a part of the acquisition.

Responsible Person: Objections by Counsel. Substantive Response by David Weaver, Director, Regulatory Affairs, AGL Services Company, Ten Peachtree Place, 15th Floor, Atlanta, Georgia, 30309.

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.

12. Explain how FCG defines "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant 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 would not perform a cost of service study to determine the incremental cost to serve any or each of the three Miami-Dade plants on a plant specific basis as such a process would not be undertaken for any customer or the specific facilities to serve an individual customer.

FCG would define the incremental cost as it would for any other customer, which would be the definition and process utilized in its last rate case.

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

13. Explain how FCG currently defines "incremental cost" to serve the Alexander Orr Plant, Hialeah Plant and South District Plant.

**FCG'S RESPONSE:** FCG incorporates objections 7, 10, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG does not have an incremental cost definition specific to serve the three Miami-Dade plants. See further the response to Interrogatory No. 12.

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

14. Identify the person(s) who determined the "incremental cost" to serve the Orr Plant, Hialeah Plant, and South District Plant and explain the methodology for determining the "incremental cost"; whether FCG or AGL [Resources] had the incremental costs validated by an independent party and whether FCG or AGL [Resources] submitted to the FPSC an independent study of the incremental cost.

**FCG'S RESPONSE:** FCG incorporates objections 7, 10, 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, so there is no individual who has determined the incremental cost to serve the three Miami-Dade plants and thus no independent review by the PSC or any other entity.

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

15. Identify the person(s) that prepared the November 2008 Surveillance Report, December 2008 Surveillance Report that was attached to the undated letter from Melvin Williams and the December 2009 Surveillance Report referred to in FCG's Responses to FPSC Staff Data Requests.

**FCG'S RESPONSE:** FCG incorporates objections 5, and 8. Notwithstanding the foregoing objections, and without waiving said objections FCG states: The Surveillance Reports are filed with the PSC and prepared by or under the supervision of Carolyn Bermudez.

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

This response prepared by or under the supervision of undersigned counsel.

32. In the opinion of each of FCG's two witnesses, did FCG violate the terms of its KDS Rate Schedule by not performing an incremental cost study prior to signing the 2008 Agreement? Please state the basis for your opinion.

**Response:** FCG objects to this interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for legal analysis and arguments that are improper for fact based interrogatory requests. Moreover, the PSC's rules also require that any such contracts be submitted to the Commission for approval "prior to its execution," so technically the 2008 TSA was not executed since it was not first approved by the Commission. FCG further objects that this interrogatory asks for attorney work product information which is privileged. Legal precedents, analysis, and argument are appropriate for the post-hearing briefs of the parties.

This response prepared by or under the supervision of undersigned counsel.

33. Please provide the definition which each of the FCG witnesses apply to the term "incremental cost study"?

**Response:** FCG objects to this interrogatory to the extent it calls for each FCG witness to have a definition of the term "incremental cost study." Notwithstanding but subject to this objection, FCG states as follows: *See* the Rebuttal Testimony of Mr. Dave Heintz, at Page 5, line 5, through Page 6, line 12, and the Rebuttal Testimony of Ms. Carolyn Bermudez, Page 3, lines 2-22.

This response prepared by or under the supervision of counsel with respect to the objection and Mr. David A. Heintz, Vice President at Concentric Energy Advisors, and Ms. Carolyn Bermudez, Region Manager for Florida City Gas, with respect to their respective testimonies.

34. Has Ms. Bermudez ever conducted an incremental cost study?

**Response:** See the response to Interrogatory No. 33.

This response prepared by or under the supervision of Carolyn Bermudez, Region Manager for Florida City Gas.

35. If the response to interrogatory 8 is yes, please identify the incremental cost study or studies conducted and the FPSC proceeding, if any, that they were prepared for?

**Response:** FCG is assuming this reference is to Interrogatory No. 34. On that basis, see the response to Interrogatory No. 33.

This response prepared by or under the supervision of Carolyn Bermudez, Region Manager for Florida City Gas.

36. Please explain why FCG witness Bermudez substituted the KDS Rate Schedule in the 2008 Agreement for the large volume interruptible rate schedule which was referenced in the 1998 Agreement?

**Response:** See Ms. Bermudez Direct testimony at Page 5, line, through Page 6, line 3. In addition, MDWASD specifically warranted that it qualified for the KDS tariff: "Customer represents that it meets all qualifications for Contract Demand Service." Article IV, paragraph 1, 2008 TSA. Further, in Article IV, paragraph 2, MDWASD warranted, "Customer agrees to comply with all terms and conditions of this Agreement and the Company's Tariff, as approved by the Florida Public Service Commission, which terms and conditions are incorporated fully herein by reference and the applicable Rate Schedule as the same may be amended or modified from time to time." See also Article II, paragraph 1 of the 2008 TSA: "Based upon governing applicability provisions, the Parties hereby confirm that Customer qualifies for the Contract Demand Service Rate Schedule." Moreover, Article II, paragraph 2 states that "Except to the extent expressly modified by the terms of this Agreement, all service rendered by Company under this Agreement shall be provided pursuant to the terms and conditions of Company's Tariff, which is incorporated fully herein by reference, as filed with and approved by the Florida Public Service Commission from time to time."

This response prepared by or under the supervision of undersigned counsel and Carolyn Bermudez, Region Manager for Florida City Gas.

37. If service rendered to Miami-Dade under the 1998 Agreement was included in FCG's 2000 and 2003 rate cases as part of the GS 1250K Rate Schedule, why did Ms. Bermudez and FCG replace the large volume interruptible rate schedule with the KDS Rate Schedule in the 2008 Agreement instead of the GS 1250K Rate Schedule?

**APPENDIX G**

**ADMISSION BY FCG OF MISMANAGEMENT AND MISTAKES**

Between them, FCG's two witnesses made the following additional admissions of FCG mismanagement and mistakes:

<b>Witness</b>	<b>Page(s)</b>	<b>Admission</b>
Melvin Williams	5	"It does not appear that NUI Corporation submitted the [1998 Agreement] to the PSC for its approval." FCG did not submit the 1998 Agreement to the Commission either.
Melvin Williams	6	First Amendment to 1998 Agreement should have been submitted by FCG to PSC for approval, but it was not.
Melvin Williams	6	"it became clear that the rate in the [2008 Agreement] would not meet the minimum rate requirements in our tariff. . . ."
Melvin Williams	9	"In retrospect, the internal approval process at FCG that was in place at the time the [2008 Agreement] was negotiated and executed was flawed."
Melvin Williams	9	"The level of checks and balances that are now in place were absent such that [FCG] did not engage in a complete and proper evaluation of the terms and conditions of the [2008 Agreement] prior to its execution."
Melvin Williams	9	"The renegotiation process at that time was very compartmentalized and there was no analysis of the cost of service request by [Miami-Dade] during the term of the [2008 Agreement]."
Melvin Williams	9	"Importantly, the individuals directly 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"
Melvin Williams	16	"The rate established in 1999 applicable to service to [Miami-Dade] does not recover the incremental cost of service for

<b>Witness</b>	<b>Page(s)</b>	<b>Admission</b>
		[FCG] to provide service to [Miami-Dade] . . . ."
Melvin Williams	17	"we need to develop new tariff language that would permit such a rate because the KDS tariff language does not meet the facts present in our service to [Miami-Dade]."
Melvin Williams	17	"[FCG] regrets the assumptions that have led to this dispute between the parties . . . While [FCG] has admitted its mistakes in how the [2008 Agreement] negotiations were monitored and subsequently executed, the mistake was known and clearly communicated to [Miami-Dade] as early as February 2009."
Carolyn Bermudez	3	"the [2008 Agreement] should be denied and the rates not enforced as they do not recover FCG's cost of service."
Carolyn Bermudez	5	"The document I reviewed purported to be an extension agreement that was signed by Eddie Delgado [an FCG employee in our marketing department, who] had apparently negotiated with [Miami-Dade] 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 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,

Witness	Page(s)	Admission
		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 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 the tariff authority for the service is Contract Demand Service ("KDS") Rate Schedule. Is this appropriate tariff reference? A. No, it is not. . . . [i]t does not apply to the facts and nature of service from [FCG] to [Miami-Dade] in the case of the [2008 Agreement]. [Miami-Dade] did not increase its throughput as part of the new agreement, and thus, the KDS tariff as written does not apply to the [2008 Agreement]."
Carolyn Bermudez	19	"the rate charged to [Miami-Dade] under the [2008 Agreement] is below the cost of service. Pursuant to our tariff and the Commission's rules, we are prohibited from offering service below our cost of service."

APPENDIX H

EX \_\_\_\_ (CB-6) – REDACTED 1997 MEMO AND UNREDACTED 1997 MEMO

MEMORANDUM

To: Ray DeMoine  
From: Carl Palermo  
Date: February 20, 1997  
Re: WASA - Alexander Orr and Hialeah Water Plant Rate Design

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Incremental Cost of Service Study

02/20/97  
page 3 of 6

WASA - Alexander Orr Water Plant

Rate Base

Description	Amount
Cost of Plant:	
Incremental Capital Cost: High Pressure Main	\$387,250
Service Line and Meter Set	\$0
KSC Allocation of HP Main	\$0
A/D Provision:	
KSC Allocation of HP Main	\$0
Service Line and Meter Set	\$0
	\$0
Net Plant	\$387,250
Working Capital	\$0
Accumulated Deferred Income Taxes	\$0
Deferred Investment Tax Credit	\$0
Rate Base	\$387,250

Incremental Cost of Service Study

02/20/97  
page 3 of 6

WASA - Hiialeah Water Plant

**Rate Base**

Description	Amount
Cost of Plant:	
Incremental Capital Cost: High Pressure Main	\$833,239
Service Line and Meter Set	\$0
KSC Allocation of HP Main	\$0
A/D Provision:	
KSC Allocation of HP Main	\$0
Service Line and Meter Set	\$0
Net Plant	\$833,239
Working Capital	\$0
Accumulated Deferred Income Taxes	\$0
Deferred Investment Tax Credit	\$0
Rate Base	<u>\$833,239</u>

KV  
DRAFT.

MEMORANDUM

To: Ray DeMoine  
From: Carl Palermo  
Date: February 20, 1997  
Re: WASA - Alexander Orr and Hialeah Water Plant Rate Design

In response to the request to develop a transportation rate for WASA: Alexander Orr Water Plant and Hialeah Water Plant, I have prepared an initial draft of a transportation rate on both an incremental and a modified embedded cost basis. At present, this customer would qualify for customer class tariff CI-LVT, however, since we are proposing to charge a rate other than a Florida Public Service Commission (FPSC) approved tariff transportation rate, the rate will have to be approved by the FPSC.

WASA presently qualifies for CI-LVT service classification. At the present rate of 8.252 cents per therm, expected annual margins equal about \$611,000 based on volumes of 7,402,000 therms.

I have developed an incremental rate of 1.76 cents per therm for Alexander Orr producing annual margins of about \$75,000 based on 4,243,010 therms; and an incremental rate of 4.65 cents per therm for Hialeah Water Plant, which would produce annual margins of about \$150,000 based on 3,159,440 therms. Combined, they total \$225,000 resulting in a margin loss of \$386,000.

I have also developed an embedded cost rate of 4.854 cents per therm based on volumes of 7,402,000 therms, yielding margins of about \$360,000 resulting in a potential loss of \$251,000.

The following is a description of my approach for both the incremental and embedded cost studies used to design the rates.

**Incremental Cost Rate**

These rates were developed by obtaining an estimated cost, both capital and operating for possible bypass at both locations. Our central engineering group prepared these estimates. In developing the incremental rate for WASA, I looked at the two locations individually. At the Alexander Orr location, it was found that the FGT line runs through the property and is close to the location's metering

station. If FGT built and operated the gate station and WASA installed and operated the gas piping, this bypass would be very feasible. This bypass is estimated at \$388,000 resulting in an incremental rate of 1.75 cents per therm, plus any applicable taxes.

The Hialeah Water Plant cost estimates were much higher, due to the FGT line being about 2 miles from the metering station. Additionally, the plant or FGT would have to purchase land for a new gate station. The cost of this bypass is a conservative estimate of about \$835,000 resulting in an incremental rate of 4.65 cents per therm, plus any applicable taxes.

Appendix A and B, pages 1 through 6, details the incremental cost study for each location. Page 1 is a summary. Page 2 is a calculation of revenue requirement based on incremental cost, with the components further detailed on subsequent pages. Page 3 is the detail of the rate base. Page 4 is a detail of incremental operating expenses and expenses associated with the gross up of the revenue deficiency on page 2. Page 5 is the overall incremental cost of service and rate design. Page 6 is the calculation of the overall rate of return.

#### **Embedded Cost Rate**

The rate was developed by using the FPSC Staff's cost-of-service methodology. I isolated the total estimated cost of serving WASA (both locations combined) from our rate base and operating income. Due to the size of this customer, a new service classification was developed.

Rate base costs which the FPSC classifies as customer and capacity costs were allocated based on staff methodology with no adjustments or modification. The capacity costs were directly assigned. The embedded cost rate is 4.854 cents per therm plus a customer charge of \$500.00 per month plus any applicable taxes.

Incremental Cost of Service Study

02/20/07  
page 2 of 6

WASA - Alexander On Water Plant

**Revenue Requirement**

<b>Rate Base</b>	<b>\$387,250</b>
<b>Cost of Capital</b>	<b>7.85%</b>
<b>Required Return</b>	<b>\$30,399</b>
<b>NOI (current incremental Cost)</b>	<b>(<del>\$15,343</del>)</b>
<b>NOI difference</b>	<b>\$45,742</b>
<b>Gross-Up for Taxes</b>	<b>1,6133</b>
<b>Total Revenue Requirement</b>	<b>\$73,795</b>

Incremental Cost of Service Study

02/20/97  
page 3 of 6

WASA - Alexander Orr Water Plant

**Rate Base**

Description	Amount
Cost of Plant:	
Incremental Capital Cost: High Pressure Main	\$387,250
Service Line and Meter Set	\$0
KSC Allocation of HP Main	\$0
A/D Provision:	
KSC Allocation of HP Main	\$0
Service Line and Meter Set	\$0
	\$0
Net Plant	\$387,250
Working Capital	\$0
Accumulated Deferred Income Taxes	\$0
Deferred Investment Tax Credit	\$0
Rate Base	\$387,250

Incremental Cost of Service Study

02/20/97  
page 4 of 6

WASA - Alexander Orr Water Plant

**Operating Expenses**

	<b>Incremental</b>	<b>Total Expenses *</b>
O&M Expenses	\$3,500	\$3,500
Depreciation	\$11,230	\$11,230
Taxes Other Than Income	\$10,000	\$10,902
State Tax @ 6.00%	(\$1,484)	\$2,943
Federal Tax @ 34.00%	(\$7,904)	\$15,674
<b>Total Incremental Operating Expenses</b>	<b>\$15,343</b>	<b>\$43,649</b>

\* Total Expenses after revenue deficiency grossed up for taxes and revenue related expenses, assuming a required return on investment of 7.85%.

**WASA - Alexander Orr Water Plant**

02/20/97  
page 5 of 6

**Cost of Service & Rate Design**

<u>Description</u>		<u>Total</u>
O&M Expenses		\$3,500
Depreciation		\$11,230
Taxes Other Than Income		\$10,302
State Tax @	5.50%	\$2,943
Federal Tax @	34.00%	\$15,674
	Sub-total	\$43,649
Required Return on Investment (Rate Base x Rate of Return)		\$30,399
Total Incremental Cost of Service		\$74,048
Annual Volume (therms)		4,243,010
Incremental Cost Rate		\$0.0175 *

\* Plus applicable taxes.

**WASA - Alexander Orr Water Plant**

02/20/97  
page 6 of 6

**Capitalization in Docket No. 960502-GU**

	<b>Percent of Capital Structure</b>	<b>Cost</b>	<b>Weighted Cost</b>
Common Equity	34.55%	11.30%	3.90%
Preferred Stock	0.00%	0.00%	0.00%
Long-Term Debt	41.63%	7.50%	3.12%
Short-Term Debt	7.83%	6.00%	0.47%
Customer deposits	5.95%	6.00%	0.36%
Tax Credits	1.47%	0.00%	0.00%
Deferred Taxes	8.57%	0.00%	0.00%
Total	100.00%		7.85%

Incremental Cost of Service Study

02/20/97  
page 1 of 6

WASA - Hialeah Water Plant

**Summary**

<b>Rate Base (page 3)</b>	<b>\$833,239</b>
<b>Cost of Capital (page 6)</b>	<b>7.85%</b>
<b>Operating Expenses: (page 4)</b>	
O&M	\$6,500
Depreciation	\$24,164
Other Taxes	\$10,049
Income Taxes	\$40,052
Sub-total	\$81,370
<b>Required Return (page 2)</b>	<b>\$65,409</b>
<b>Total Incremental Cost of Service (Revenue Requirement) (page 2)</b>	<b>\$146,779</b>
<b>Annual Throughput (therms)</b>	<b>3,159,440</b>
<b>Proposed Rate (page 5)</b>	<b>\$0.0465 *</b>

\* Plus Applicable Taxes, which we currently believe to be 2.5%.

Incremental Cost of Service Study

02/20/97  
page 2 of 6

WASA - Hialeah Water Plant

Revenue Requirement

Rate Base	\$833,239
Cost of Capital	7.85%
Required Return	\$65,409
NOI (current Incremental Cost)	<del>(\$25,228)</del>
NOI difference	\$90,637
Gross-Up for Taxes	1.8133
Total Revenue Requirement	\$146,225

Incremental Cost of Service Study

02/20/97  
page 3 of 6

WASA - Hialeah Water Plant

**Rate Base**

Description	Amount
Cost of Plant:	
Incremental Capital Cost: High Pressure Main	\$833,239
Service Line and Meter Set	\$0
KSC Allocation of HP Main	\$0
A/D Provision:	
KSC Allocation of HP Main	\$0
Service Line and Meter Set	\$0
Net Plant	\$833,239
Working Capital	\$0
Accumulated Deferred Income Taxes	\$0
Deferred Investment Tax Credit	\$0
<b>Rate Base</b>	<b>\$833,239</b>

Incremental Cost of Service Study

02/20/97  
page 4 of 6

**WASA - Hialeah Water Plant**

**Operating Expenses**

	Incremental	Total Expenses *
O&M Expenses	\$6,500	\$6,500
Depreciation	\$24,164	\$24,164
Taxes Other Than Income	\$10,000	\$10,849
State Tax @ 8.00%	(\$2,440)	\$6,331
Federal Tax @ 34.00%	(\$12,988)	\$33,726
<b>Total Incremental Operating Expenses</b>	<b>\$25,228</b>	<b>\$81,370</b>

\* Total Expenses after revenue deficiency grossed up for taxes and revenue related expenses, assuming a required return on investment of 7.85%.

**WASA - Hialeah Water Plant**

02/20/97  
page 5 of 8

**Cost of Service & Rate Design**

Description	Total
O&M Expenses	\$6,500
Depreciation	\$24,164
Taxes Other Than Income	\$10,649
State Tax @ 5.50%	\$6,331
Federal Tax @ 34.00%	\$33,726
Sub-total	\$81,370
Required Return on Investment (Rate Base x Rate of Return)	<u>\$65,409</u>
Total Incremental Cost of Service	\$146,779
Annual Volume (therms)	3,159,440
Incremental Cost Rate	<u>\$0.0465 *</u>

\* Plus applicable taxes.

**WASA - Hialeah Water Plant**

02/20/97  
page 6 of 6

**Capitalization in Docket No. 950502-GU**

	<u>Percent of Capital Structure</u>	<u>Cost</u>	<u>Weighted Cost</u>
Common Equity	34.55%	11.30%	3.90%
Preferred Stock	0.00%	0.00%	0.00%
Long-Term Debt	41.63%	7.50%	3.12%
Short-term Debt	7.83%	6.00%	0.47%
Customer deposits	5.85%	6.00%	0.36%
Tax Credits	1.47%	0.00%	0.00%
Deferred Taxes	6.57%	0.00%	0.00%
Total	100.00%		7.85%

APPENDIX I

FCG RESPONSE TO MIAMI-DADE COUNTY'S INTERROGATORY 19

18. Are the pipelines from the FCG station to the Alexander On Plant fully depreciated? Hialeah Plant? South District Plant? If not, how much has been depreciated?

**FCG'S RESPONSE:** FCG incorporates objections 5, 6, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG does not depreciate individual assets, but rather assets are depreciated as a class based upon additions and removals from service. Since individual assets are not individually depreciated, it is not possible to state whether the pipelines to the three Miami-Dade plants have been fully depreciated or not. However, as a class, FCG can state that no pipes have been fully depreciated.

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

19. Who paid for the installation of the pipeline from the FCG station to the Alexander Orr Plant? Hialeah Plant ? South District Plant?

**FCG'S RESPONSE:** FCG incorporates objections 5, 8, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: Under Section 1 of Article X, Facilities, of the 1998 Natural Gas Transportation Service Agreement, it states: "All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company." In addition, Section 2 of Article X, of the 1998 Agreement states, "Customer [Miami-Dade] agrees to pay Company [FCG] a one time 'Aid to Construction' charge of \$300,000 for Company to design, construct, own, maintain, and operate natural gas service to Miami-

Dade South District Wastewater Treatment Plant, 8950 S.W. 232 Street, Miami, FL, 33170, sufficient in size to meet Customer-specified demand of 400,000 therms maximum annual quantity (MACQ). Company agrees to run gas line(s) to point(s) of use within this plant as determined by the Customer, which shall constitute Point(s) of Delivery. Customer shall reimburse Company, prior to the commencement of service, in the amount of \$825.00 per meter for any telemetry equipment required to be installed at this plant.”

The 2008 Natural Gas Transportation Service Agreement states in Section 1 of Article X, Facilities, as follows: “All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company.”

FCG has no basis for disputing these representations or that the obligations stated therein were met.

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

20. What was FCG's annual revenues, expenses and profits between 2004 and 2009?

**FCG'S RESPONSE:** FCG incorporates objections 5, 7, 8, 11, and 13.

Responsible Person: Objections by Counsel.

APPENDIX J

FCG RESPONSES TO MIAMI-DADE COUNTY'S DOCUMENT REQUESTS  
20, 21 AND 22

**REQUESTS**

20. If FCG's answer to Interrogatory No. 45 is yes, please provide any and all continuing property records relating to the incremental pipe serving Miami-Dade's facilities.

**Response:** FCG objects to this request as overly broad, unduly burdensome, expensive, oppressive, and excessively time consuming as written. The original work order and job tickets associated with the plant serving the MDWASD facilities covers the last 15 years and such records are intermingled with all of the other original work order and job tickets for the company. Such paper records are regularly inventoried and stored off site. In order to ensure presentation of all such records associated with service to MDWASD would require a review of every such document for nearly 15 years. Similarly, while the Company's accounting records are today automated and stored in electronic format, the original paper records are likewise voluminous and in off-site storage. Production of these original records is excessive and unnecessary. Notwithstanding but subject to this objection, FCG states: FCG has undertaken an effort to try to retrieve those continuing property records that relate to FCG's service to MDWASD. FCG does not represent that the documents it has located to date are complete. FCG will provide MDWASD with a copy of those records retrieved and identified to date. See Attachment No. 20 to this production request.

21. Please provide any and all documents such as invoices, contracts, requisitions, purchase orders, or any similar documents that establish or corroborate FCG's investment in the incremental two miles of pipe serving Miami-Dade.

**Response:** See the objection and response to POD No. 21 above.

22. Please provide all documents received by witness Heintz establishing FCG's investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** Other than the information contained in Ms. Bernudez's Exhibit \_\_ (CB-6), already in MDWASD's possession, there are no other responsive documents.

23. If FCG's answer to Interrogatory No. 54 is "no", please provide any and all documents that FCG is relying on to establish its investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** See FCG's Response to MDWASD's Third Set of Interrogatories, No. 54.

APPENDIX K

FCG RESPONSE TO PSC STAFF'S INTERROGATORY 18

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of Special Gas )  
Transportation Service agreement )  
with Florida City Gas by Miami-Dade ) Docket No. 090539-GU  
through Miami-Dade Water and Sewer )  
Department )  
\_\_\_\_\_ )

**FLORIDA CITY GAS COMPANY'S RESPONSES  
TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 18-49)**

Florida City Gas ("FCG") hereby responds to the January 21, 2011 Second Set of Interrogatories of the Staff of the Florida Public Service Commission ("Staff").

**INTERROGATORIES**

18. Please refer to Exhibits CB-1 through CB-2 attached to Carolyn Bermudez's direct testimony. Please explain in detail how FCG calculated the depreciation expense for Alexander Orr and the Hialeah Water Plant and South District using the 1999 Rate Design. The response should include a full discussion of FCG's methodology and assumptions, including but not limited to the basis for the use of any factors. The response should also include the list of accounts, by account number and name, book value, accumulated depreciation, the date of the data, the depreciation rates for each account, and the source for the depreciation rates (e.g., Commission order number and date). The response should provide the information separately for Alexander Orr and the Hialeah Water Plant and South District.

**Response:** The Depreciation expense for Alexander Orr, Hialeah Water Plant and South District using the 1999 Rate Design was taken from Carl Palermo's (Former NUI/ETG Marketing employee) memo dated February 20, 1997, in which he describes the development of the transportation rate for Alexander Orr Water Plant and Hialeah Water Plant. A copy of this memo was attached to the rebuttal testimony of Ms. Bermudez as Exhibit \_\_ (CB-6). This memo

is the sole document relied upon for the 1999 rate design numbers appearing in CB-1 and CB-2. FCG provided this analysis, originally, for some perspective as to the rate design analysis that was developed in December 2009. FCG is in the process of attempting to locate the original records from 1997-1999 to verify the information contained in the February 20, 1997, memo, but so far we have not been able to locate any additional documents.

This response prepared by or under the supervision of Carolyn Bermudez, Region Manager for Florida City Gas.

19. Please refer to Exhibits CB-1 through CB-2 attached to Carolyn Bermudez's direct testimony. Please explain in detail how FCG calculated the depreciation expense for Alexander Orr and the Hialeah Water Plant and South District using the November 2008 surveillance report. The response should include a full discussion of FCG's methodology and assumptions, including but not limited to the basis for the use of any factors. The response should also include the list of accounts, by account number and name, book value, accumulated depreciation, the date of the data, the depreciation rates for each account, and the source for the depreciation rates (e.g., Commission order number and date). The response should provide the information separately for Alexander Orr and the Hialeah Water Plant and South District.

**Response:** The Depreciation expense for Alexander Orr, Hialeah Water Plant and South District using the November 2008 Surveillance Report was calculated by totaling the monthly Depreciation Expense recorded in FCG's general ledger for accounts 424000 and 425000 the period December 2007 through November 2008. The depreciation rates used to calculate monthly depreciation expense were approved by the Florida Public Service Commission on October 14, 2003, FPSC Order Number PSC-03-1147-PAA-GU.

Florida City Gas	12 Months Total Dec'07-Nov'08
424000 Other Amortization Expense	332,749.00
425000 Depreciation Expense	9,064,829.36
<b>Depreciation and Amortization</b>	<b>9,397,578.36</b>

This response prepared by or under the supervision of Carolyn Bermudez, Region Manager for Florida City Gas.

APPENDIX L

FCG RESPONSE TO MIAMI-DADE COUNTY'S INTERROGATORIES 16, 18  
AND 21 AND

FCG RESPONSE TO MIAMI-DADE COUNTY'S DOCUMENT REQUESTS 20,  
21, 22 AND 27

16. Identify the person(s) responsible for review and analysis of the 2008 Agreement and its effects on FCG's rates and earnings.

**FCG'S RESPONSE:** FCG incorporates objection 9. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has already addressed this in prior responses with respect to the review and analysis of the 2008 Natural Gas Transportation Service Agreement between FCG and Miami-Dade. Since the rate became an issue after the 2008 agreement was filed with the PSC in Docket No. 080672-GU, the review and analysis of the rate and its effect on FCG's rates and earnings has been led by Carolyn Bermudez and her group.

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

17. Identify the person(s) who authorized the withdrawal of the Petition for approval of the 2008 Agreement.

**FCG'S RESPONSE:** FCG incorporates objection 5. Notwithstanding the foregoing objections, and without waiving said objections FCG states: The decision to withdraw the request to approve the 2008 Natural Gas Transportation Service Agreement between FCG and Miami-Dade was made by Melvin Williams after an analysis of the various email exchanges and requests from the Commission Staff in Docket No. 080672-GU by the company's regulatory, legal, financial, and managerial employees.

Responsible Person: Objections by Counsel. Substantive Response by Melvin Williams, Vice President and General Manager, 955 East 25 Street, Hialeah, Florida, 33013.

18. Are the pipelines from the FCG station to the Alexander On Plant fully depreciated? Hialeah Plant? South District Plant? If not, how much has been depreciated?

**FCG'S RESPONSE:** FCG incorporates objections 5, 6, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG does not depreciate individual assets, but rather assets are depreciated as a class based upon additions and removals from service. Since individual assets are not individually depreciated, it is not possible to state whether the pipelines to the three Miami-Dade plants have been fully depreciated or not. However, as a class, FCG can state that no pipes have been fully depreciated.

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

19. Who paid for the installation of the pipeline from the FCG station to the Alexander Orr Plant? Hialeah Plant ? South District Plant?

**FCG'S RESPONSE:** FCG incorporates objections 5, 8, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: Under Section 1 of Article X, Facilities, of the 1998 Natural Gas Transportation Service Agreement, it states: "All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company." In addition, Section 2 of Article X, of the 1998 Agreement states, "Customer [Miami-Dade] agrees to pay Company [FCG] a one time 'Aid to Construction' charge of \$300,000 for Company to design, construct, own, maintain, and operate natural gas service to Miami-

21. What capital investments, if any, has FCG made to serve the Alexander On Plant? Hialeah Plant? South District Plant?

**FCG'S RESPONSE:** FCG incorporates objections 5, 7, 8, 9, 10, 11, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: See the responses to Interrogatory Nos. 18 and 19.

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

22. Does FCG have any gas transportation contracts with other municipalities or utilities? If yes, state the name of the customer(s), whether the contract has below tariff rates and was submitted to the PSC for approval, and explain how FCG determined the incremental cost to serve the customer.

**FCG'S RESPONSE:** FCG incorporates objections 1, 5, 7, 8, 9, 11, 12, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: Yes, FCG has municipality and other utilities as customers. All such customers take service from FCG either directly from the tariff or pursuant to some kind of contract that incorporates tariff service(s) and tariff rate(s). In other words, none of these customers receive a below tariff rate, and because such customers are tariff customers, nothing has been submitted to the PSC regarding their specific service arrangements.

Responsible Person: Objections by Counsel. Substantive Response by Melvin Williams, Vice President and General Manager, 955 East 25 Street, Hialeah, Florida, 33013.

**REQUESTS**

20. If FCG's answer to Interrogatory No. 45 is yes, please provide any and all continuing property records relating to the incremental pipe serving Miami-Dade's facilities.

**Response:** FCG objects to this request as overly broad, unduly burdensome, expensive, oppressive, and excessively time consuming as written. The original work order and job tickets associated with the plant serving the MDWASD facilities covers the last 15 years and such records are intermingled with all of the other original work order and job tickets for the company. Such paper records are regularly inventoried and stored off site. In order to ensure presentation of all such records associated with service to MDWASD would require a review of every such document for nearly 15 years. Similarly, while the Company's accounting records are today automated and stored in electronic format, the original paper records are likewise voluminous and in off-site storage. Production of these original records is excessive and unnecessary. Notwithstanding but subject to this objection, FCG states: FCG has undertaken an effort to try to retrieve those continuing property records that relate to FCG's service to MDWASD. FCG does not represent that the documents it has located to date are complete. FCG will provide MDWASD with a copy of those records retrieved and identified to date. See Attachment No. 20 to this production request.

21. Please provide any and all documents such as invoices, contracts, requisitions, purchase orders, or any similar documents that establish or corroborate FCG's investment in the incremental two miles of pipe serving Miami-Dade.

**Response:** See the objection and response to POD No. 21 above.

22. Please provide all documents received by witness Heintz establishing FCG's investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** Other than the information contained in Ms. Bermudez's Exhibit \_\_ (CB-6), already in MDWASD's possession, there are no other responsive documents.

23. If FCG's answer to Interrogatory No. 54 is "no", please provide any and all documents that FCG is relying on to establish its investment in the two miles of incremental pipe serving Miami-Dade.

**Response:** See FCG's Response to MDWASD's Third Set of Interrogatories, No. 54.

24. Please provide the document that was not attached to Williams Exhibit\_ (MW-5).

**Response:** See Attachment No. 24 to this production request.

25. Please provide copies of any FPSC Orders or precedent identified by FCG in response to Miami-Dade Interrogatory No. 55.

**Response:** There are no responsive documents. See the interrogatory response.

26. Please provide copies of any FPSC Orders or precedent identified by FCG in response to Miami-Dade Interrogatory No. 57.

**Response:** There are no responsive documents. See the interrogatory response.

27. On page 11 of witness Bermudez' direct testimony, Bermudez states that "you 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 MDWASD collectively or specifically for their three plants that we serve." Please provide any and all documents, including, but not limited to, continuing property records, invoices, contracts, and purchase orders that establish or corroborate FCG's investment in the two miles of incremental pipe to serve MDWASD.

**Response:** See FCG's Response to MDWASD's Third Request for Production, No. 20.

APPENDIX M

STAFF INTERROGATORY 84

STAFF'S FOURTH SET OF INTERROGATORIES  
TO FLORIDA CITY GAS (NOS. 72-84)  
DOCKET NO. 090539-GU  
PAGE 9

84. The Commission has previously approved transportation agreements and flexible gas service tariffs for regulated gas companies. In those cases, the companies provided cost of service studies which included a detailed estimate of operation and maintenance (O&M) expenses. Attached for guidance are examples of the level of detail requested, as reflected in the following Orders:

Example No.	Order No.	Docket No.	Date Issued
1	PSC-93-1330-FOF-GU	930714-GU	September 9, 1993
2	PSC-94-1169-FOF-GU	940830-GU	September 26, 1994
3	PSC-96-1218-FOF-GU	960920-GU	September 24, 1996
4	PSC-02-0162-PAA-GU	011620-GU	February 4, 2002
5	PSC-03-0190-TRF-GU	021174-GU	February 7, 2003
6	PSC-05-0784-PAA-GU	050327-GU	July 27, 2005
7	PSC-06-0143-PAA-GU	050835-GU	February 27, 2006

Please provide the estimated O&M expenses by activity and associated cost for each MDWASD site for the period of 2008 through 2010, using a format from one of the approved transportation agreement examples listed above and attached below.

July 15, 1993  
Page 4 of 5

FLORIDA DIVISION - AUBURNDALE POWER PARTNERS  
TRANSPORTATION AGREEMENT  
ESTIMATED O&M EXPENSES

1. Cathodic Protection Testing - 4 hours/year @\$25.00/hour	\$100
2. Leak Testing - @\$1532.00/year	1,532
3. Pipeline Marker Replacements - @\$16.00/hour labor & markers @\$77.00	93
5. Maintenance on Equipment 48 hours/month @\$28.00/hr	2,695
6. Billing & Customer Accounting @2 hours/month @\$32.00/hr	766
8. Percentage of time allocated from Management and Marketing personnel- 810 hrs/month @\$36.00/hr	4,595
9. Annual odorant costs	2,050
10. Miscellaneous	1,750
	-----
TOTAL ESTIMATED O & M EXPENSES	\$13,581 =====

07/27/94  
Page 4 of 6

FLORIDA DIVISION  
ORANGE COGENERATION LIMITED PARTNERSHIP  
TRANSPORTATION AGREEMENT  
ESTIMATED O&M EXPENSES

1. Meter - Spin Testing 4 times/yr (labor only)	\$480
2. Meter - Recalibrated every year @\$220/year	440
3. Meter Parts - \$2,000/3 years or \$666.66/year	1,334
4. Annual Regulator Testing - 4 hours/year @\$22.00/hour	176
5. Cathodic Protection Testing - 4 hours/year @\$20.00/hour	80
6. Leak Testing - @\$20.00/year	20
7. Pipeline Marker Replacements - @\$13.00/hour labor & markers @\$60.00	73
8. Repaint Regulator every 2 years @\$100/year	200
9. Telemetering Monitoring @2 hours/month @\$25.00/hr	600
10. Maintenance on Equipment @10 hours/month @\$22.00/hr	2,640
11. Billing & Customer Accounting @2 hours/month \$25.00/hr	600
12. T&E Person @2 hours/month \$25.00/hr	600
13. Percentage of time allocated from Management and Marketing personnel - @10 hrs/month @\$30.00/hr	3,600
14. Miscellaneous	1,100
TOTAL ESTIMATED O & M EXPENSES	\$11,940

COMMON

City Gas of Florida  
Flexible Gas Service Tariff Incremental Cost - Common Facility

Exhibit B  
 Page 3 of 4

Common Facility Example 2/  
 Estimated O & M Expenses - Incremental

	Man Hours	Labor	Other	Total
<u>Customer Maintenance:</u>				
Leak Surveys (service line)	1	\$20	\$25	\$45
Meter Set Maintenance	8	\$160	\$800	\$960
Valve Maintenance	6	\$120	\$400	\$520
<u>Administrative Functions</u>				
Meter Reading	4	\$100	\$500	\$600
Billing	12	\$300	\$500	\$800
Other	24	\$600	\$200	\$800
<b>Total Estimated O &amp; M Expenses</b>		<b>\$1,300</b>	<b>\$2,425</b>	<b>\$3,725</b>

Estimated O & M Expenses - Common Facilities

	Man Hours	Labor	Other	Total
<u>Customer Maintenance:</u>				
Leak Surveys (main)	7	\$140	\$150	\$290
Meter Set Maintenance	0	\$0	\$0	\$0

	COMMON			
Valve Maintenance	6	\$120	\$400	\$520
<u>ii Pipe Inspection:</u>				
Exposure Reports	8	\$160	\$50	\$210
Locate for Others	8	\$160	\$100	\$260
Third Party Monitoring	8	\$180	\$75	\$235
<u>iii Cathodic Protection:</u>				
Pipe to Soil Survey	4	\$80	\$100	\$180
Interference Testing	4	\$80	\$100	\$180
Atmospheric Inspection	8	\$160	\$50	\$210
Magnesium Anode Replacement	2	<u>\$40</u>	<u>\$100</u>	<u>\$140</u>
<b>Total Estimated O &amp; M Expenses-Common Facilities</b>		<b>\$1,100</b>	<b>\$1,125</b>	<b>\$2,225</b>
<b>Allocation of Common Facilities O &amp; M to New Customer</b>		<b>\$0</b>	<b>\$0</b>	<b><u>\$445</u></b>
<b>Total O &amp; M Expenses of New Customer</b>				<b><u>\$4,170</u></b>

Because this hypothetical example assumes service will be provided to the FGS customer through a combination of existing and new facilities, the Company will impute revenues reflecting the customer's share of the cost of maintaining existing facilities as well as the full cost of maintaining the new dedicated facility.

*Amount of revenue which would be imputed in future base revenue proceeding and used in monthly surveillance reports.*

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INCREMENTAL COST OF SERVICE STUDY  
SUWANEE AMERICAN

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED O&M EXPENSES

<u>Description</u>	<u>Amount</u>
Meter -Spin test 2 times per year. (16 hours/year @ \$28.74/hr)	\$480
Meter-Test every 5 years. (8 hours/year @ \$28.74/hr. Parts \$500)	\$546
Meter Parts	\$150
Repaint Station Every 3 Years. (20hrs labor @ \$32/hr. \$183 Supplies & Misc. Exp.)	\$630
Maintenance & Calibration of EFM Equipment	
16 hrs/yr @ 28.74/hr.	\$480
Replacement Board	\$1,260
Replacement Modem	\$475
Replacement Battery (Every 5 Yrs)	\$20
Misc. Materials	\$120
Annual Regulator Testing & Repair (16hrs @ \$28.74/hr)	\$480
Misc Materials for Repair	\$840
Miscellaneous Expense	<u>\$2,600</u>
TOTAL ESTIMATED O & M EXPENSES	<u>\$7,611</u>

12/3/2001

INCREMENTAL COST OF SERVICE STUDY  
Minute Maid

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED O&M EXPENSES

	<u>Description</u>	<u>Amount</u>
1	Meter -Spin test 2 times per year. (16 hours/year @ \$28.74/hr)	\$460
2	Meter-Test every 5 years. (8 hours/year @ \$28.74/hr. Parts \$500)	\$548
3	Meter Parts	\$150
4	Repaint Station Every 3 Years. (20hrs labor @ \$62/hr. \$183 Supplies & Misc. Exp.)	\$498
5	Maintenance & Calibration of EFM Equipment	
6	16 hrs/yr @ 28.74/hr.	\$460
7	Replacement Board	\$500
8	Replacement Modem	\$475
9	Replacement Battery (Every 5 Yrs)	\$20
10	Misc. Materials	\$120
11	Annual Regulator Testing & Repair (19hrs @ \$28.74/hr)	\$548
12	Misc Materials for Repair	\$300
13	Miscellaneous Expense	<u>\$2,500</u>
14	TOTAL ESTIMATED O & M EXPENSES	<u>\$8,573</u>

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INCREMENTAL COST OF SERVICE STUDY  
Washington Correctional Institute

Amended  
06/20/05

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED O&M EXPENSES

	<u>Description</u>	<u>Amount</u>
1	Annual Odorant Expense. (23 hours/year @ \$23.00/hr. Parts \$618)	\$1,355
2	Meter-Test every 5 years. (6.4 hours/year @ \$25.00/hr. Parts \$230)	\$390
3	Meter Parts	\$300
4	Repaint Station Every 3 Years. (10.7hrs labor @ \$21/hr. \$384 Supplies & Misc. Exp.)	\$608
5	Maintenance & Calibration of EFM Equipment	
6	32 hrs/yr @ \$25/hr.	\$800
7	Replacement Equipment	\$300
10	Misc. Materials	\$465
11	Cathodic Protection (8 hours/year @ \$22.00/hr Parts \$163)	\$339
	Line Locating	\$2,000
13	Miscellaneous Expense	<u>\$2,782</u>
14	TOTAL ESTIMATED O & M EXPENSES	<u>\$9,349</u>

06/20/05

Exhibit E  
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INCREMENTAL COST OF SERVICE STUDY  
POLK POWER PARTNERS

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED O&M EXPENSES

<u>Description</u>	<u>Amount</u>
1. Cathodic Protection Testing - 8 hours/year @ \$22.00/hr	\$176
2. Leak Testing - 4 hours/year @ \$22./hr plus \$25 Materials	\$113
3. Pipeline Marker Replacements - 5 markers/yr @ \$12 each + 5 hours/year @ \$22.00/hr	\$170
4. Repaint Station every 3 years - 8 hours/yr @ \$21 /hr plus \$384 materials	\$552
5. Maintenance and calibration of EFM equipment - 50 hours/yr @ \$25./hr plus \$500 materials	\$1,750
6. Maintenance and calibration of Flow Control Valve - 36 hours/yr @ \$25.00/hr plus \$2,720 materials	\$3,620
7. Meter Test every 5 years and Repair - 6 hours/yr @ \$25.00/hr plus \$500 materials	\$650
8. Meter Parts	\$300
9. Annual Regulator Testing and Repair - 12 hours/yr @ \$25.00/yr plus \$200 materials	\$500
10. Telemetry Monitoring and T&E Functions - 4 hours/month @ \$31/hr	\$1,488
11. Annual Odorant Expenses - 23 hours/yr. @ \$23.00/hr., Parts \$619	\$1,148
12. Painting and Maintenance of City Gate Station	\$150
13. Cathodic Protection Expense - replacement of anodes	\$780
14. Railroad Crossing Expense	\$1,000
15. Emergency Valve Maintenance - 2 hours/yr @ \$22.00/hr	\$44
16. Line Locating Expense - 3 hours/yr @ \$22.00/hr	\$66
17. Miscellaneous	<u>\$8,500</u>
TOTAL ESTIMATED O & M EXPENSES	<u>\$18,977</u>