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April 14, 2011

Via Hand-Delivery

Ms. Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 090539-GU
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

Dear Ms. Cole:

Enclosed please find for filing in the above referenced docket an original and seven
copies of MIAMI-DADE COUNTY'S PREHEARING STATEMENT.

Thank you for your assistance with this filing. If you have any questions, please do not
hesitate to contact me.

Sincerely,

Henry N. Gillman
Assistant County Attorney

COM cc. All Parties of Record
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BEFORE THE 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

Filed: April 14, 2011

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MIAMI-DADE COUNTY'S PREHEARING STATEMENT

Petitioner, Miami-Dade County ("Miami-Dade" or "County") through the Miami-Dade Water and Sewer Department ("MDWASD") pursuant to Order No. PSC-10-0714-PCO-GU in Docket No. 090539-GU issued December 7, 2010 and the Revised Order Establishing Procedure, Order No. PSC-10-0715-PCO-GU issued on December 8, 2010, and First Revised Order Revising the Revised Order Establishing Procedure issued on December 13, 2010 as Order No. PSC-10-0729-PCO-GU, and the Second Revised Order Establishing Procedure issued on February 9, 2011 as Order No. PSC-11-0110-PCO-GU, hereby submits its Prehearing Statement in this matter and states as follows.¹

(1) NAMES OF KNOWN WITNESSES AND SUBJECT MATTER

MDWASD is presenting the direct and rebuttal testimony of (a) fact witnesses Joseph Ruiz and Gregory Hicks (direct only); (b) expert witnesses Jack

¹Miami-Dade County incorporates by reference herein its Motion for Summary Final Order.

Langer, Fred Saffer, and Brian Armstrong; and (c) fact and expert witness Jack Langer.

DIRECT TESTIMONY

Joseph Ruiz will testify on Issues 1 through 10. Mr. Ruiz will testify regarding operations of Miami-Dade Water and Sewer Department and its use of natural gas; representations by FCG during negotiation of the 2008 Agreement; 2008 Agreement was reviewed by FCG and FCG's parent, AGL Resources' marketing, regulatory, legal and executive management prior to being signed by FCG's President who is AGL's Senior Vice-President; FCG's actions and representations since execution of the 2008 Agreement including in Dockets 080672 and 090539; meetings with FCG; FCG's refusal to resubmit or join MDWASD in submitting the 2008 Agreement for Commission review and order; MDWASD simply seeks to obtain the benefit of its bargain with FCG under the 2008 Agreement; FCG's failures to comply with its own tariff, Commission rules and FCG mismanagement; requests Commission approval of the 2008 Agreement and that Commission not allow FCG to abuse regulatory process to avoid its contractual commitments.

Greg Hicks will testify on Issues 1, 7, 9 and 10. He will testify on procurement of natural gas transportation services by MDWASD and specifically on negotiation of 2008 Agreement; FCG's insistence for condition requiring

Commission approval and last minute substitution of KDS rate schedule reference; FCG's representation that 2008 Agreement approval would be ministerial and noncontroversial matter; Amendment to 1998 Agreement; meetings he attended with FCG including meeting on February 11, 2009 in which FCG gave no notice of intent to withdraw the Petition but provided a chart comparing 1999 Rate Design and 2008 Rate Design which FCG alleged was their "incremental cost of service study"; despite MDWASD's requests, no corroborating information ever was provided by FCG to show FCG's actual costs of serving MDWASD through less than two miles of pipe; FCG threat to terminate service if MDWASD did not agree to a 300% rate increase; payment by MDWASD of FCG invoices with GS-1250K rates under protest and subsequent treatment of invoices and charges by depositing difference in amount between 2008 Agreement rate and GS-1250K charges into a liability account.

Jack Langer will testify on Issues 1 through 10. As the County's natural gas consultant expert, Mr. Langer will testify on all aspects regarding natural gas service as MDWASD's natural gas consultant; all historical information; MDWASD's purchase of natural gas from third-party suppliers and capacity on FGT statewide system and dealings with FCG for local transportation service only; all negotiations with FCG and AGL regarding 2008 Agreement, including FCG's

purported cost of service study; FCG's failure to provide any documentation to support "cost of service study"; bypass information and costs.

Fred Saffer will testify on Issues 1, 2, 3, 4, 5, 6 and 7. As the County's cost of service expert, Mr. Saffer will testify that FCG's purported "incremental cost of service study" is fundamentally flawed, misleading and erroneous; FCG's cost of service study is not an incremental cost of service study; it does not use original investment data; instead of presenting cost data for operations, maintenance, customer service and billing specifically to serve MDWASD's plants it allocates FCG's total company costs to MDWASD based on faulty allocation factors for GS-1250K customer class; FCG does not correctly apply the 2003 rate case customer allocation factor; it is presented by a witness who never performed an incremental cost of service study and deviates from standard incremental cost of service studies used by utilities, including FCG, for many years.

Brian Armstrong will testify on Issues 1 through 10. As the County's expert on contracts and management of utilities regulated by the Commission including Commission policies regarding approval of special contracts, utility management, in general, utility ratemaking and the regulatory process and based on his 25 years in the natural gas, water, wastewater and electric utility arenas, including 10 years in utility executive management, Mr. Armstrong will testify that the Commission should approve the 2008 Agreement and hold FCG accountable

for its lengthy list of mistakes, misdeeds, and misrepresentations to its largest transportation customer, MDWASD, the PSC regulatory staff (who relied on incorrect data provided by FCG) and the Commission itself; FCG disregard for its own tariff, the Commission's rules and regulations and its obligation to act in good faith concerning the 2008 Agreement constitute utility mismanagement.

REBUTTAL TESTIMONY

Joseph Ruiz - Mr. Ruiz rebuts FCG witnesses regarding the negotiation of the 2008 Agreement during which neither FCG witness was involved; FCG does not present testimony from any of its managers or lawyers who were actually involved in the negotiation and review of the 2008 Agreement; inability to reconcile the exhaustive list of mistakes, misdeeds and mismanagement admitted by FCG's witnesses to the \$22 million positive acquisition adjustment that FCG and AGL received from the Commission when FCG acquired City Gas of Florida; lists the many admissions of FCG mistakes and mismanagement; the Commission should approve the 2008 Agreement and hold FCG and its shareholders accountable for its gross mismanagement.

Jack Langer - Mr. Langer rebuts the testimony of FCG witnesses and confirms their admissions of numerous FCG mistakes and acts of mismanagement; provides bypass cost information.

Fred Saffer - Mr. Saffer rebuts the FCG witnesses regarding the alleged incremental cost of service analysis which used incorrect data and the misleading nature of Ms. Bermudez' testimony; Bermudez improperly characterizes her analysis as an "incremental costs study" which it is not; Ms. Bermudez' "allocation method" using the GS-1250K service classification is not a valid substitute for an incremental cost of service analysis which traditionally is a customer specific analysis.

Brian Armstrong - Mr. Armstrong rebuts FCG witnesses and highlights the inequity of attempting to force the County to pay 670% more than FCG contractually agreed to accept in the 2008 Agreement and twice the highest cost of service figure which FCG has been able to manufacture in its constantly changing analysis; rebuts witness Williams testimony that competitive rate adjustment recovery is "inextricably intertwined" with approval of the 2008 Agreement; Commission is not required to make FCG whole under the CRA mechanism due to FCG's mismanagement; Commission can require FCG to absorb the difference, if any, between the revenue generated under the 2008 Agreement and FCG's true incremental cost to serve the County; Commission can impute revenues to FCG due to mismanagement and other reasons; the Commission should approve the 2008 Agreement and hold FCG accountable by assessing appropriate penalties for FCG's willful noncompliance with various Commission rules, failing to maintain

accurate continuing property records and failing to comply with its own tariff requirements.

(2) **DESCRIPTION OF PRE-FILED EXHIBITS**

A. PREFILED DIRECT EXHIBITS

Sponsored by Jack Langer:

Exhibit__ (JL-1) - 1986 Miller Gas Agreement
Exhibit__ (JL-2) - FERC Approval of Orr Bypass
Exhibit__ (JL-3) - 1998 Agreement
Exhibit__ (JL-4) - FERC Approval of Hialeah and South District Bypass
Exhibit__ (JL-5) - Letter Confirming Renewal of 1998 Agreement
Exhibit__ (JL-6) - FCG Errol West, May 8, 2008 Letter to Jack Langer Authorizing Signing of 2008 Agreement
Exhibit__ (JL-7) - 2008 Agreement
Exhibit__ (JL-8) - First Amendment to 1998 Agreement
Exhibit__ (JL-9) - Miami-Dade Water Plant- Rate Design Comparison
Exhibit__ (JL-10) - FCG Confidential Response to Comm. Staff Data Request in Docket 080672-Gu
Exhibit__ (JL-11) - FCG and AGL Employees and Representatives who have participated in negotiations, review and proceedings regarding the 2008 Agreement

Sponsored by Fred Saffer:

Exhibit__ (FRS-1) - Curriculum Vitae of Fred R. Saffer
Exhibit__ (FRS-2) - Testimony by Fred R. Saffer
Exhibit__ (FRS-3) - FCG Cost to Provide Gas Transportation Service to Miami-Dade Water and Sewer Department

Sponsored by Brian Armstrong:

Exhibit__ (BPA-1) - Commission Staff Rejection of 2008 Agreement
Exhibit__ (BPA-2) -CG Admission that it did not perform an incremental cost study
Exhibit__ (BPA-3) - FCG/AGL Response concerning due diligence performed prior to signing 2008 Agreement

B. PREFILED REBUTTAL EXHIBITS

Sponsored by Jack Langer

Exhibit__ (JL-12) - Miami-Dade Bypass Costs

(3) MDWASD's STATEMENT OF BASIC POSITION

The 2008 Agreement should be approved by the Commission because the rates in the Agreement provide FCG with sufficient revenue to cover FCG's incremental cost of serving MDWASD plus surplus revenue.

Since 1998, FCG has provided transportation service of natural gas to Miami-Dade's Water and Sewer Department under a special contract. In August 2008, FCG and Miami-Dade County through MDWASD extended the 1998 Agreement by executing another special transportation services agreement subject to Commission approval. The 2008 Agreement provides for FCG to exclusively transport up to 7.9 million therms annually for a 10-year period. Over the past 6 years, FCG has transported an average of 6.5 million therms to the Orr and Hialeah water plants. FCG has engaged in a litany of acts of mismanagement and bad faith

since executing the 2008 Agreement for the sole purpose of insuring that the Commission does not approve it.²

FCG has failed to comply with its own tariff and Commission rules. The Commission should not absolve this regulated utility from its mismanagement but should approve the 2008 Agreement and hold FCG and its shareholders accountable for its unprofessional and unconscionable behavior.

Although FCG's incremental costs to serve MDWASD's plants has been the dispositive issue since first raised by PSC Staff in a December 30, 2008 data request, for 2 1/2 years FCG has failed to present any detailed, site specific costs for calculating its incremental cost to serve MDWASD's plants. FCG has not provided any evidence, competent, substantial or otherwise, to establish FCG's incremental costs to serve Miami-Dade.³

²This matter should be disposed of by Summary Final Order since the County has provided substantial competent evidence that the revenues received by FCG under the rates in the 2008 Agreement will cover FCG's incremental cost of serving the County and FCG presents no competent evidence in FCG's pre-filed or rebuttal testimony to refute the County.

³FCG's newly promoted Regional Manager relied on a 1997 memorandum which she severely redacted to allege FCG's original investment to serve MDWASD's plants. FCG's purported cost of service expert, David Heintz, relied solely on the redacted memorandum to opine that the 2008 Agreement rates do not meet FCG's incremental costs. The memorandum does not identify FCG's original investment when FCG facilities were placed in service in 1986 and 1991 to serve MDWASD's plants but rather estimates of bypass costs made by FCG engineers from 1997. This is but one example of the carelessness shown by FCG and its management throughout this proceeding.

The County's position can be summarized as follows: (1) FCG's president willingly, voluntarily and with advice of counsel and a number of FCG and AGL employees signed the 2008 Agreement; (2) FCG acknowledges that it failed to comply with its tariff requirements by not conducting an incremental cost of service study before signing the contract;⁴ (3) FCG admits that it exercised poor management in negotiating the 2008 Agreement, in failing to conduct the incremental cost of service analysis required by FCG's tariffs, in failing to evaluate the impact of the 2008 Agreement on FCG and its other customers, in not having proper management procedures in place to evaluate the 2008 Agreement's rates and other terms, and other acknowledged instances of poor utility practice; (4) FCG's competitive rate adjustment ("CRA") mechanism for recovering any shortfall in revenue from other customers is not "inextricably intertwined" with the Commission's approval of the 2008 Agreement;⁵ (5) for nearly 3 years FCG has refused to conduct a true incremental cost of service analysis as required by its tariff, as any professional utility management would conduct prior to entering a

⁴FCG witness Williams also admits that FCG violated Commission rules by failing to present the terms of the 2008 Agreement to the Commission prior to signing it.

⁵FCG witness Williams made the decision to terminate the 2008 Agreement, or attempt to do so, in reliance upon the cost of service study presented to him by Ms. Bermudez. That analysis has now been proven faulty in many ways. Mr. Williams and FCG should bear the results of FCG's actions, not FCG customers.

long-term agreement with its largest transportation customer, and as FCG and other Florida natural gas utilities have conducted repeatedly in the past before entering special gas transportation agreements; (6) FCG presents testimony from witnesses who have no personal knowledge of or involvement in the negotiation of the 2008 Agreement while the Commission will hear nothing from FCG managers and employees with knowledge of the negotiation and terms of the 2008 Agreement since they no longer work for FCG; (7) FCG's purported cost of service study was performed under the supervision of a witness who never conducted an incremental cost of service study and the witness' subordinate who prepared it also had never conducted an incremental cost of service study; (8) FCG inexplicably interprets its tariff and Commission rules as providing absolution for FCG mismanagement and violations of such tariff and rules as well as the means for enabling FCG to escape its contractual obligations in contrast to traditional utility regulation which holds the utility accountable for the utility's tariff non-compliance, rule violations and mismanagement, each of which is admitted by FCG's witnesses.

(4) **COUNTY'S STATEMENT OF ISSUES AND POSITIONS**

ISSUE 1: Did FCG perform an incremental cost of service study prior to entering into the 2008 Agreement with MDWASD?

COUNTY'S POSITION: No. FCG has acknowledged in sworn responses to discovery requests that it did not perform an incremental cost of service study for serving MDWASD's plants prior to entering into the 2008 Agreement with MDWASD. Bermudez confirmed this in deposition in which she testified that she had never performed an incremental cost of service study for a specific customer. Additionally, the analysis that she presented was performed by another FCG employee who likewise had never performed such a study and neither of them had any training in the performance of incremental cost of service studies. The KDS rate schedule that FCG inserted into the 2008 Agreement required FCG to recover its incremental costs. However, FCG did not perform an incremental cost of service analysis prior to entering into the Agreement in August 2008. Moreover, FCG did not attach a cost of service study to its original petition seeking approval of the 2008 Agreement (Docket 0806729-GU), unlike other natural gas utilities that previously have sought approval of special gas transportation contracts many times.

WITNESSES: Hicks, Langer, Saffer, Armstrong.

ISSUE 2: 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?

COUNTY'S POSITION: The issue of whether the revenue to be derived by FCG under the rates established in the 2008 Agreement cover FCG's incremental cost to serve Miami-Dade is the dispositive issue in this proceeding. FCG (as recently as 2005) and other natural gas utilities in Florida each have presented standard incremental cost of service analyses to establish incremental costs supporting special gas transportation agreements or a utility's utilization of a flexible gas tariff. See Docket Nos. 930714, 940830, 960920, 011620, 021174, 05027 and 050835.

The cost of service analysis performed by FCG and the other utilities in all other special gas transportation agreement proceedings except this one are premised on detailed, site specific data for the utility's incremental investment and operation expenses to serve the customer. The cost of service categories included in these incremental cost studies are: operation and maintenance expenses; depreciation expenses; insurance expenses; taxes other than income; income taxes; and return (on investment).

PSC Staff provided examples to FCG of such cost of service studies in PSC Staff Interrogatory 84, after FCG had submitted its direct and rebuttal

testimony. However, FCG to this day has chosen not to perform a standard, industry accepted and applied incremental cost of service analysis but instead chose to perform a different analysis pursuant to which FCG total company costs are allocated to the MDWASD's plants through a GS1250 rate schedule allocation from the 2003 rate case.

For example, incremental costs do not include "uncollectible costs" or "general and administrative expenses." Neither FCG in the past nor other natural gas utilities have included costs such as these in an incremental cost of service study. No other Commission Order approving a special gas transportation contract based on incremental cost of service standards has included uncollectible costs or G&A expenses as part of the utility's incremental costs.

The starting point in determining incremental costs is FCG's original investment in the subject facilities. FCG has violated Commission Rule 25-7.014, Florida Administrative Code, by failing to maintain its accounts in conformity with the Uniform System of Accounts for Natural Gas Companies (USOA) as found in the Code of Federal Regulations and failing to maintain continuing property records in conformity with the plant accounts prescribed in USOA. FCG has failed to maintain records of original cost consistent with the USOA. FCG failed to keep a detailed description and classification of

property record units that will permit their ready identification and verification. FCG violated the rules by not maintaining the records in such a manner to meet the following objectives: an inventory of property records which may be readily checked for proof of physical existence; the association of costs with such property record units to assure accounting for retirements; the determination of dates of installation and removal of plant to provide data for use in connection with depreciation studies. FCG failed to keep proper records of these facts despite specifically being ordered to do so by the Commission when FCG purchased the assets of Miller Gas Company in 1991 (which purchase included FCG's assets serving Miami-Dade's Alexander Orr plant since 1986). FCG failed to present a single document to establish its original investment in the facilities serving Miami-Dade in its direct or rebuttal testimony.

These rules were clearly violated and FCG attempted to minimize the violations by objecting to discovery requests and claiming until March 4, 2011, that producing the continuous property records is "unduly burdensome," "expensive," "oppressive" and "excessively time consuming" and suggesting in pleadings to this Commission that such records were "ancient" and thus presumably worthless in FCG's managerial opinion. These FCG actions should be taken into consideration by the Commission in

approving the 2008 Agreement and assessing appropriate penalties against FCG.

Due to FCG's failure to maintain historic cost records in the manner required by Commission rules, FCG's most recent proposal is to substitute a portion of the purchase price paid by FCG for the assets of Miller Gas Company (the utility purchased by FCG in 1991 which installed the facilities serving the Alexander Orr plant only 5 years earlier, in 1986) as a proxy for FCG's original investment in the Alexander Orr facilities (see FCG revised testimony pages of Carolyn Bermudez and associated supplemental exhibits filed by FCG counsel on April 5, 2011). Thus, FCG proposes to replace an FCG engineer's 1997 estimate of the cost of \$387,250 to bypass FCG's facilities serving the Alexander Orr plant with a dubious allocation of \$526,234 of FCG's total purchase price for all of the assets of Miller Gas Company to the one mile of pipe serving MDWASD's Alexander Orr plant. According to FCG information provided in response to Staff Interrogatory No. 83, this \$526,234, amount represents more than 50% of the total price paid by FCG for the assets of Miller Gas Company which served nearly 4,500 residential customers and 75 commercial customers at the time FCG acquired it. While it is unreasonable on its face to accept the results of such an illogical allocation amount as a proxy for FCG's original investment in such facilities,

FCG offers no revised testimony from any competent witness, which would be expected to be an engineer, to even attempt to establish its validity. Such an engineer would be required to explain how the "allocation of purchase price paid in 1991" proxy of \$526,234 is reasonable when FCG's engineer indicated that the 1997 estimated cost to replace such facilities through a bypass would cost only \$387,250. Specifically, the engineer would need to establish that it is reasonable to assume that in the 11 years after the facilities serving the Alexander Orr plant were constructed, the construction cost went down from \$526,234 to \$387,250 or a nearly 40% decrease in construction costs. Without such evidence (which would lack credibility in any event), FCG's "allocation of the purchase price paid in 1991" proxy is not a reasonable estimation of FCG's original investment in facilities serving MDWASD's Alexander Orr plant since 1986. FCG has simply failed to produce any competent or substantial evidence of its incremental costs to serve MDWASD's plants and FCG continues to change the facts in its analysis to this day without any reliable, dependable or credible corroborating documents or evidence.

WITNESSES: Ruiz, Langer, Saffer, Armstrong.

ISSUE 3: Does the contract rate in the 2008 Agreement allow FCG to recover FCG's incremental cost to serve MDWASD?

COUNTY POSITION: Yes. The revenues generated by the rates in the 2008 Agreement even based on conservative estimates of them throughout provides FCG with surplus revenues from service to MDWASD's plants. MDWASD's witness Saffer presents competent evidence that supports the County's position that the 2008 Agreement rates cover FCG's incremental cost of serving MDWASD's plants.

WITNESSES: Ruiz, Langer, Saffer, Armstrong.

ISSUE 4: Does MDWASD have a viable by-pass option?

COUNTY'S POSITION: Yes. FCG has known since 1997 that the County has the ability to bypass FCG's facilities. FCG recognized this again in 2000 and 2003. See Householder and Williams Testimony in 2003 and 2000 FCG rate cases, respectively (FCG Resp, to PSC Staff POD # 7). Jeff Householder, FCG's energy consultant, states:

The Company serves several large volume customers whose facilities are in close proximity to a Florida Gas Transmission (FGT) pipeline lateral. These customers could potentially bypass the Company's distribution facilities and directly connect to FGT. The Miami-Dade Water and Sewer Authority (WASA) is one example of a customer with a by-pass alternative. WASA is the Company's largest volume customer, with four accounts using over 7,900,000 annual therms at three separate sites. One of WASA's sites is within 300 feet of the FGT pipeline and a second is 10,800 feet from FGT. Annual

transportation sales to these two WASA sites are forecast at 7,262,000 therms in the Projected Test Year.

Householder Testimony at pp 23-24.

Also, MDWASD witness Langer provided specific bypass costs which were presented to MDWASD by a contractor willing to perform the work to construct bypass facilities at the Alexander Orr and Hialeah plants on January 14, 2011, at the costs identified in Exhibit ___ (JL-12). The estimated total amount of bypass costs for Alexander Orr and Hialeah is \$1.9 million. With a 10% contingency factor, the required investment is approximately \$2.1 million which is within MDWASD's ability to fund with cash from \$528 million in annual revenue and multi-million dollar capital projects budget. FCG has presented no evidence which refutes this estimate and, in fact, FCG's President, who is a witness in this proceeding, acknowledged in deposition that FCG has done nothing to verify or check this bypass information since FCG received it in January.

FCG never requested bypass information from MDWASD until after FCG had signed the Agreement, filed a petition for Commission approval of the 1998 Agreement and shortly before FCG withdrew it from Commission consideration. These actions of current FCG management are in stark contrast to the actions of FCG's management in place at the time of the 1998

Agreement which developed bypass costs with MDWASD representatives prior to signing the 1998 Agreement (Exhibit ___ (JL-12)). FCG's withdrawal of its petition is an act of bad faith and an anticipatory breach of contract. While FCG may have believed that the rates in the 2008 Agreement did not cover its incremental cost to serve MDWASD's plants when it withdrew its petition, FCG cannot be absolved of its affirmative advocacy for Commission rejection of the 2008 Agreement now that it is patently clear that FCG's incremental cost of service analysis was conducted by inexperienced employees unfamiliar with standard incremental cost of service practices that had been used many times previously by FCG and other natural gas utilities. FCG also knows now that its study is based on inaccurate and otherwise faulty information, yet FCG continues to litigate this matter.

WITNESSES: Ruiz, Hicks, Langer, Saffer, Armstrong.

A. LEGAL/POLICY ISSUES

ISSUE 5: What, if any, FCG tariff schedule applies to the 2008 Agreement for gas transportation services to MDWASD?

COUNTY'S POSITION: No tariff rate schedule should be applied to MDWASD's plants. This fact is the basis for the 2008 Agreement. MDWASD agrees with the Commission Staff characterization of the 2008 Agreement as a

customer specific tariff or rate schedule. The KDS schedule which was inserted by FCG witness Bermudez into the 2008 Agreement at the eleventh hour of negotiations may apply as the rate schedule includes a provision allowing a special contract to deviate from the KDS schedule's terms. This rate schedule does not prevent the special contract from deviating from the "applicability" provision regarding an additional load requirement. It was never the intent of the parties that the rate schedule referred to in the 2008 Agreement should in any way modify the terms negotiated by the parties over an extended period by many legal and management representatives of both parties as well as FCG's parent company, AGL.

WITNESSES: Langer, Armstrong, Ruiz.

ISSUE 6: In the absence of a special agreement, what existing FCG tariff schedule applies to the natural gas transportation service provided to MDWASD?

COUNTY'S POSITION: MDWASD is such a unique customer in that it is served by dedicated pipes and requires a large amount of gas on a 24/7/365 basis that a new customer classification should be created and approved by the Commission using the rates and terms in the 2008 Agreement. The Flexible Gas Service tariff also may be applied (which would permit approval of the 2008 Agreement) because the County has a viable

alternative option of bypass for Orr and Hialeah, and FCG to this day has been adamant as to its desire to keep its largest customer, however, MDWASD suggests the new service classification alternative. (See page 4 of City Gas Petition for Authority to Implement Proposed Flexible Gas Service Tariff - Docket No. 960920- regarding FGS applicable to existing customers). No Commission rule or binding policy exists which limits the terms in a utility's rate schedule (including the "applicability" term) which may be revised or superseded in a special agreement. Therefore, MDWASD does not believe the reference in the 2008 Agreement to the KDS rate schedule is a material issue in this proceeding.

WITNESSES: Ruiz, Langer, Saffer, Armstrong.

ISSUE 7: Should the 2008 Agreement between MDWASD and FCG be approved as a special contract?

COUNTY'S POSITION: Yes. Based on the substantial competent evidence provided by the County, the 2008 Agreement should be approved as a special contract as the County has provided the only supportable evidence that the 2008 Agreement rates provide revenue which will exceed FCG's cost of service to MDWASD's plants. The Commission should not reject the 2008 Agreement because of FCG's incompetence, mismanagement, failure to keep

proper records, failure to engage in proper due diligence, refusal to perform a typical incremental cost of service study and other parade of horrors demonstrated in this proceeding. FCG and its parent company, AGL, are not "fly by night" or "mom and pop" businesses. They are a multi-billion dollar natural gas conglomerate with subsidiaries in many states and an army of professional accountants, managers, lawyers and other personnel that advise them on regulatory and contract matters. This Commission's policy should be to hold a utility to the terms of their agreements even if the utility has acted imprudently or unreasonably as long as other customers are not affected. In this case, the Commission can approve the 2008 Agreement without harm to FCG's other customers by requiring FCG to impute revenue equal to a shortfall, if any, between revenues resulting from the 2008 Agreement and FCG's incremental cost of serving MDWASD's plants.

WITNESSES: Ruiz, Hicks, Langer, Saffer Armstrong.

ISSUE 8: If the 2008 Agreement is approved, should FCG be allowed to recover the difference between the contract rate and the otherwise applicable tariff rates through the Competitive Rate Adjustment (CRA) factor for the period of August 1, 2009, forward? How should any such recovery occur?

COUNTY'S POSITION: The Commission should not allow FCG to recover any funds from other customers through the CRA as FCG made a business decision to enter, then attempt to annul, the 2008 Agreement and instead impose the GS1250 rates on MDWASD. FCG never mentioned the CRA to MDWASD or its representatives or to the Commission when it submitted the petition for approval of the 2008 Agreement. FCG believed that it was in the best interest of the utility and its customers to continue to serve MDWASD, its largest customer. The 2008 Agreement does not contain any conditions that its effectiveness is subject to Commission approval of a CRA. To the extent FCG made an imprudent business decision in agreeing to and executing the 2008 Agreement and engaged in poor management practices since such time, the Commission should impute revenues to FCG, not require other customers to pay a shortfall, which MDWASD does not believe exists in any event. See County's Position to Issue 7.

WITNESSES: Ruiz, Langer, Armstrong.

ISSUE 9: Should the Commission disallow cost recovery for the differential, if any, between the FCG revenue under the 2008 Agreement and FCG's incremental cost to serve MDWASD?

COUNTY'S POSITION: Yes. As a matter of policy, the Commission should not condone FCG's mismanagement, mistakes and other bad faith actions which are exacerbated by the fact that FCG's parent company, AGL Resources, is a multi-billion dollar public company. Also, the Commission should consider the fact that FCG/AGL sought and received a \$22 million positive acquisition adjustment from this Commission in 2007 based, in part, on FCG's "professional and experienced managerial, financial, legal, technical and operational resources." Unfortunately for FCG, such professionalism and experience was not displayed during the negotiation, review and execution of the 2008 Agreement or throughout the Commission proceedings which have followed. See also MDWASD's Response to Issue 8. Unfortunately for MDWASD, none of the efficiencies which FCG/AGL promised would arise from the acquisition have been demonstrated either.

WITNESSES: Ruiz, Langer, Armstrong.

ISSUE 10: Based on the Commission's decisions in this case, what monies, if any, are due MDWASD and/or FCG, and when should such monies be paid?

COUNTY'S POSITION: MDWASD is due a refund of \$80,447.52, with applicable interest, together with a reimbursement of any portion of its

\$300,000 cash contribution to FCG for the incremental facilities necessary to serve MDWASD's plants.

WITNESSES: Hicks, Ruiz, Armstrong, Langer.

B. PENDING MOTIONS

MDWASD has pending a Motion for Summary Final Order and Sanctions, a Motion to Strike Rebuttal Testimony of David Heintz and a Motion to Compel Discovery and Impose Sanctions.

FCG has pending a Motion to Disqualify Miami-Dade's Counsel and Witness Brian P. Armstrong and to Exclude His Testimony and, in the Alternative to Strike Testimony.

C. PENDING CONFIDENTIALITY CLAIMS OR REQUESTS

The County has none. FCG has made several overly broad requests for confidentiality and MDWASD is unsure of the status of such requests other than to note that the overly broad nature of such requests belies FCG's expressed desire for transparency. MDWASD believes that some requests remain pending. MDWASD asks that the Commission clarify the status of FCG's confidentiality requests, past and pending.

D. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

MDWASD objects to Carolyn Bermudez and David Heintz being designated or relied upon as an expert regarding cost of service. Ms. Bermudez is not qualified as an expert. Her deposition testimony confirms that she is not qualified as she has never performed an incremental cost of service study nor has she received any training to perform such a study. Ms. Bermudez also testified that she supervised the work of an employee who also did not possess any experience conducting an incremental cost of service analysis. Ms. Bermudez also failed to properly allocate the customer cost factors from the GS-1250K class.

Mr. Heintz' provided his opinion in Rebuttal Testimony. Any expert opinions offered by FCG regarding the incremental cost of service should have been proffered in FCG's case in chief in Direct Testimony. Also, Mr. Heintz admits in his rebuttal testimony that his incremental cost of service analysis relies upon the information provided to him by FCG. Mr. Heintz specifically states that he based his opinion upon the 1997 bypass cost estimates of FCG engineers to conduct his study mistakenly believing that the bypass cost estimates were FCG's original investment in facilities serving MDWASD's plants. Mr. Heintz testified at deposition that he did not read the 2007 memorandum before conducting his analysis nor conduct any further due diligence as to this faulty information he

received from FCG and upon which he relied. Heintz opinion thus has no basis in fact and should not be considered by the Commission.

E. COMPLIANCE WITH ORDER NO. PSC-10-0714-PCO-GU, AS REVISED

Miami-Dade has complied with all requirements of the Orders Establishing Procedure entered in this docket. Miami-Dade reserves the right to make any amendments or supplements to this Pre-Hearing Statement and to file additional motions in due course.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand-delivery, email and/or U.S. Mail this 14th day of April 2011 to:

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