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 ORDER NO. PSC-11-0219-PHO-GU ISSUED: May 12, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 5, 2011, in Tallahassee, Florida, before Chairman Art Graham, as Prehearing Officer.

APPEARANCES:

HENRY N. GILLMAN, ESQUIRE, and DAVID STEPHEN HOPE, ESQUIRE, Stephen P. Clark Center, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128.
On behalf of Miami-Dade Water and Sewer Department (MDWASD).

FLOYD SELF, ESQUIRE, and ROBERT J. TELFER III, ESQUIRE, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308; SHANNON O. PIERCE, ESQUIRE, AGL Resources, Inc., Ten Peachtree Place, 15th Floor, Atlanta, GA 30309.
On behalf of Florida City Gas (FCG).

ANNA R. WILLIAMS, ESQUIRE, and MARTHA CARTER BROWN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of the Florida Public Service Commission (STAFF).

SAMANTHA CIBULA, ESQUIRE, ATTORNEY SUPERVISOR, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

Florida City Gas (FCG), formerly City Gas Company of Florida, executed a Natural Gas Transportation Services Agreement with Miami-Dade County on behalf of the Miami-Dade Water and Sewer Department (MDWASD) in 1998 (1998 Agreement).[1]

[1] The parties also refer to the 1998 Agreement as the "1999 Agreement" and the "1999 TSA."

FCG and MDWASD negotiated a successor agreement to the 1998 Agreement, dated August 28, 2008 (2008 Agreement). By petition dated November 13, 2008, FCG requested that the Commission approve the 2008 Agreement.[2] Thereafter, FCG voluntarily withdrew its petition on February 17, 2009, and the Commission administratively closed the docket. On December 14, 2009, MDWASD filed its own petition for approval of the 2008 Agreement that initiated the present docket. By Order No. PSC-10-0671-PCO-GU,[3] the Commission determined that it has jurisdiction to consider the 2008 Agreement. The matter is scheduled for a formal administrative hearing on June 1-3, 2011.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S., specifically Sections 366.04, 366.05, and 366.06, F.S. This hearing will be governed by said Chapter and Chapters 25-7, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section

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[2] See Docket No. 080672-GU, In re: Petition for approval of Special Gas Transportation Service agreement with MDWASD by Florida City Gas.

[3] Issued on November 5, 2010, in 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.

366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

The witnesses shall present testimony in the following order:

Witness	Proffered By	Issues Nos.
Direct		
Joseph Ruiz	MDWASD	1 – 10
Greg Hicks	MDWASD	1, 7, 9, 10
Jack Langer	MDWASD	1 – 10
Fred Saffer	MDWASD	1, 2, 3, 4, 5, 6, 7
Brian Armstrong	MDWASD	1 – 10
Melvin Williams	FCG	4, 5, 6, 7, 9
Carolyn Bermudez	FCG	1, 2, 3, 5, 6, 7, 8, 10
Rebuttal		
Joseph Ruiz	MDWASD	1 – 10
Jack Langer	MDWASD	1 – 10
Fred Saffer	MDWASD	1 – 10
Brian Armstrong	MDWASD	1 – 10
Melvin Williams	FCG	4, 5, 6, 7, 9

Witness	Proffered By	Issues Nos.
Carolyn Bermudez	FCG	1, 2, 3, 5, 6, 7, 8, 10
David Heintz	FCG	2, 3

VII. BASIC POSITIONS

MDWASD: 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.[4]

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 cost 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.[5]

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[4]This 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.

[5]FCG'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

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;[6] (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;[7] (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 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's 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.

FCG: The 2008 Natural Gas Transportation Agreement ("2008 Agreement" or "2008 TSA") should not be approved by this Commission because the

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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.

[6]FCG 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.

[7]FCG 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.

agreement is not in compliance with the Company's tariff or this Commission's rules and statutes.

The process leading up to the 2008 Agreement was flawed by failures and mistakes committed by each of the parties. None of the prerequisites for a non-tariff rate have been met. MDWASD never demonstrated a valid economic bypass with verifiable documentation. While FCG updated the tariff reference from the 1999 TSA to its KDS schedule, MDWASD warranted that it complied with that tariff when it did not meet the minimum threshold requirements for a new incremental load of 250,000 therms to one location. The rates in the 2008 Agreement do not recover the cost of service. Both parties signed the document before it was approved by the Commission, contrary to the clear language in the rule that requires Commission approval before execution.

MDWASD would have this Commission believe that it bears no responsibility in this process and that the Commission should ignore its clear statutory duty and approve the document regardless of its many failings on some equitable relief theory or because of FCG's actions, ignoring MDWASD's own mistaken actions. But the review and approval process by the Commission is not selective or perfunctory – it is a substantive review to determine whether the agreement fully and completely complies with the law. Given its numerous fatal flaws, the only legal remedy is to not approve the 2008 Agreement. MDWASD should therefore be ordered to pay FCG the difference between the tariff rate and agreement rate that it has been withholding plus applicable late fees per FCG's tariff.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

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

PROPOSED STIPULATION

POSITIONS

MDWASD: No.

FCG: No.

STAFF: No.

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?**

MDWASD: The incremental costs are $0.0078/therm and $0.0192/therm for Orr and Hialeah, respectively. FCG's analyses are neither premised on detailed, site-specific data for incremental investment and operational expenses, nor properly apply customer allocation factors, which properly applied to FCG's flawed methodology yield $0.00841/therm and $0.00749/therm for Orr and Hialeah, respectively.

Moreover, FCG's analysis (1) is not an incremental cost analysis, (2) differs in technique and scope from the standard incremental cost analysis applied by other Florida gas utilities, (3) has changed in scope and content repeatedly during discovery, (4) was not submitted with its original petition unlike other petitions by Florida gas utilities, and (5) Miami-Dade remains unsure to this day what FCG's final alleged incremental costs will be because FCG has violated the Commission's recordkeeping requirements including the failure to provide verified original investment costs of the subject facilities.

FCG: FCG's incremental cost to serve the Orr plant is $0.11918 and the incremental cost to serve the Hialeah plant is $0.08575. This incremental cost analysis is based upon the actual original FCG investment for these two plants and the class of service analysis performed by Ms. Bermudez and reflected in her updated CB-4 Exhibit, which is based upon November 2010 data. No incremental cost study has been developed for the Blackpoint/South Dade plant because the volume of gas transported is very low since this plant uses natural gas only as a backup fuel source.

STAFF: No position at this time.

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

MDWASD: Yes. The revenues generated by the rates in the 2008 Agreement even based on conservative estimates of therm throughput 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.

FCG: No. None of the incremental cost analyses performed by Ms. Bermudez or Mr. Heintz for the Orr and Hialeah demonstrate that the rates in the 2008 Agreement recover the cost of service. While Mr. Saffer for MDWASD has proposed an analysis he characterizes as a "true" incremental cost study, his singular proposal is incomplete and does not capture the actual costs associated with MDWASD. If Mr. Saffer's approach is corrected for its various errors, as Mr. Heintz has done, this methodology produces an incremental cost rate which is still above the contract rates for each MDWASD plant. Finally, the Blackpoint plant's volumes do not justify any contract rate.

STAFF: No position at this time.

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

MDWASD: Yes. Since 1997, FCG knew the County could bypass. The County received estimates from Florida Gas Transmission and an industry recognized pipeline contractor to construct bypass facilities. The estimated total amount of bypass costs with a 10% contingency is approximately $2.1 million, and within MDWASD's ability to fund with cash.

FCG: No. The threshold requirement for requesting a non-tariff or below tariff rate is for the customer to provide a viable economic energy alternative including verifiable documentation of Customer alternative. MDWASD did not provide any bypass information at the time of the negotiation of the 2008 Agreement. In November 2009, MDWASD obtained an "Executive Summary" of a bypass proposal which Mr. Langer included with his rebuttal testimony as Exhibit JL-12 for the Orr and Hialeah plants. This Executive Summary by T&T Pipeline, Inc. does not include complete information or verifiable documentation that would enable a third party to determine whether the proposed bypass service to either the Orr or Hialeah plants is a viable economic energy alternative. As for the Blackpoint plant, MDWASD has not offered any bypass information for Blackpoint, and MDWASD has admitted that there is no viable economic bypass potential for the Blackpoint plant.

STAFF: No position at this time.

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

MDWASD: 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.

FCG: As FCG's tariff is currently structured, the only rate schedule that would apply to MDWASD is the GS-1,250k rate schedule for service to the Orr and Hialeah plants, and the GS-25k rate schedule for service to Blackpoint. The 2008 Agreement expressly incorporates the Contract Demand Service ("KDS") schedule, and while the parties agreed it was the applicable schedule, and MDWASD expressly warranted that it met the terms of the KDS schedule, the 2008 Agreement does not meet the terms of the KDS schedule because MDWASD is not bringing any new incremental demand of 250,000 additional therms per year and because the rates do not recover the incremental cost of service.

The Flexible Gas Service ("FGS") schedule does not apply, as MDWASD has suggested, because there is no documented viable economic energy alternative. Likewise, the Special Conditions section of the KDS schedule does not rescue the agreement because the tariff's requirements for viable, documented economic bypass, 250,000 therms of new incremental load, and rates above incremental cost are threshold requirements that must be met before the parties can negotiate a special service agreement, and here MDWASD has not met any of the prerequisites to a contract rate.

STAFF: No position at this time.

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

MDWASD: 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.

FCG: The Orr and Hialeah plants fall within the GS-1250k rate class, which is the class used in the 2003 rate case; the volumes for these two plants meet the minimum volume thresholds for this tariff, especially if the two meters at the Orr plant are combined. The low volumes transported for the Blackpoint plant qualifies for service under the GS-25k class.

STAFF: No position at this time.

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

MDWASD: 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 horribles 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.

FCG: The 2008 Agreement should not be approved by this Commission because it is not in compliance with the Company's tariff or this Commission's rules and statutes.

The process leading up to the 2008 Agreement was flawed by failures and mistakes committed by each of the parties. None of the prerequisites for a non-tariff rate have been met. MDWASD never demonstrated a valid economic bypass with verifiable documentation. While FCG updated the tariff reference from the 1999 TSA to its KDS schedule, MDWASD warranted that it complied with that tariff when it did not meet the minimum threshold requirements for a new incremental load of 250,000 therms to one location. The rates in the 2008 Agreement do not recover the cost of service. Both parties signed the document before it was approved by the Commission, contrary to the clear language in the rule that requires Commission approval before execution.

MDWASD would have this Commission believe that it bears no responsibility in this process and that the Commission should ignore its clear statutory duty and approve the document regardless of its many failings on some equitable relief theory or because of FCG's actions, ignoring MDWASD's own mistaken actions. But the review and approval process by the Commission is not selective or perfunctory – it is a substantive review to determine whether the agreement fully and completely complies with the law. Given its numerous fatal flaws, the only legal remedy is to not approve the 2008 Agreement.

STAFF: No position at this time.

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 August 1, 2009, forward? How should any such recovery occur?**

MDWASD: 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.

FCG: Yes. The 2008 Agreement should not be approved for the reasons previously discussed. The 2008 Agreement and the CRA are inextricably linked. If the 2008 Agreement is approved, then the Commission has made the legal determination that it is in compliance with the KDS tariff and the Commission's rules and statutes. Since the KDS schedule is one of the tariff schedules that permits the recovery of any below tariff rate through the CRA mechanism, then the only appropriate action is for the CRA to be collected pursuant to the terms of that tariff schedule.

STAFF: No position at this time.

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

MDWASD: 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.

FCG: No. If the Commission approves the 2008 Agreement under the terms expressed in the document, it must find the special contract rates recover the incremental cost of service to MDWASD, that the rates are reasonable, and, therefore, the differential is recoverable under the CRA mechanism. If it finds that the 2008 Agreement fails to recover the incremental cost of service to MDWASD, then it cannot reform the contract to apply a different rate against the expressed agreement of both parties.

Since this question sets up an illegal outcome, this situation should not occur. The only choices for the Commission are to approve or disapprove the document. If the Commission approves it, then it has found as a matter of law that all the prerequisites for service have been met (bypass,

rates recover cost, 250,000 therms of new incremental load per location, etc.) in which case the entire difference between the tariff rates and the agreement rates are recovered through the CRA. If the 2008 Agreement is not approved, and it should not because it is contrary to the law, then there is no differential to collect under this issue.

STAFF: No position at this time.

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?**

MDWASD: 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.

FCG: If the 2008 Agreement is not approved by the Commission, MDWASD owes FCG the difference between the tariff rate and the 2008 Agreement rate beginning with the September 9, 2009 invoice to the date MDWASD begins to make payments plus applicable late charges of 1.5% as authorized by the tariff. As of the November 5, 2010 invoice the unpaid amounts totaled $859,836.91 plus interest.

STAFF: No position at this time.

ISSUE 11: **Should this docket be closed?**

MDWASD: The docket should be closed once the order becomes a final non-appealable order.

FCG: The docket should be closed once the order has become final and the appropriate payments have been made in full as ordered under Issue 10.

STAFF: No position at this time.

IX. EXHIBIT LIST

Witness	Proffered By	Exhibit	Description
Direct			
Joseph Ruiz	MDWASD	JAR-1	FCG Response to MDWASD Interrogatory No. 11

Witness	Proffered By	Exhibit	Description
Jack Langer	MDWASD	JL-1	1986 Miller Gas Agreement
Jack Langer	MDWASD	JL-2	FERC Approval of Orr Bypass
Jack Langer	MDWASD	JL-3	1998 Agreement
Jack Langer	MDWASD	JL-4	FERC Approval of Hialeah and South District Bypass
Jack Langer	MDWASD	JL-5	Letter Confirming Renewal of 1998 Agreement
Jack Langer	MDWASD	JL-6	FCG Errol West, May 8, 2008 Letter to Jack Langer Authorizing Signing of 2008 Agreement
Jack Langer	MDWASD	JL-7	2008 Agreement
Jack Langer	MDWASD	JL-8	First Amendment to 1998 Agreement
Jack Langer	MDWASD	JL-9	Miami-Dade Water Plant-Rate Design Comparison
Jack Langer	MDWASD	JL-10	FCG Confidential Response to Comm. Staff Data Request in Docket 080672-GU
Jack Langer	MDWASD	JL-11	FCG and AGL Employees and Representatives who have participated in negotiations, review and proceedings regarding the 2008 Agreement
Fred Saffer	MDWASD	FRS-1	Curriculum Vitae of Fred R. Saffer
Fred Saffer	MDWASD	FRS-2	Testimony by Fred R. Saffer
Fred Saffer	MDWASD	FRS-3	FCG Cost to Provide Gas Transportation Service to Miami-Dade Water and Sewer Department

Witness	Proffered By	Exhibit	Description
Brian Armstrong	MDWASD	BPA-1	Commission Staff Rejection of 2008 Agreement
Brian Armstrong	MDWASD	BPA-2	CG Admission that it did not perform an incremental cost study
Brian Armstrong	MDWASD	BPA-3	FCG/AGL Response concerning due diligence performed prior to signing 2008 Agreement
Melvin Williams	FCG	MW-1	1999 TSA
Melvin Williams	FCG	MW-2	2008 TSA
Melvin Williams	FCG	MW-3	2008 Amendment
Melvin Williams	FCG	MW-4	MDWASD Billing Letters
Carolyn Bermudez	FCG	CB-1	1999 Rate Design – November 2008 Surveillance Report
Carolyn Bermudez	FCG	CB-2 (Original & Supplemental)	1999 Rate Design Back-up to Attachment 1
Carolyn Bermudez	FCG	CB-3 (Original & Supplemental)	December 2009 Incremental Analysis
Carolyn Bermudez	FCG	CB-4 (Revised)	November 2010 Incremental Analysis
Carolyn Bermudez	FCG	CB-5	MDWASD Unpaid Amounts
Rebuttal			
Jack Langer	MDWASD	JL-12	Miami-Dade Bypass Costs
Melvin Williams	FCG	MW-5	Letter to MDWASD regarding need for bypass information

Witness	Proffered By	Exhibit	Description
Carolyn Bermudez	FCG	CB-6 (Revised)	Orr Plant Original Costs
David A. Heintz	FCG	DAH-1	David A. Heintz Summary of Education and Experience
David A. Heintz	FCG	DAH-2 (Revised)	Incremental Cost Analysis

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. STIPULATIONS

The parties propose the stipulation of Issue 1.

XI. PENDING MOTIONS

Description	Filed By	Date Filed
Motion to Compel Discovery and to Impose Sanctions	MDWASD	03/18/2011
Motion to Disqualify Miami-Dade's Counsel and Witness Brian P. Armstrong and to Exclude His Testimony and, in the Alternative, to Strike Testimony, and Request for Oral Argument	FCG	03/18/2011
Motion for Summary Final Order Approving Special Gas Transportation Service Agreement And Imposing Sanctions on FCG and Incorporated Memorandum of Law, and Request for Oral Argument	MDWASD	03/21/2011

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality requests at this time.

XIII. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

MDWASD: 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.

FCG: FCG objects to the qualifications of Jack Langer, Fred Saffer, and Brian Armstrong as expert witnesses.

STAFF: No position at this time.

XIV. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time.

XV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Chairman Art Graham, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Art Graham, as Presiding Officer, this 12th day of May, 2011.

ART GRAHAM
Chairman and Presiding Officer
Florida Public Service Commission
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Tallahassee, Florida 32399
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(SEAL)

ARW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.