

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for review and determination on)	
the project construction and gas)	
transportation agreement between NUI)	DOCKET NO. 160175-GU
Utilities, Inc. d/b/a City Gas Company)	
of Florida and Florida Crystals)	FILED: November 17, 2016
Corporation, and approval of an)	
interim service arrangement.)	
_____)	

FLORIDA CRYSTALS CORPORATION’S COMMENTS
CONCERNING FLORIDA CITY GAS’S RESPONSE TO
NOTICE OF APPARENT VIOLATION

Florida Crystals Corporation (“Florida Crystals”), subject to its pending unopposed motion to be designated a party or, in the alternative to intervene, in this proceeding, filed herein on August 5, 2016, hereby files these comments (“Comments”) concerning the Response to Notice of Apparent Violation (“Response to NOAV”) filed by Florida City Gas (“FCG”) on November 1, 2016. In summary, for the reasons set forth in Florida Crystals Corporation’s Motion to Dismiss (the “Motion to Dismiss”) which was filed with the Florida Public Service Commission (“PSC” or “Commission”) on August 29, 2016, the Project Construction and Gas Transportation Agreement (the “Agreement” or the “GTA”) between FCG and Florida Crystals is a valid contract under Florida law and did not require filing with the Commission because it was covered by, and otherwise complied with FCG’s applicable tariffs.

However, if the Commission determines that FCG was required to file the Agreement with, and obtain approval by, the Commission, then Florida Crystals disputes many of the factual allegations made in FCG's Response to NOAV, as more specifically described herein. Moreover, again assuming arguendo that the Commission determines that FCG was required to file the Agreement, Florida Crystals strongly believes that the Commission should commence show cause proceedings, and probably additional appropriate administrative proceedings against FCG for FCG's knowing, intentional, multi-year violation of Rule 25-9.034, Florida Administrative Code ("F.A.C."), and impose penalties pursuant to Section 366.095, Florida Statutes.¹

With respect to other arguments advanced by FCG, Florida Crystals will demonstrate herein that FCG's arguments are replete with factual inaccuracies and excuses that are at best weak, with some overtly false. Moreover, Florida Crystals will demonstrate that FCG's failure to file the Agreement was a knowing, conscious decision that was explicitly considered by FCG in 2001, and that FCG further sat on its hands for at least 5 years from the time that FCG alleges it

¹ Florida Crystals will contend that, if the Commission determines that FCG was required to file the Agreement, the Commission, in order to send appropriate messages to regulated companies that they must follow Commission rules and treat their customers fairly and justly, should commence show cause proceedings and impose substantial penalties on FCG. Again, Florida Crystals believes that the Agreement did not require filing, and that the Commission should accordingly leave this contract dispute to Florida courts of competent jurisdiction.

discovered its oversight “sometime in the 2010-2011 period” until the summer of 2016, and accordingly, the Commission must impose significant sanctions on FCG to protect the integrity of the Commission’s rules and processes, and to send the appropriate message to regulated companies that they simply cannot decide not to follow a Commission rule and then attempt to bootstrap their failures into opportunistic changes in the bargains that they strike with their customers when it suits their financial interests.

PROCEDURAL BACKGROUND

1. FCG initiated this docket by filing its Petition for Review and Determination and Approval of Interim Service Agreement (“FCG’s Petition”) on July 22, 2016.

2. On August 5, 2016, Florida Crystals filed its Unopposed Motion to be Designated a Party, or in the Alternative, to Intervene (“Florida Crystals’ Unopposed Motion”). The Commission has not yet ruled on Florida Crystals’ Unopposed Motion.

3. On August 29, 2016, Florida Crystals filed its Motion to Dismiss FCG’s Petition asserting that dismissal is appropriate for the following reasons.

- a. The Agreement is a valid contract under Florida law and did not require filing with the Commission because it was covered by and otherwise complied with FCG’s applicable tariffs.

- b. The Commission was fully informed about the Agreement in 2003, in FCG's general rate case (In re: Application for Rate Increase by City Gas Company of Florida, Docket No. 030569-GU, hereinafter the "2003 City Gas Rate Case"), thereby achieving substantive compliance with the purposes of Rule 25-9.034, F.A.C.
- c. Any attempt to reverse the Commission's approval of FCG's rates is barred by the doctrine of administrative finality.
- d. The Agreement provides for rates that are fully compliant with FCG's existing tariffs.
- e. The interpretation of contracts, such as the Agreement, is solely within the jurisdiction of judicial courts in Florida.
- f. If the Agreement were required to be filed with and approved by the Commission by Rule 25-9.034, F.A.C., then FCG is in violation of that Rule.
- g. FCG's erroneous and specious allegation that other customers will be harmed by the Agreement is not at issue in this proceeding.

FCG responded in opposition on September 19, 2016. The Commission has not yet ruled on Florida Crystals' Motion to Dismiss.

4. On August 31, 2016, FCG filed a Motion for Approval of a Temporary Interim Service Arrangement (“FCG’s Motion”). On September 19, Florida Crystals filed an extensive response in opposition to FCG’s Motion.

5. On October 18, 2016, the Commission issued its Notice of Apparent Violation (“NOAV”) to FCG, in Docket No. 160175-GU. Florida Crystals was not served with or otherwise furnished a copy of the Notice of Apparent Violation at that time, with the result that Florida Crystals did not learn of the NOAV until FCG served Florida Crystals with a copy of FCG’s Response to NOAV on November 1, 2016.²

6. On November 1, 2016, FCG filed its Response to NOAV.

7. As FCG’s counter-party to the Agreement, Florida Crystals believes it is the only party, other than FCG, with information that is directly material to the issues raised in FCG’s Response to NOAV. Accordingly, Florida Crystals respectfully requests the Commission to consider the information and legal argument set forth in these Comments.

DISPUTED FACTUAL ALLEGATIONS

8. Assuming that the Commission determines that Rule 25-9.034, F.A.C., requires the Agreement to be filed with and approved by the Commission,

² Florida Crystals is appreciative that FCG’s counsel elected to treat Florida Crystals as a party to this proceeding and served FCG’s Response to NOAV on undersigned counsel.

FCG's Response to NOAV contains numerous factual allegations that are patently inaccurate and which Florida Crystals disputes, including, but not limited to, the following: (a) FCG's assertion that it is somehow absolved from responsibility for its alleged rule violation because the Agreement was executed by persons employed by the utility company that was acquired by AGL Resources, Inc. ("AGL") and later by Southern Company Gas, a wholly-owned subsidiary of the Southern Company (Response to NOAV at 2-3, ¶¶ 3-4); (b) FCG's contention, again as an excuse for failure to act in a timely manner to comply with the Commission's rules, that when its "post-merger management" team³ learned of the apparent violation "sometime in the 2010-2011 period," it was too busy with other matters and that "there was no time" for proper investigation of the Florida Crystals Agreement (Response to NOAV at 3, ¶ 5); (c) FCG's related assertion that its "management is committed to being fair, open, and truthful in attempting to resolve these bad deals that were inherited when the AGL acquitted [sic] NUI/City Gas" (Response to NOAV at 8, ¶13; (d) FCG's assertion, again as an excuse for its failure to comply with the Commission's rule that FCG's current or recent inability to locate any documentation or correspondence relating to the development of the Agreement or the rates therein "suggest[s] to FCG management that the GTA was

³ Because FCG has been part of acquired entities twice since the Agreement was executed, it is ambiguous as to exactly which of the acquiring companies – AGL Resources or Southern Company Gas – FCG is trying to make excuses for.

negotiated in secret and kept hidden from City Gas employees;” (Response to NOAV at 4-5, ¶7); (e) FCG’s assertion, again as an excuse for AGL not investigating the Agreement and business relationship with Florida Crystals (which should be read to mean “failing to conduct adequate due diligence regarding” the Agreement) that there was nothing remarkable about service to Florida Crystals under the Florida Crystals Agreement in November 2004 (Response to NOAV at 2-3, ¶4); (f) FCG’s mischaracterizations of FCG’s own representations to the Commission, in the 2003 City Gas Rate Case, regarding the costs to serve Florida Crystals and the appropriateness of the rates paid under the Agreement (Response to NOAV at 5, ¶7 and at 8, ¶13); (g) FCG’s grossly false claim that it has a culture of “transparency with the customer” (Response to NOAV at 7, ¶11); and (h) FCG’s assertions regarding potential adverse impacts on other FCG customers, including its assertion that “service to Florida Crystals has been provided at a significant loss over past years” (Response to NOAV at 6, ¶9). Florida Crystals reserves its rights to raise additional disputed factual issues as such are developed through discovery in any proceedings regarding the Agreement, FCG’s actions with respect to the Agreement, and fair, just, and reasonable rates to be paid by Florida Crystals for the remainder of the Agreement’s life.

9. FCG’s Alleged Excuse that the Agreement Was Executed by Employees of Florida City Gas Before FCG Was Acquired by AGL. FCG asserts

that the fact that the Agreement was executed by management of the former owners and not by FCG's post-merger management team, and that FCG's post-merger management team was unaware that the Agreement had not been approved until "sometime in the 2010-2011 period," somehow mitigates FCG's failure to comply with Rule 25-9.034, F.A.C. See FCG's Response to NOAV at ¶¶ 2, 5. The Commission should reject this assertion for several reasons. First, Florida City Gas is the *same* company and the *same* Commission-regulated public utility that it has always been. See Exhibit A to these Comments, which presents an "Historical Timeline" for Florida City Gas that was downloaded from the FCG website (<https://www.floridacitygas.com/about-us>) on November 10, 2016. See also Exhibit B to these Comments, which is the 2016 Annual Report of Pivotal Utility Holdings, Inc., to the Florida Secretary of State. A search for NUI Utilities on the Florida Division of Corporations website is directed to Pivotal Utility Holdings; note particularly that the parent company's officers include Mr. H. Bryan Batson, identified as "PRESIDENT, FLORIDA CITY GAS," and Ms. Carolyn Bermudez, identified as "VICE PRESIDENT AND GENERAL MANAGER, FLORIDA CITY GAS." FCG still has the same Commission-assigned utility number, GU602. FCG still identifies its tariffs as "Florida City Gas, FPSC Natural Gas Tariff." See Exhibit C to these Comments, which consists of three representative FCG tariff sheets downloaded on July 27, 2016. FCG is the

Florida public utility that is regulated by the Commission, and FCG should not – arguably cannot – be allowed to evade responsibility for its continuing failures to comply with Rule 25-9.034, F.A.C., because of a change in upstream ownership.

10. Further, FCG’s claims that AGL Resources, Inc. (“AGL”) was not aware of the Agreement in 2004 when it acquired FCG’s parent corporation (Response to NOAV at 2-3, ¶4) are irrelevant both to the underlying rule violation and to FCG’s argument that somehow, the fact of a change or changes in upstream ownership – of NUI Utilities by AGL and later of AGL by Southern Company Gas – should excuse AGL or Southern Company Gas from responsibility and liability for the violation. At most, FCG’s assertions are prima facie evidence of AGL’s failure to conduct adequate due diligence in its acquisition of FCG’s parent company in 2004. (Further, to the extent that FCG is trying to excuse its “current management team” including Southern Company Gas from responsibility for FCG’s self-alleged violation, these claims are prima facie evidence of similar due diligence failures by Southern Company Gas in 2016.) If the Commission were to deem AGL’s and Southern Company Gas’s due diligence relevant, then FCG’s allegations should be tested through discovery and sworn testimony in a docketed proceeding. The discovery should include, at a minimum, review of the transaction documents and any related correspondence relating to the acquisition of FCG’s parent to determine if the Agreement was addressed during either the

acquisition of NUI by AGL or the subsequent acquisition of AGL by Southern Company Gas. In summary, whether FCG's post-merger management was aware of the Agreement is irrelevant to whether the Commission should implement show cause proceedings against FCG for violation of Rule 25-9.034, F.A.C.

11. FCG's Alleged Excuse that FCG Did Not Have Time to Investigate the Florida Crystals Agreement When it Discovered in 2010 or 2011 That It Had Not Been Filed with the Commission. As noted above, FCG contends that its "post-merger management team" learned that the Agreement had not been approved until "sometime in the 2010-2011 period." FCG's Response to NOAV at 3, ¶ 5. While it *might* be true that some AGL personnel did not learn about the Agreement until 2010 or 2011, this is irrelevant to a violation of the Commission's rules by the Commission-regulated public utility, Florida City Gas. Moreover, it is *also true* that during the *5 to 6 years* between when FCG's post-merger management team learned that the Agreement had not been formally approved by the PSC and July 21, 2016, the day before the date on which FCG initiated this action, neither FCG (the Commission-regulated public utility) nor any of its upstream ownership nor such parent companies' management, did anything to alert either the Commission or its customer and contract partner, Florida Crystals, of any impending problem. On July 21, 2016, the day before filing its Petition initiating this docket, FCG told Florida Crystals of its new theory that the contract

was invalid and provided a one-page “Executive Summary for Florida Crystals” to Florida Crystals personnel. See Exhibit D to these Comments. FCG claims, as its excuse for not telling the Commission about the issue, that it was occupied resolving service issues with Miami-Dade County, attempting to negotiate a new transportation agreement with Florida Crystals, and taking the time to investigate, understand, and bring this matter to the PSC for action, and further asserts that “there was no time” for a full investigation. Thus, FCG would apparently have the Commission believe that FCG could not take any of the following steps:

- a. notifying Florida Crystals, its customer and contract partner, that FCG believed the Agreement had not been formally approved by the Commission or that FCG believed that the Agreement was therefore “invalid” (such notification of Florida Crystals did not occur until July 21, 2016, the day before it filed its Petition seeking to escape its contractual obligations to Florida Crystals);
- b. requesting that Florida Crystals provide any pertinent information in Florida Crystals’ possession concerning the negotiation and implementation of the Agreement; and
- c. most importantly as it relates to the Notice of Apparent Violation of the Commission’s rules, notifying the Commission that FCG had discovered another special contract (besides its contract with Miami-

Dade County) that FCG believed had not been filed in compliance with the Commission's rules.

12. FCG's failure to take any of these actions for *more than 5 years* demonstrates FCG's clear, knowing, considered and willful decision not to file the Agreement. FCG clearly considered the issue whether it had to file the Agreement with the Commission (which would have been pursuant to Rule 25-9.034, F.A.C., if the Agreement was required to be filed and approved) and "elected" not to file it. Such behavior should not be countenanced by the Commission. Moreover, all FCG's alleged excuse amounts to is an admission that it was unwilling to devote the human and other resources necessary to deal with the problem that it identified in 2010 or 2011. The Commission should be offended by this allegation, because it plainly says that neither the employees of the regulated public utility, Florida City Gas, nor its upstream owners, AGL, cared enough about an apparent violation of Commission Rules to address it. AGL is not an impecunious business entity; it is a substantial, sophisticated company, and the suggestion that AGL did not have the time or the resources to address a perceived violation of the Florida Public Service Commission's rules verges on the absurd, if not bad faith. The Commission should implement show cause proceedings and consider imposing the maximum penalties authorized by Section 366.095, Florida Statutes, for FCG's knowing, willful, multi-year violation of Rule 25-9.034, F.A.C.

13. Moreover, email correspondence between FCG and Florida Crystals during the negotiation of the Agreement demonstrates that FCG was fully aware of the issue whether the Agreement had to be filed with the Commission. Exhibit E to these Comments includes several emails. An email dated April 6, 2001 (18 days before the Agreement was executed) from Paul Chymiy of NUI to Gus Cepero (Florida Crystals), Mark Lewis (Florida Crystals' outside counsel), Ed Liberty (NUI), and Mark Casaday (also NUI), states, among other things, that "***NUI does not intend to 'remove regulatory approvals' as a Condition Precedent,***" (emphasis supplied) and goes on to state that "If these conditions are not satisfied at the time that NUI elects to issue its Intent to Proceed, pursuant to the Agreement, NUI will effectively waive regulatory approvals as a condition precedent when it issues the Intent to Proceed." A further email from Mr. Chymiy dated April 16, 2001, to Mr. Cepero, Mr. Liberty, and others, states the following: "This [a certain cross-reference] is necessary since ***FPSC approval has been removed as a Condition Precedent*** from Article 4.A and, ***if the Company elects to file the Agreement with the FPSC***, this is [n]ow provided for in Article 7." (Emphasis supplied.) This correspondence clearly demonstrates that FCG and its parent, NUI, were aware of the issue whether the Agreement had to be filed and that they obviously made the affirmative decision ***not*** to file it.

14. FCG's knowledge of the Commission's filing requirements – or lack thereof, as urged by Florida Crystals – is further demonstrated by the fact that it filed the rate schedule under which Florida Crystals takes service, Rate Schedule KTS, Contract Transportation Service (renamed to Rate Schedule KDS, Contract Demand Service, in the 2003 City Gas Rate Case) in the summer of 2000. See Exhibit F to these Comments, which is FCG's Petition for Authority to Implement Contract Transportation Service, which initiated Docket No. 000717-GU on June 15, 2000. Moreover, FCG also contemporaneously filed another Petition for Approval of Special Gas Transportation Service Agreement, initiating Docket No. 010099-GU, on January 24, 2001. FCG cannot credibly claim ignorance of the filing requirements. The Commission should initiate show cause proceedings and impose substantial penalties on FCG for its knowing, willful, continuing violations of the Commission's rules.

15. FCG's Assertion that its Management is Committed to Being Fair, Open, and Truthful in Attempting to Resolve the "Bad Deals" Inherited when AGL and Southern Company Gas "Acquitted" NUI and FCG. At page 8, ¶13 of its Response to NOAV, FCG makes yet another attempt to distance its current upstream ownership and management from FCG, and yet another admission of inadequate due diligence by both AGL and Southern Company Gas in the

acquisitions, and another utterly lame excuse for its failures to follow the Commission's rules. FCG makes the following claim:

FCG has demonstrated both in the Miami-Dade docket and in this case, [that] management is committed to being fair, open, and truthful in attempting to resolve these bad deals that were inherited when the AGL acquitted [sic] NUI/City Gas.

The following facts disprove and belie FCG's assertion that it is committed to being fair, open, or truthful:

- a. FCG considered filing the Agreement with the Commission in 2001 but decided not to do so;
- b. FCG learned of its currently self-alleged rule violation "sometime in the 2010-2011 period" but did not tell either the Commission or Florida Crystals, its customer and contract partner, about this discovery until July 2016;
- c. In the 2003 Rate Case, FCG fully informed the Commission about the Agreement and the costs that it incurred to serve Florida Crystals pursuant to the Agreement, to the point of averring – in Mr. Householder's testimony filed with and relied upon by the Commission – that "*The Company's negotiated rate contract with*

*Florida Crystals establishes a rate that recovers its costs to provide service*⁴ (emphasis supplied).

16. There is, however, a grain of truth in these particular allegations, and it is the obvious fact that all that FCG (and AGL and Southern Company Gas) are really trying to do is to escape the consequences of the bargain that they struck with Florida Crystals – one of the “bad deals” referred to in FCG’s Petition. It is particularly noteworthy that FCG is raising the issue only *now, after taking the benefits of the high rates paid by Florida Crystals for fifteen years, when the lower rates that FCG and Florida Crystals agreed upon for the last fifteen years of the Agreement’s Term are about to become effective*. This is the real reason that FCG – and AGL and Southern Company Gas – decided to act in July of 2016: their realization that the lower rates provided for in the Agreement are about to become effective. As FCG stated it in its Response to NOAV at page 4, ¶6, “FCG learned in late 2015 that Florida Crystals believed the Extended Term of the GTA could begin as early as October 2016. With this information, FCG began a thorough investigation into the GTA that led to the filing of the Petition in this docket.”

⁴ Direct Testimony of Jeff Householder, August 2003, contained in Commission Document No. 03-07495, filed on August 15, 2003. A copy of the cover page and the cited pages of Mr. Householder’s testimony was attached as Exhibit B to Florida Crystals’ Motion to Dismiss.

17. There could hardly be a clearer admission that FCG and its “current management” are simply trying to protect their bottom line. FCG made an affirmative decision not to file the Agreement for Commission approval in 2001; FCG and AGL claim that they were too busy in 2010 or 2011 to address the situation, even though they discovered it “sometime” in that time frame, yet now, faced with having to abide by its contractual promises to Florida Crystals, FCG is suddenly “committed” to being “open” about its self-alleged violation, in a truly transparent effort to protect its own bottom line. The Commission should initiate and vigorously pursue show cause proceedings against FCG and impose substantial penalties against FCG if the Commission determines that the Agreement was required to be filed. Alternatively, the Commission should grant Florida Crystals’ Motion to Dismiss and leave the resolution of this contract dispute to the courts.

18. FCG’s Asserted Excuse That the Agreement Was Negotiated in Secret and Kept Hidden from City Gas Employees. At pages 4-5, ¶7 of its Response to NOAV, FCG alleges the following:

FCG could not find any rate development information or other supporting workpapers, including the absence of any cost studies, correspondence or e-mails, revenue analyses, bypass analysis, or even a complete copy of the GTA. These facts suggest to FCG management that the GTA was negotiated in secret and kept hidden from City Gas employees.

(Emphasis supplied.) This allegation is baseless, and patently untrue, and the Commission should reject it out-of-hand and initiate show cause proceedings. The record will demonstrate that the Agreement was executed after arms-length negotiations between Florida Crystals and FCG's respective managements.

19. The Agreement was signed for NUI/City Gas by A. Mark Abramovic, NUI's Treasurer, and witnessed for NUI by an Assistant Secretary of the corporation. Moreover, various emails between Florida Crystals and FCG/NUI during the negotiation of the Agreement include several other NUI personnel, including Mr. Paul Chymiy, Mr. Ed Liberty, and Mr. Mark Casaday. (See Exhibit E to these Comments.) By a letter dated November 6, 2001, signed by Mr. Abramovic, and with officially noted copies to Mr. J. VanHorn, then General Counsel of NUI, Mr. R. Gruber, NUI's Vice President of Marketing, and Mr. Liberty, one of NUI's negotiators for the Agreement as shown in the emails in Exhibit E to these Comments, clarified that the Primary Term of the Agreement would begin on November 15, 2001 (which is relevant to both Parties because the Extended Term begins no later than 15 years following the conclusion of the Primary Term). See Exhibit G to these Comments, which is a copy of the above-referenced letter.

20. FCG appears to be inviting the Commission to believe that its parent company's treasurer, general counsel, and others involved in the negotiations kept

the Agreement secret from FCG employees. Of course, the Commission will readily recognize that NUI's employees and FCG's employees are one and the same; they are the same company. FCG would also apparently have the Commission believe that FCG sought and obtained approval of Rate Schedule KTS, under which Florida Crystals receives service, and then kept the Agreement between FCG and the only customer served under that Rate Schedule, secret from anyone having anything to do with the service to Florida Crystals, e.g., FCG's Rate Department or equivalent, FCG's billing department or equivalent, and others. Such assertions are patently absurd.

21. That the Agreement was not a secret from anyone is further demonstrated by the fact that, on May 7, 2001, less than two weeks after signing the Agreement, NUI issued a press release that proudly announced, as its headline, **“NUI Corporation Signs Florida Crystals Corporation to 30-Year Agreement for Natural Gas Service.”** (Larger type and bold print in original. See Exhibit H to these Comments.) The sub-headline to this press release was **“City Gas Company to bring the economic and environmental benefits of natural gas to South-Central Florida.”** (Emphasis supplied.) NUI further proudly touted its new contract with Florida Crystals in its 2002 Annual Report. See Exhibit I, which is an excerpt from NUI's 2002 Annual Report, at pages 1, 6, and 13. Such proud and very public announcements are prima facie

proof that knowledge and information regarding the Florida Crystals contract was widely disseminate by NUI and widely known, *hardly kept secret from anyone*. If the Commission were going to consider whether there was any distinction between FCG and NUI in this context, which Florida Crystals rejects, and if the Commission were going to consider the relevance of any such distinction, FCG's "negotiated in secret" excuse should be fully investigated in show cause proceedings, and the Commission should thereafter impose significant financial penalties on FCG for its violations.

22. FCG's Assertion that There Was Nothing Remarkable about Florida Crystals' Usage or Status in 2004 or the 2004-2008 Period. FCG asserts, again as an apparent excuse as to why AGL didn't pay any attention to the Florida Crystals Agreement, or to Florida Crystals as a customer in 2004, that

. . . when AGL [] acquired City Gas through its parent NUI in November 2004 [fn. omitted], there was nothing remarkable about service to Florida Crystals.

(Emphasis supplied.) Response to NOAV at 2-3, ¶4. In the first place, Florida Crystals reiterates that whether AGL did or did not perform adequate due diligence in its acquisition of NUI and FCG is irrelevant to whether FCG, the Commission-regulated Florida public utility, should be held responsible and penalized for its failures to follow the Commission's rules (if the Commission determines that there was any rule violation).

23. Further, the idea that a sophisticated utility company like AGL would not undertake thorough due diligence to inform itself about the current and projected usage, and the rate status, of a major industrial customer strains credibility. That the subject industrial customer was the *only* customer then taking service on a major new pipeline just recently completed by the acquired company (NUI/FCG) only magnifies the obvious conclusion that any reasonable utility company would have thoroughly investigated the usage of that customer.

24. Further still, while FCG's assertion is true that Florida Crystals was using relatively small amounts of transportation service *in 2004* and *in the 2004-2008 time period*, one would reasonably expect that AGL would have inquired as to the historical and future projected usage by this substantial industrial customer. Even casual investigation would have revealed that there was indeed a remarkable change in Florida Crystals' usage from 2002 and 2003 to 2004. In 2002, Florida Crystals used more than 4 million therms of gas and gas transportation, and in 2003, Florida Crystals used more than 5 million therms of gas and gas transportation service, but in 2004, Florida Crystals' usage dropped by more than 90 percent, to less than 300,000 therms. To a sophisticated gas utility company like AGL, such a drop in usage by a large industrial customer would indeed be remarkable and would precipitate thorough investigation and due diligence inquiry. Moreover, the suggestion that AGL did not know about the Agreement or about

Rate Schedule KTS/KDS with its *single* large industrial customer, is almost absurd. Surely, AGL, a sophisticated gas utility company would have carefully reviewed FCG's filings in the 2003 City Gas Rate Case as part of any due diligence prior to acquiring NUI and FCG. FCG's assertions do not ring true,⁵ and the Commission should accordingly initiate show cause proceedings and impose significant penalties on FCG for its violations of the Commission's rules.

25. FCG's Mischaracterizations of FCG's Own Representations to the Commission Regarding the Cost to Serve Florida Crystals and Supporting Analyses Submitted to the Commission in the 2003 City Gas Rate Case. At page 5, ¶7 of its Response to NOAV, FCG asserts the following:

The only real information FCG could find about the GTA came from the City Gas rate case in 2003, but the context of that discussion was

⁵ FCG's entire pattern of behavior with respect to the matter – (a) its alleged discovery in 2010 or 2011 of the alleged problem with the Agreement not having been filed, (b) sitting on its hands for more than 5 years after its alleged discovery before calling the matter to either the Commission's attention or to Florida Crystals' attention, (c) then *only* bringing the matter forward contemporaneously with the acquisition of AGL and NUI/FCG by Southern Company Gas, and (d) FCG's acknowledgement that its real goal is to get out of the allegedly "bad deals" that earlier FCG personnel made, all raise the question as to whether Southern Company Gas may have a claim against AGL relating to the lower revenues that would be generated by the rates specified in the Agreement for the Extended Term, or for some revenue shortfall accruing from a due diligence failure by AGL in 2004 but identified by Southern Company Gas in 2016 and addressed in the Southern-AGL acquisition transaction documents. The Commission should initiate show cause proceedings and attempt to get to the bottom of FCG's real motivations in waiting until 2016 to bring this matter to the Commission's attention.

to justify the investment in the East-West Pipeline and not a formal review of the un-filed GTA (referred to as an approved contract in the testimony) or, more importantly a formal review and approval of the rates in the GTA since the GTA was not filed in that case.

These statements are at best mischaracterizations of FCG's testimony and exhibits submitted to the Commission in the 2003 City Gas Rate Case, and also of the actions that the Commission took in that case. They represent no more than weak and uninformed attempts at revisionist history, again designed to escape FCG's admissions – both in common terminology and in the legal sense of admissions against FCG's interests – in the 2003 City Gas Rate Case.

26. While the evidence in the 2003 City Gas Rate Case was not couched as a formal review of the GTA per se, the evidence presented was exactly that: FCG's evidence upon which it obtained approval for all of its rates, including the KTS/KDS rate schedule, which at that time had exactly one customer, Florida Crystals' Okeelanta Facility, is summarized here as follows. Mr. Jeff Householder, FCG's cost of service expert witness in the 2003 City Gas Rate Case, sponsored FCG's cost of service study that was relied upon by the Commission in that case. The Company's cost of service study was filed as MFR Schedules H-1, H-2, and H-3, and was titled "FULLY ALLOCATED EMBEDDED COST OF SERVICE STUDY." (A copy of this publicly filed cost study was included as Exhibit B to Florida Crystals' Response in Opposition to FCG's Motion for Approval of Temporary Service Arrangement; because of its size, it is not reproduced again

here.) This cost of service study examined the cost of service of all of FCG's rate classes, including Rate Schedule KTS/KDS, of which Florida Crystals was the only member/customer. A FULLY ALLOCATED COST OF SERVICE STUDY is in fact a formal review and analysis of the cost to serve rate classes, and where a rate class has only one member, it is necessarily and inherently a formal analysis of the costs to serve that customer.

27. Further, in the 2003 Rate Case, FCG fully informed the Commission about the Agreement and the costs that it incurred to serve Florida Crystals pursuant to the Agreement, to the point of averring – in Mr. Householder's testimony that explicitly addressed the “direct assignment of costs to the KTS customer class,” of which Florida Crystals was the *only* member, which was filed with and relied upon by the Commission – that **“The Company's negotiated rate contract with Florida Crystals establishes a rate that recovers its costs to provide service.”**⁶ This statement clearly contradicts FCG's assertion that the evidence presented in the rate case was simply to justify the investment in the East-West (Clewiston) Pipeline Extension Project; Mr. Householder's testimony clearly and unequivocally addressed the point that “the Company's negotiated rate

⁶Direct Testimony of Jeff Householder, August 2003, contained in Commission Document No. 03-07495, filed on August 15, 2003. A copy of the cover page and the cited pages of Mr. Householder's testimony was attached as Exhibit B to Florida Crystals' Motion to Dismiss.

contract with Florida Crystals establishes a rate that recovers its costs to provide service.” Further analysis of Mr. Householder’s FULLY ALLOCATED EMBEDDED COST OF SERVICE STUDY shows that the target revenues for Florida Crystals actually exceeded the cost to serve. The Commission relied on Mr. Householder’s cost of service study to set *all* of FCG’s rates, including its approval of the rates paid by Florida Crystals, as the only member of the KTS/KDS rate class. In Order No. 04-0128-PAA-GU, the final order in the 2003 City Gas Rate Case, the Commission discussed Rate Schedule KTS and approved the replacement Rate Schedule KDS, noting that “One customer currently takes service under this rate.” Order No. 04-0128 at 30-31. It is clear from Mr. Householder’s testimony that the “one customer” was and is Florida Crystals.

28. The Commission should reject FCG’s misleading characterizations of FCG’s evidence presented in 2003 and should initiate show cause proceedings and impose substantial penalties on FCG for its violations of the Commission’s rules.

29. FCG’s Assertion that it has a Culture of “Transparency with the Customer.” Florida Crystals disputes FCG’s assertion, at page 7, ¶11 of the Response to NOAV, that it has a strong culture of compliance that is “evidenced by its transparency with the customer.” This assertion is patently false and offensive. FCG never evidenced “transparency” with Florida Crystals in 2010 or 2011, when it claims to have discovered that it was in violation of the

Commission's rules by not filing the Agreement between Florida Crystals and FCG with the Commission. In fact, *FCG never mentioned* anything about a *possible rule violation*, or its recently concocted *position that the Agreement was invalid*, during the intervening five-plus years, *until July 21, 2016, the day before it filed its Petition initiating this docket*. And of course, FCG never bothered to tell the Commission about its apparent discovery during the *more than five years* between that discovery and its initiation of this docket.

30. About the only thing that FCG has been “transparent” about is its desire to get out of the “bad deals” that FCG made earlier – as FCG and its “current management team” view those deals from 2016, with the lower rates that FCG agreed to as the quid pro quo for the higher rates paid by Florida Crystals for the Agreement's first fifteen years now on the near-term horizon. As FCG acknowledged, it didn't get serious about trying to investigate the legal status or history of the Agreement until “FCG learned in late 2015 that Florida Crystals believed the Extended Term of the GTA could begin as early as October 2016. With this information, FCG began a thorough investigation into the GTA that led to the filing of the Petition in this docket.” The Commission should reject FCG's baseless claim that it has a culture of compliance and “transparency with the customer” and should initiate show cause proceedings.

31. Alleged Adverse Impacts on Other Customers. FCG also tries to bring its specious argument that the Agreement would adversely impact other customers into its attempts to escape the consequences of its self-described rule violations. See FCG's response to NOAV at 6, ¶9. The impact on other customers is irrelevant to whether FCG broke the rules. That issue would be addressed, if ever, in a future general rate case. In such a case, if necessary, Florida Crystals would put on evidence that its payments over the past fifteen years have greatly exceeded FCG's cost to provide transportation service to Florida Crystals, and that the rates in the Extended Term, more than \$300,000 per year, would more than cover the true incremental costs of providing transportation service to the Okeelanta Facility. If, hypothetically, the Commission were to determine that the rates that FCG bargained for did not cover the cost to serve, which Florida Crystals would dispute most vigorously, Florida Crystals would strongly suggest that the Commission should simply do what it did in the 2003 City Gas Rate Case, when it imputed revenues from the Clewiston Pipeline Extension, including its determination that certain "unmaterialized projections [of future sales and revenues] represent a business risk of the Company that is more appropriately borne by its stockholders, rather than by its ratepayers." Order No. PSC-04-0128 at 31. Accordingly, the Commission should ignore FCG's attempts to obfuscate its clear rule violations by repeating its specious arguments regarding hypothetical

impacts on other customers, and the Commission should initiate show cause proceedings against FCG and impose substantial penalties on this utility for its knowing, willful, continuing violations.

DISCUSSION OF LEGAL AND POLICY ISSUES

32. FCG's assertion that it should not be penalized for its failures, because there would be no good public policy purpose for imposing penalties is wrong-headed and demonstrates a gross lack of understanding of the purpose of imposing penalties for violations of Commission's statutes, rules, and orders as provided for by Section 366.095, Florida Statutes. Again assuming that the Commission determines that FCG was required to file the Agreement, the Commission should impose substantial penalties on FCG because FCG's actions were knowing and thoroughly considered decisions not to file the Agreement, because FCG disrespected the Commission's rules and processes both in its failure to file the Agreement in 2001 and, more egregiously, from 2010 until 2016, and finally, because allowing FCG's gross failures to go un-penalized would undermine the Commission's credibility and send a message to regulated public utilities in Florida that they can break the Commission's rules, take the benefit of a mutually agreed-to bargain with a major customer for fifteen years, and then use a self-fabricated rule violation to deprive that customer of the benefit of its bargain.

A. FCG's Asserted Excuses for Delay Afford No Basis to Allow FCG to Escape Substantial Penalties.

33. FCG's asserted excuses for its delays in submitting the Agreement are based on excuses that compare unfavorably to the time-honored "the dog ate my homework," and they afford no basis to excuse FCG's egregious behavior. The Commission should pay special attention to FCG's patently false assertion that it has a culture of "transparency with the customer" – that assertion is offensive and disproven many times over by FCG's behavior toward Florida Crystals in the history of their customer-utility relationship.

34. Reduced to their essence, FCG's excuses are simply to blame its failures on earlier employees of FCG, even though FCG is the same company, the same Commission-regulated public utility, that it has been since the Commission was given jurisdiction over natural gas public utilities by the Florida Legislature. FCG was founded in 1946, and the fact that it was subsequently acquired by NUI, by AGL, and by Southern Company Gas does not change that fact. If there was a rule violation, it was committed by FCG, and FCG – regardless of who its upstream ownership is – must bear the consequences. Moreover, FCG's assertion that AGL should be let off the hook is absurd: AGL is a well-funded, well-managed, and sophisticated utility company. If it failed to conduct adequate due diligence, or if Southern Company Gas, an equally sophisticated energy company, failed to conduct adequate due diligence, they deserve to be penalized.

B. FCG's Failure to File the Agreement Was a Willful Act, and the Commission Should Impose Significant Penalties for this Knowing, Fully Considered, Willful Violation.

35. FCG's failure to file the Agreement in 2001 was a willful, knowing act that was expressly considered by FCG personnel, who apparently "elected" (their word) not to file it. Commission precedent recognizes that whether an act is "willful" is a question of fact, and that "willful implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." In re: Investigation Into the Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Docket No. 890216-TL, Order No. 24306 (Fla. Pub. Serv. Comm'n, April 1, 1991); see also In re: Initiation of Show Cause Proceedings Against Tri-County Telephone, Inc., Docket No. 140222-TC, PSC-15-0049-SC-TC at 4 (Fla. Pub. Serv. Comm'n, January 14, 2015).

36. Correspondence between FCG and Florida Crystals during the negotiation of the Agreement clearly demonstrates that FCG was aware of the question or issue whether the Agreement had to be filed, and thus FCG knowingly "elected" not to file it with the Commission. FCG's knowledge of the rules is further established by the facts of its contemporaneous filing of its original Rate Schedule KTS, under which Florida Crystals takes service, and another special contract with the Commission, in January 2001, three short months before it

executed the Agreement with Florida Crystals. FCG knew the rules and “elected” not to follow them.

37. In short, FCG knew the rules and it considered filing the Agreement but elected not to do so. This was clearly a willful, knowing act. Moreover, FCG apparently knew that it had a problem in 2010 or 2011, but never told the Commission about its discovery, even though it was in the context of a similar proceeding, never asked the Commission for guidance, and never told Florida Crystals about its concerns – never, that is, until a few days before initiating this docket, a few weeks after its acquisition by Southern Company Gas, when it realized that it wanted to get out of the allegedly “bad deals” that earlier FCG personnel had made.

C. FCG’s “Ratepayer Impacts” Arguments Are Specious and Afford No Basis to Excuse FCG’s Violations of the Commission’s Rules.

38. FCG’s “ratepayer impacts” argument is specious – evaluating impacts on the general body of customers is not the purpose or first consideration in determining whether to impose a penalty for a rule violation⁷ and it is neither an

⁷ If anything, the relevant inquiry regarding impacts on customers should be on the customer who is directly affected by FCG’s self-alleged rule violation, namely Florida Crystals. If anything, Florida Crystals is the customer directly affected by FCG’s alleged violation, and as explained above, the Commission has full power to protect FCG’s other customers without depriving Florida Crystals of the benefit of its bargain, and indeed, without allowing FCG to escape the legitimate consequences of the bargain that it made with Florida Crystals fifteen years ago.

issue either in proceedings on the Commission's Notice of Apparent Violation or on FCG's underlying Petition or Motion by which FCG seeks the PSC's authorization to break its contract with Florida Crystals (assuming that such is possible). FCG's ratepayer impacts arguments affords no excuse for FCG's violations, nor any grounds for mitigation. The Commission has all the power it needs to protect FCG's general body of ratepayers from any adverse consequences that might, hypothetically, result if the rates paid by Florida Crystals under the Agreement in the remaining 15 years of its term did not cover FCG's true incremental costs of serving Florida Crystals.⁸ The Commission can, if necessary, impute revenues from the Clewiston Extension Project, just as it did in the 2003 City Gas Rate Case (Docket No. 030769-GU), based on the Commission's finding in that docket that it was appropriate for City Gas/FCG's shareholders to bear the consequences of the business risk that they took in deciding to proceed with the Clewiston Extension Project.

⁸ Florida Crystals strongly disputes any such assertion as a matter of fact, for the reasons explained extensively in Florida Crystals' Response in Opposition to FCG's Motion. In any event, if necessary, Florida Crystals will fully develop evidence on this false assertion by FCG in formal proceedings on FCG's Petition and FCG's Motion.

D. In Order to Protect the Commission’s Own Credibility, the Commission Should Initiate Show Cause Proceedings Against FCG and Impose Substantial Penalties on FCG for Its Knowing, Willful Failure to File the Agreement.

39. The purpose of show cause proceedings is to penalize regulated utilities who willfully fail to follow the Commission’s statutes, rules, and orders. FCG has failed to do so, and the Commission should accordingly initiate show cause proceedings and impose significant penalties on FCG. The Commission should be mindful of the numerous false representations in FCG’s Response to NOAV. The Commission should also be mindful that this is at least the second time FCG has violated Rule 25-9.034, F.A.C., the first being when it failed to file a special contract in the proceedings on the Miami-Dade contract, which FCG now cites as precedent in its efforts to avoid show cause proceedings in this case. The Commission should further be mindful of Florida Crystals’ right to be treated fairly, justly, and reasonably. The Commission can protect the general body of FCG’s customers if necessary (and again, Florida Crystals asserts that the evidence supports findings that Florida Crystals has paid more than its cost to serve) simply by doing what it did in the 2003 City Gas Rate Case, i.e., by imputing revenues so that FCG’s shareholders bear the consequences of the business risks that they took.

40. If the Commission allows FCG to escape the consequences of its knowing, willful failure to file the Agreement in 2001, and its further knowing, willful failure to file it when FCG claims it discovered its error “sometime in the

2010-2011 period,” it would send absolutely the wrong message to regulated Florida public utilities. The Commission can and should send the correct public policy message by initiating show cause proceedings and by imposing substantial penalties on FCG.

CONCLUSION AND RELIEF REQUESTED (SUGGESTED)

41. Technically, since these Comments are only that – comments – Florida Crystals recognizes that a formal request for relief may not be necessary. However, in light of the grossly false misrepresentations made by FCG in its Response to NOAV, in light of FCG’s willful and knowing failure to file the Agreement either in 2001 – *fifteen years ago* – or in 2010 or 2011 – *at least five years ago* – when it now claims to have discovered that it had another, additional special contract that it should have filed (i.e., in addition to the Miami-Dade contract), Florida Crystals would ask – or at least strongly suggest – that the Commission conduct full evidentiary show cause proceedings against FCG. The Commission should thoroughly investigate all of FCG’s factual allegations and all of the other weak and fallacious excuses thrown against the wall by FCG.

42. Florida Crystals further asks or suggests that the Commission, based on the evidence presented in these Comments – notably FCG’s extensive factual misrepresentations in its Response to NOAV – as well as additional evidence that will be adduced in such show cause proceedings, impose significant penalties on

FCG pursuant to Section 366.095, Florida Statutes, in order to protect and preserve the Commission's credibility as protector of its rules and of customers, and to notify all other regulated public utilities that they cannot escape the consequences of their actions by claiming that, even with 5 or 6 years to do so, they did not have sufficient time to report an apparent rule violation to the Commission or to tell their customer about the apparent violation.

43. Alternatively, Florida Crystals would suggest that Commission grant Florida Crystals' Motion to Dismiss and let this contract dispute be resolved by the judicial courts of Florida.

Respectfully submitted this 17th day of November, 2016.



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Attorneys for Florida Crystals

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 17th day of November, 2016.

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Office of the General Counsel
Florida Public Service Commission
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Tallahassee, Florida 32399

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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT A

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**HISTORICAL TIMELINE FOR FLORIDA CITY GAS
(FLORIDA CITY GAS WEBSITE – ABOUT US)**

**SUBMITTED:
NOVEMBER 17, 2016**

[Home > About Us](#)

[Our Service Area](#)

[Press Room](#)

[Careers](#)

[Customer News](#)

[Social Media](#)

About Us

Florida City Gas serves approximately 107,000 residential and commercial natural gas customers in Florida's Miami-Dade, Brevard, St. Lucie, and Indian River counties.

A Historical Timeline

1946	City Gas begins serving customers in Dade County.
1960s	Service expands into Brevard County during the development of America's space program.
1988	City Gas becomes a part of NUI Corp. and extended its natural gas distribution system into Saint Lucie, Indian River, Martin and Palm Beach counties.
2004	We become a subsidiary of AGL Resources Inc., an Atlanta-based energy company, and change our name to Florida City Gas.
July 2016	AGL Resources becomes Southern Company Gas, a wholly-owned subsidiary of Southern Company.
Today	As part of the Southern Company Gas family, we continue to deliver safe and reliable natural gas.

Residential	Business	Builders/Developers	Rates and Tariff	Natural Gas Vehicles	Safety	Community	About Us
Stop/Start/Transfer or Add Service	Start/Stop Service	Commercial Gas Conversion	Useful Links	CNG vs. Traditional Fuels	Call Before You Dig	Community Involvement	Our Service Area
Pay Your Bill	Pay Your Bill	Gas Operators	Gas Operators	How NGVs Work	Carbon Monoxide	Charitable Giving	Press Room
Choosing Natural Gas Appliances	Choosing Natural Gas Rebates			NGV Benefits	Odor of Gas	Supplier Diversity	Careers
Energy Savings	Equipment			Safety	Safety Activities for Kids	Work In Your Neighborhood	Customer News
Energy Assistance	Supplier Choice			NGV Vehicle Types	Severe Weather Safety		Social Media
Meter Reading	Economic Development			CNG Fueling	Pipeline Safety		Contact Us
	Gas Operators			Business Fleets	Appliance and Equipment Safety		Find a Contractor
	Meter Reading			Consumer Vehicles	Sewer Line Safety		

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT B

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**PIVOTAL UTILITY HOLDINGS, INC.,
2016 ANNUAL REPORT TO FLORIDA
SECRETARY OF STATE**

**SUBMITTED:
NOVEMBER 17, 2016**

2016 FOREIGN PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# F94000000511

Entity Name: PIVOTAL UTILITY HOLDINGS, INC.

Current Principal Place of Business:

TEN PEACHTREE PLACE NE
LOCATION 1466
ATLANTA, GA 30309

Current Mailing Address:

TEN PEACHTREE PLACE NE
LOCATION 1466
ATLANTA, GA 30309

FEI Number: 22-1869941

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title PRESIDENT AND DIRECTOR
Name LINGINFELTER, HENRY P
Address TEN PEACHTREE PLACE NE - LOC
 1466
City-State-Zip: ATLANTA GA 30309

Title EXECUTIVE VICE PRESIDENT AND
 CHIEF FINANCIAL OFFICER
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Title TREASURER
Name CAVE, L. STEPHEN
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 SECRETARY
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Title PRESIDENT, FLORIDA CITY GAS
Name BATSON, H. BRYAN
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Title PRESIDENT, ELIZABETHTOWN GAS
 AND ELKTON GAS
Name MACLEAN, BRIAN
Address TEN PEACHTREE PLACE NE
 LOCATION 1466
City-State-Zip: ATLANTA GA 30309

Continues on page 2

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: BARBARA P CHRISTOPHER

ASST CORP SECT

04/30/2016

Electronic Signature of Signing Officer/Director Detail

Date

Officer/Director Detail Continued :

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Title VP, GAS SUPPLY OPERATIONS
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Title VP, TAX
Name KOLVEREID, GRACE
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Title VP, STORAGE AND PEAKING
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT C

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**FCG TARIFF SHEETS –
COVER SHEET FOR VOLUME NO. 8, ORIGINAL
SHEET NO. 1, AND FIRST REVISED SHEET NO. 1A
(DOWNLOADED JULY 27, 2016)**

**SUBMITTED:
NOVEMBER 17, 2016**

FLORIDA CITY GAS
FPSC NATURAL GAS TARIFF
VOLUME NO. 8

**Effective with meter readings on and after
December 7, 2004**

Revised January 1, 2016

The following pages have been revised/added:

PGA Cap Rate – Fourteenth Revised Sheet No. 64

ECCR Factors – Thirteenth Revised Sheet No. 65

**SAFE Program – Original Sheet No. 2A
First Revised Sheet Nos. 70, 71, 72, 73**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT D

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**"EXECUTIVE SUMMARY FOR FLORIDA CRYSTALS"
(HAND-DELIVERED TO FLORIDA CRYSTALS ON JULY 21, 2016)**

**SUBMITTED:
NOVEMBER 17, 2016**

Executive Summary for Florida Crystals

The *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation* dated April 24, 2001 (“GTA”) while signed by the parties was never submitted to or approved by the Florida Public Service Commission (“PSC”). Under Florida Statutes Section 366.06(1), the PSC must approve all rates for natural gas public utilities before they may be effective. Natural gas utilities may offer non-tariff, special contract rates to customers but under Florida Administrative Code Rule 25-9.034(1) those contracts must not only be approved by the PSC before they may take effect, but such approval is required before the contracted may be signed by the parties. In the absence of a PSC-approved special contract, FCG is obligated to charge Florida Crystals the applicable tariff rate, which is the GS 1,250k Schedule.

Notwithstanding the failure to obtain the PSC’s approval for the GTA, the parties have implemented the terms of the GTA for nearly 15 years. Nevertheless, FCG must now bring service to Florida Crystals into compliance with the applicable PSC requirements. This obligation is reinforced from FCG’s experience in the Miami-Dade case, which also involved another special service arrangement that was not filed and approved by the PSC. It is fundamental that any rates charged to a customer under a special contract must recover both the cost to serve that customer and some additional revenue above the cost to serve. In analyzing both FCG’s past service to Florida Crystals and under the Extended Term of the GTA, the rates, terms, and conditions of service have not been and will not be legally sufficient for FCG to recover FCG’s cost of service, let alone its obligation to recover “cost plus.”

To address the legal status of the GTA and going forward service to Florida Crystals, FCG will be filing a petition with the PSC seeking its determination that the GTA is not a legally effective or enforceable special contract under Florida law. However, in seeking this ruling by the PSC, FCG recognizes the special circumstances associated with service to Florida Crystals and that tariff rates are not in the best interests of Florida Crystals or FCG and its other ratepayers. Accordingly, FCG will also be requesting that the PSC approve, as an interim service arrangement, confidential rates, terms, and conditions that were provided to Florida Crystals on July 21, 2016. Those interim rates would remain in effect until the PSC approves a successor transportation service special contract that complies with Florida law or the PSC issues such other applicable final order. It is FCG’s hope that before the PSC can act on the Petition that the parties can successfully negotiate a new, confidential service contract that can be filed and approved and which would govern service instead of the proposed interim service arrangement.

The PSC proceeding on FCG’s Petition is open to the public. Florida Crystals may want to seek to formally intervene through its counsel and become a party of record or it may simply monitor the proceeding as an interested person. FCG intends to provide a copy of the Petition to Florida Crystals once filed with the PSC. FCG contemplates that the process to review and rule upon the Petition may take six to ten months, and the process could be longer if there is a formal administrative hearing. If the parties can agree upon a new, confidential special contract that can be filed with the PSC, then review of that agreement would take precedence over the Petition and result in a process that could be concluded in four to five months. An approved, new special contract would moot the Petition proceeding and govern future service to Florida Crystals.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT E

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**VARIOUS E-MAILS BETWEEN:
NUI, FLORIDA CRYSTALS, AND
FLORIDA CRYSTALS' OUTSIDE COUNSEL,
APRIL 5 – APRIL 16, 2001**

**SUBMITTED:
NOVEMBER 17, 2016**

-----Original Message-----

From: Paul Chymiy [mailto:pchymiy@NUI.com]
Sent: Friday, April 06, 2001 8:31 AM
To: 'Gus Cepero'; 'Mark Lewis'; Ed Liberty
Cc: 'Mark Casaday'

Subject: RE: Definitive Agreement - Open Items

I'd just like to clarify a few points made by Ed. First, the Insurance Exhibit is "Exhibit D", not "Exhibit B". Second, NUI does not intend to "remove regulatory approvals" as a Condition Precedent. If these conditions are not satisfied at the time that NUI elects to issue its Intent to Proceed, pursuant to the Agreement, NUI will effectively waive regulatory approvals as a condition precedent when it issues the Intent to Proceed. Therefore, I believe no changes are necessary to the document with regard to this matter. Finally, if Florida Crystals has satisfied its condition concerning the air permit, FC should notify NUI in writing that the condition has been satisfied. Again, there would be no need to alter the Agreement.

Paul

> -----

> From: Ed Liberty
> Sent: Thursday, April 05, 2001 6:15 PM
> To: 'Gus Cepero'; 'Mark Lewis'
> Cc: Paul Chymiy; 'Mark Casaday'
> Subject: Definitive Agreement - Open Items

>

> <<File: Florida Crystals CP 4-3-01.doc>><<File: FL Crystals monthly
> payment-rev_.doc>><<File: Florida Crystals Security Language draft 3.doc>>

>

>

> Gus,

>

> Paul and I sat down today to identify the remaining open items. We're
> down to what appears to be a few simple items, here's a listing of them
> and a plan for disposition:

>

> * Exhibit C "Amortization of Conversion Costs" : included above as
> an attachment to this email, it includes both a formula for repayment and
> an example of how it would be applied. Please review it and comment.
> * Exhibit B "Insurance" : A copy of a sample insurance certificate
> will be faxed to your office at Okeelanta by my assistant Mary Saunders
> (908 470 4661). Please review and comment.
> * Security language : Revised draft language is included above as an
> attachment to this email, we made a few changes after your comments
> earlier this week. The changes are designed to make the language work
> well within the time frame we have to work with to get started on the
> project and to make sure it "fits" well with the Conditions Precedent
> section of the agreement. We think the two sections now work well
> together but please review and comment.
> * Conditions Precedent Language : Revised language attached above in
> this email, please review and comment.
> * Confidentiality Agreement for Financial Statements: I forwarded
> signed documents to you at your Okeelanta office. Please sign and return
> with the needed documents so we can perform our review as quickly as
> possible. The financial reports/documents should go directly to the
> attention of Bob Lurie at our Bedminster office as he will be in charge of
> the review.

>

> Other items:

- > * As you know we intend to remove regulatory approval as a condition
> precedent
- > * You need to issue us a letter with regards to your condition
> precedent related to obtaining air permits, either that you are waiving
> the condition or to remove it from the document altogether. We understand
> these permits are in place but can't make the change to the agreement
> without your approval.
- > * We will be changing the tariff designation to KTS
- > * Exhibit B "Rate Tables" : we will be using the same table we have in
> the Letter Agreement for the Definitive Agreement
- > * Exhibit A "Project Costs" : we will be using the same table we have
> in the Letter Agreement for the Definitive Agreement

>
>
> Our goal remains as we discussed on Monday. We'd like to wrap up with a
> signature from you by Friday April 13th which would allow NUI to be ready
> for signatures as early as Tuesday April 17th.

>
> I will be away on vacation until Tuesday April 17th. During that time
> please feel free to call or email Mark Casaday (610 415 0622) and/or Paul
> Chymiy (908 719 4228) with your comments. They will be working together
> to wrap this up.

>
> Regards,
>
> Ed
>



Paul Chymiy <pchymiy@NUI.com> on 04/16/2001 09:37:07 AM

To: "Gus_Cepero@floridacrystals.com" <Gus_Cepero@floridacrystals.com>, "pentexmark@email.msn.com" <pentexmark@email.msn.com>, Ed Liberty <eliberty@NUI.com>
cc: "Armando_Tabernilla@floridacrystals.com" <Armando_Tabernilla@floridacrystals.com>, "mark.lewis@bakerbotts.com" <mark.lewis@bakerbotts.com>, "debra.bolton@bakerbotts.com" <debra.bolton@bakerbotts.com>
Subject: RE: Transportation Agreement

In reviewing the Agreement, I have found a few minor typos and changes that I intend to correct in the final document. Please note these in your review.

1. Section 2.c., line 13- There is a hanging parenthesis after the words "Osceola Facility" that will be deleted.
2. Article 6, line 9 - Cross-reference will be changed from "Section 22" to "Article 22".
3. Article 10 - The "bold" will be removed from the final sentence.
4. Article 17, line 11 - The cross-reference to "Section 4.A." will be removed and replaced with "Article 7". This is necessary since FPSC approval has been removed as a Condition Precedent from Article 4.A. and, if the Company elects to file the Agreement with the FPSC, this is now provided for in Article 7.
5. Article 21 - The indenting with respect to the notices section for Florida Crystals will be corrected.

-----Original Message-----

From: Paul Chymiy
Sent: Thursday, April 12, 2001 4:23 PM
To: 'Gus_Cepero@floridacrystals.com'; pentexmark@email.msn.com; Ed Liberty
Cc: Armando_Tabernilla@floridacrystals.com; mark.lewis@bakerbotts.com; debra.bolton@bakerbotts.com
Subject: RE: Transportation Agreement

In order to expedite the review process, I am attaching a red-lined version of the final agreement. Subject to Ed's consent, I have deleted the final two lines of Section 4.A.1. Please get back to me with any comments or your indication that the agreement is acceptable as soon as possible. I will then prepare executable originals (correcting page numbering in the table of contents and attaching Exhibits). It is our objective to get the final version out no later than Tuesday, April 17. Thank you.

-----Original Message-----

From: Gus_Cepero@floridacrystals.com
[mailto:Gus_Cepero@floridacrystals.com]
Sent: Thursday, April 12, 2001 2:43 PM
To: pchymiy@nui.com; pentexmark@email.msn.com; eliberty@nui.com
Cc: Armando_Tabernilla@floridacrystals.com; mark.lewis@bakerbotts.com; debra.bolton@bakerbotts.com

Subject: Transportation Agreement

After reviewing the e-mails and talking to Chymiy, here's where I believe we are.

1. We may have an open issue related to whether or not FPSC approval remains a condition precedent. I thought we had conceptually agreed to remove FPSC approval as a condition precedent (CP) but it's still in CP # 1. In any event, I have asked Paul to remove the last 2 lines on CP # 1 which deal with FPSC approval and Paul will discuss with Ed.
2. We are in agreement with Paul's e-mail of April 6 related to the language on Financial Information and Adequate Assurance. We have received the executed Confidentiality Agreement and will forward the latest available financial statements (dated March 31, 2000) on Monday, April 16.
3. The Exhibits are OK.
4. If Paul can make the change discussed on Item # 1 then we'll do a quality check of the document and hopefully execute within a day or so of receipt.

Gus

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT F

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**FCG'S PETITION FOR AUTHORITY TO IMPLEMENT
CONTRACT TRANSPORTATION SERVICE,
PSC DOCKET NO. 000717-GU,
FILED JUNE 15, 2000**

**SUBMITTED:
NOVEMBER 17, 2016**



Miami Division
955 East 25th Street
Hialeah, FL 33013-3498
Tel: (305) 691-8710
www.nui.com

NUI Corporation (NYSE: NUI)

June 15, 2000

ORIGINAL

RECORDS AND REPORTING

00 JUN 15 AM 10: 04

RECEIVED-FPSC

000717-60

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Petition For Authority To Implement Contract Transportation Service

Dear Ms. Bayo:

Enclosed for filing please find the original and twelve copies of the Petition of City Gas Company of Florida For Authority To Implement Contract Transportation Service.

Should you have any questions with respect to this filing, please contact me at (850) 877-5282.

Sincerely,

Michael A. Palecki

Michael A. Palecki
NUI Corporation
PMB 224
3539 Apalachee Parkway
Tallahassee, FL 32311
(850) 877-5282

MAP/rt

Encl.

c: Wayne Makin

RECEIVED & FILED

MMW

DEPARTMENT OF RECORDS

NUI Companies and Affiliates:
City Gas Company of Florida
Elizabethtown Gas
Elkton Gas
North Carolina Gas

NUI Capital Corp.
NUI Energy
NUI Energy Brokers
NUI Energy Solutions
NUI Environmental Group

DOCUMENT NUMBER-DATE

073008 JUN 15 8

FPSC-RECORDS/REPORTING

TIC Enterprises, LLC
Utility Business Services
Valley Cities Gas
Waverly Gas

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: City Gas Company's)
Petition for Authority to Implement)
Contract Transportation Service)

Docket No. 000717-60
Filed: June 15, 2000

**PETITION FOR AUTHORITY TO IMPLEMENT
CONTRACT TRANSPORTATION SERVICE**

Pursuant to Section 366.07, Florida Statutes and Rule 25-9.005 Florida Administrative Code, City Gas Company of Florida, a division of NUI Corporation ("NUI City Gas" or "the Company"), hereby petitions the Florida Public Service Commission ("the Commission") for Approval of the NUI City Gas' proposed Contract Transportation Service tariff. In support of this petition, NUI City Gas states:

1. Federal and Florida Public Service Commission initiatives have transformed the natural gas industry from what was traditionally a monopoly enterprise to one of multiple providers participating in a competitive market. Energy customers, within and outside of the State of Florida, now have options. They have become increasingly aware of their ability to meet their energy requirements with alternative sources of energy and through physical relocation to geographic locations where energy is economically priced.

2. Over time, the Commission has recognized the changing markets faced by electric and natural gas utilities by providing them with a degree of flexibility in entering into contracts with large customers. The Commission approved Gulf Power Company's Commercial Industrial Service Rider (CISR) by Order PSC-96-1219-FOF-EI, issued September 24, 1996, in Docket No. 960789-EI. This Rider allows Gulf to enter into negotiated contracts with customers meeting a minimum threshold of new or retained load.

DOCUMENT NUMBER-DATE

07308 JUN 15 8

FPSC-RECORDS/REPORTING

The Commission approved a similar Commercial Industrial Service Rider for Tampa Electric Company through Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI. Likewise, in Order No. PSC-98-0603-FOF-EI, issued April 28, 1998, in Docket No. 980294-EI, the Commission approved Florida Power and Light Company's (FPL) Economic Development Rider Rate Schedule (EDR). FPL's rider allows it to negotiate with new customers with a minimum load of 5,000 kW, or with existing customers who add additional load of 5,000 kW. In the case of an existing customer who chooses to expand, the discounted rate applies only to the additional load. In Order No. PSC-98-1222-FOF-EI, issued September 16, 1998 in Docket No. PSC-980766-EI, the Commission approved Florida Power Corporation's (FPC) Economic Development Rider. Florida Power Corporation's rider allows it to negotiate with new customers with a minimum load of 500kW, or with existing customers who add additional load of 500kW. For existing customers the negotiated rate applies only to additional load added to FPC's system. Both the FPL and the FPC tariffs allow the utilities to recover revenue shortfalls associated with the rate discount from their general body of ratepayers.

3. The Commission authorized Peoples Gas System to establish a Contract Transportation Service (CTS) tariff, which became effective June 17, 1997. Peoples' CTS rate permits Peoples to offer a transportation customer a negotiated contract rate that is as low as one cent per therm plus the customer charge. This tariff requires that the customer meet a threshold consumption level of 500,000 therms annually. The Commission's basis for allowing the ability to negotiate a contract rate is that a large consuming customer can have a great affect on the financial viability of the utility.

4. Like Peoples Gas, Gulf Power, FPL, TECO and FPC, NUI City Gas requires flexibility to compete effectively for customers who have viable energy alternatives, within and outside of the State of Florida. Through this petition, NUI City Gas seeks authority to implement a new Contract Transportation Service, similar to Peoples' CTS tariff. The proposed tariff has been designated Rate Schedule KTS, since NUI City Gas already has a Schedule CTS (Commercial Transportation Service) in its tariff book. A copy of proposed Rate Schedule KTS is attached hereto as Exhibit 1. The proposed tariff is designed to meet the Company's need to compete for potential customers who have viable energy options. Under the proposed KTS tariff, the negotiated rate may not be less than \$0.01 per therm, and may not be set lower than the incremental cost the Company incurs to serve the customer.

5. Under the proposed tariff, the general body of ratepayers will not be called upon to subsidize KTS contracts through a Competitive Rate Adjustment (CRA) mechanism. This degree of protection distinguishes the proposed KTS tariff from the Commission approved tariffs for Peoples, FPL and FPC, described above, which impose a per therm charge on the general body of ratepayers in order to collect revenue shortfalls under the tariff. NUI City Gas does not require use of a competitive rate adjustment mechanism in the proposed tariff, since it is the Company's intention that projects under KTS pay for themselves without contributions from the general body of ratepayers.

6. NUI City Gas' proposed Contract Transportation rates would apply to new and existing customers who bring significant new incremental load onto the Company's natural gas distribution system. The Company has set its threshold for service under the tariff at 250,000 therms per year. Like the tariffs of FPL and FPC, for existing customers this means

that an additional load of the threshold amount (250,000 therms) must be added to the Company's system and the negotiated KTS rate will only apply to the additional load added to the Company's system. Given the size of NUI City Gas (approximately one-third the number of customers as Peoples), we believe the 250,000-therm threshold is reasonable, as it represents a load that has a significant economic effect. In Docket No.000502, the Commission Staff recently recommended that Peoples Gas reduce its CTS threshold limits (currently set at 500,000 therms), in order to avoid the need for special Commission approval of individual contracts. Specifically, Staff suggested that Peoples modify its existing tariff to eliminate the discriminatory aspect of individual contract approval by the Commission. See Staff Recommendation in Docket No. 000502-GU, filed June 8, 2000. NUI City Gas accepts Staff's suggestion in setting its proposed KTS threshold at 250,000 therms.

7. NUI City Gas' existing customer base will not be adversely affected by the adoption of the Contract Transportation Service tariff. As stated above, the Company will not seek to recover the difference between the KTS rate and the otherwise applicable tariff rate through the Competitive Rate Adjustment Clause. The proposed tariff also requires that the negotiated rate not be less than the incremental cost to serve, and that the Company take reasonable steps to mitigate the potential of revenue shortfalls between revenues received under the contract and the cost to provide service to the customer. Such steps may include, but are not limited to, take or pay provisions, and capital repayment mechanisms. In this way, the KTS tariff will assist the Company to be competitive and at the same time existing customers should be shielded from risk.

8. NUI City Gas' proposed Contract Transportation Service Tariff contemplates that the Company will submit each contract entered pursuant to the tariff to the Commission within 30 days of execution of the contract. The tariff prescribes that such information will be submitted to the Commission on a confidential basis. Because each contract will be separately negotiated, NUI City Gas regards the confidentiality provision as an essential component of the tariff.

9. NUI City Gas could have proposed this tariff as a part of its general base rate petition to be filed on August 25, 2000. The Company has elected to pursue the KTS tariff separately because of the importance the tariff represents to the competitiveness of the Company. The authority to implement greater flexibility is imperative to NUI City Gas' ability to succeed in the present, highly competitive energy market.

WHEREFORE, NUI City Gas respectfully requests that the Florida Public Service Commission authorize the Company to implement its proposed Contract Transportation Service tariff under the conditions and procedures set forth herein.

Respectfully submitted this 15th day of June 2000.



Michael A. Palecki
NUI CORPORATION
PMB 224
3539 Apalachee Parkway
Tallahassee, FL 32311
(850) 877-5282

EXHIBIT 1

RATE SCHEDULE KTS **Contract Transportation Service**

Availability

Throughout the service area of the Company.

Objective

The objective of this service classification is to enable the Company to attach incremental load to its system by providing the Company with the flexibility to negotiate individual service agreements with customers taking into account competitive and economic market conditions and system growth opportunities.

Applicability

Transportation service is available under this rate schedule to any non-residential, commercial or industrial customer bringing a minimum new incremental demand of 250,000 additional therms per year to the Company's system at one location.

Terms of service including operating conditions and, if applicable, a capital repayment mechanism acceptable to Company, which may include, but shall not be limited to, a minimum monthly or annual bill, will be set forth in individual service agreements between the Company and the customer. Absent a service agreement with Company under this rate schedule, Company has no obligation to provide, and the customer shall have no right to receive, service under this rate schedule, and customer may elect to receive service under other applicable rate schedules.

Gas Supply Obligation

The Company shall have no obligation to provide natural gas supplies to customers under this rate schedule.

Monthly Rate

Transportation Charge: An amount negotiated between Company and customer, but not less than \$0.01 per therm. The rate shall not be set lower than the incremental cost the Company incurs to serve the customer. The transportation charge shall include any capital recovery mechanism. The transportation charge shall be determined by the Company based on Company's evaluation of competitive and overall economic market conditions and the opportunity for the Company to expand its system into areas not served with natural gas. Such evaluation may include, but is not necessarily limited to: the cost of gas which is available to serve customer; the delivered price and availability of customer's alternate fuel or energy source; the nature of the customer's operations (such as load factor, fuel efficiency, alternate fuel capacity, etc.); and the opportunity to extend gas service to areas not supplied with natural gas. With respect to existing customers, an additional load of at least 250,000 therms must be added, and the negotiated KTS rate will only apply to the additional load added to the Company's system.

Interruption and Curtailment

Company shall have the right to reduce or completely curtail deliveries to Customer pursuant to this rate schedule:

- (A) If in Company's opinion, Customer will overrun the volume of gas to which it is entitled from its supplier (or overrun the volume of gas being delivered to Company for Customer's account); or
- (B) in the event Company is notified by its supplier or pipeline transporter to interrupt or curtail deliveries to Customer, or deliveries of gas for uses of the same type or category as Customer's use of gas hereunder; or
- (C) when necessary to maintain the operational reliability of Company's system

Confidentiality

The Company and Customer each regard the terms and conditions of the negotiated service agreement as confidential, proprietary business information.

The Company and Customer agree to utilize all reasonable and available measures to guard the confidentiality of said information, subject to the requirements of courts and agencies having jurisdiction hereof.

In the event either party is asked to provide the information by such a court or agency, it will promptly inform the other of the request, and will cooperate in defending and maintaining the confidentiality of the information.

This provision shall not prohibit or restrict the FPSC from reviewing the service agreement in the performance of its duties, but the FPSC shall treat the service agreement as a confidential document. Within 30 days after a service agreement has been executed under this rate schedule, the Company shall file the service agreement and related documents with the Commission's Division of Records and Reporting for review by the Commission Staff who shall treat them as confidential documents.

Special Conditions

1. Service under this rate schedule shall be subject to Section 11 of Rules and Regulations for Transportation – Special Conditions, except to the extent modified in a service agreement.
2. The rates set forth in this rate schedule shall be subject to the operation of the Company's Tax and Other Adjustments set forth on Sheet No. 26.
3. Service under this rate schedule shall be subject to the Rules and Regulations set forth in the tariff, except to the extent modified in a service agreement.
4. If the provision of service hereunder requires the installation of natural gas equipment at customer's facility, Company and customer may enter into an

agreement as to the terms and conditions regarding the reimbursement of costs relating to such equipment. The initial term of the service agreement shall, at a minimum, be equal to the period of cost reimbursement. The rates established in the Monthly Rates section may be adjusted to provide for such cost reimbursement to the Company including carrying costs.

5. Service under this rate schedule shall not be subject to the Competitive Rate Adjustment Clause.
6. When entering into a service agreement with a customer under this rate schedule, Company will take reasonable steps to mitigate the potential of any revenue shortfalls between the revenues received under a service agreement and the total cost and expenses relating to the associated capital investment made by the Company.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT G

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**NOVEMBER 6, 2001 LETTER FROM NUI TO
FLORIDA CRYSTALS CORPORATION RE:
BEGINNING DATE OF PRIMARY TERM UNDER
GAS TRANSPORTATION AGREEMENT**

**SUBMITTED:
NOVEMBER 17, 2016**



550 Route 202-206
P.O. Box 760
Bedminster, NJ 07921-0760
Tel: (908) 781-0500
Fax: (908) 781-0718
www.nui.com

NUI Corporation (NYSE: NUI)

November 6, 2001

Florida Crystals Corporation
Mr. Armando Tabernilla
General Counsel
1 North Clematis Street, #200
West Palm Beach, FL 33402

Re: Natural Gas Service
Project Construction and Gas Transportation Agreement dated April 24, 2001
("Agreement")
Letter Amendment

Dear Mr. Tabernilla,

Pursuant to our verbal agreements with Mr. Cepero during the course of our respective construction and equipment conversion projects, by way of this Letter Amendment, both NUI Utilities and Florida Crystals agree, notwithstanding anything to the contrary contained in Article 3 or elsewhere in the Agreement, that the Primary Term of the Agreement will begin on November 15, 2001. This Letter Amendment reflects the prior commitment of both parties to modify the start of the Primary Term to better suit our mutual business needs. NUI Utilities' Project has been completed and will begin providing Service to Florida Crystals' Okeelanta Facility on November 15, 2001.

Sincerely,

A. Mark Abramovic
Treasurer
NUI Utilities, Inc.

Accepted and Agreed to for Florida Crystals:

By:
Name: Armando Tabernilla
Title: Vice President

cc: G. Cepero; Vice President (Florida Crystals)
J. VanHorn; General Counsel (NUI)
R. Gruber; Vice President, Marketing (NUI)
E. Liberty; Director, Key Accounts and Project Development (NUI)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT H

TO

**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

**NUI CORPORATION PRESS RELEASE RE: NUI SIGNING
FLORIDA CRYSTALS TO 30-YEAR AGREEMENT FOR
NATURAL GAS SERVICE, MAY 7, 2001**

**SUBMITTED:
NOVEMBER 17, 2016**

NUI Corporation Signs Florida Crystals Corporation to 30-Year Agreement for Natural Gas Service.

Business Editors

BEDMINSTER, N.J.--(BUSINESS WIRE)--May 7, 2001

City Gas Company to bring the economic and environmental benefits of natural gas to South-Central Florida

In a move that will bring the economic and environmental benefits of natural gas to the South-Central Florida region for the first time, NUI Corporation (NYSE:NUI) today announced it has entered into a 30-year agreement to provide natural gas transportation service to Florida Crystals Corporation, a major sugar products producer.

NUI's Florida division, City Gas Company of Florida, will construct an 83-mile distribution line to bring natural gas to Florida Crystal's Okeelanta and Osceola power plants, sugar mills and refineries, as well as the towns of South Bay and Belle Glade. The company also plans to extend the line westward into the towns of Clewiston and LaBelle at a later date before eventually terminating in Tice, near Fort Myers.

"This agreement with Florida Crystals is a significant plus to the economy of South-Central Florida," said John Kean, Jr., NUI President and Chief Executive Officer. "Florida Crystals is a major contributor to the area's economy and is highly representative of the role agribusiness plays in the economic well-being of the region. Agriculture is the primary employer in the Everglades Agricultural Zone and contributes more than \$2 billion to the \$7 billion agriculture industry state-wide. The availability of natural gas will allow the agriculture community in South-Central Florida to improve its efficiency and competitiveness.

"Florida Crystals should be applauded for partnering with NUI to pave the way for the introduction of natural gas to this important region. We are happy to be working with this national agribusiness leader to bring the benefits of natural gas to South-Central Florida."

Introducing natural gas to South-Central Florida also will benefit the wider region and the state as a whole, according to Kean. The demand for power generation is increasing in Florida as the state continues to enjoy economic and population growth. The availability of natural gas in an area where the need for power generation is growing every day will play a major role in addressing the energy needs of the residents and businesses of all of South Florida, Kean said.

"And because natural gas is a domestic and environmentally preferred fuel, something that is extremely important to the residents of the Everglades Agricultural Zone, you have a win-win in every way," Kean said.

Florida Crystals will use natural gas in processing sugarcane and for power generation. The company burns bagasse, a bi-product of sugarcane production, and wood chips to produce steam for processing its sugarcane. It will burn natural gas to regulate steam production and to fire its cogeneration plants that provide electricity to the region. In doing so, Florida Crystals will be able to all but eliminate its use of fuel oil and improve the reliability of its operations.

NUI will start its distribution line from a gate station it will build connecting it to Florida Gas Transmission Company in West Palm Beach. The company will construct the line in three phases. In phase one City Gas will run pipe 55 miles into South Bay and Florida Crystal's facilities in that area. In Phase two the company plans to continue the line an additional 28 miles and provide service to the Clewiston area.

Phase three, planned for a later date, will provide service to the LaBelle area and will complete the state crossing with a planned connection to Florida Gas Transmission in Tice, near Fort Myers. Construction of phase one is expected to begin in late-May and be completed by early fall to coincide with the sugar harvest.

City Gas expects it will provide natural gas service initially to industrial and large commercial customers. Plans call for construction of local distribution systems to serve additional businesses and homeowners in the region within five to 10 years.

"While we will not immediately offer natural gas service to all residents and businesses, NUI and Florida Crystals will be bringing all the benefits of natural gas to this region before the end of this year," Kean said. "This project will improve the efficiency and strengthen the competitiveness of local major employers. That in turn will benefit the economy of the region and its residents."

Financial terms of the agreement were not disclosed.

NUI Corporation, based in Bedminster, NJ, operates natural gas utilities serving nearly 380,000 customers in seven states along the eastern seaboard. NUI also operates businesses involved in natural gas storage, exploration and pipeline operations; wholesale energy trading and portfolio management; retail energy sales; energy and environmental project development; energy consulting; sales outsourcing; telecommunications; and geospatial and customer information systems and services.

Florida Crystals Corporation, based in Palm Beach, FL, is the first fully integrated sugarcane company in the United States, taking its products from field to table. The company farms nearly 180,000 acres of land, operates three sugar mills, a rice mill and its own packaging and distribution center. Its mills are also cogenerators of clean, renewable energy.

This press release contains forward-looking statements. These statements are based on management's current expectations and information currently available and are believed to be reasonable and are made in good faith. However, the forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected in the statements. Factors that may make the actual results differ from anticipated results include, but are not limited to, economic conditions; competition from other providers of similar products; and other uncertainties, all of which are difficult to predict and some of which are beyond our control. For these reasons, you should not rely on these forward-looking statements when making investment decisions. The words "expect," "believe," "project," "anticipate," "intend," "should," "could," and variations of such words and similar expressions, are intended to identify forward-looking statements. We do not undertake any obligation to update publicly any forward-looking statement, either as a result of new information, future events or otherwise.

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<https://www.thefreelibrary.com/NUI+Corporation+Signs+Florida+Crystals+Corporation+to+30-Year+...-a074210622>

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 160175-GU

EXHIBIT I

TO

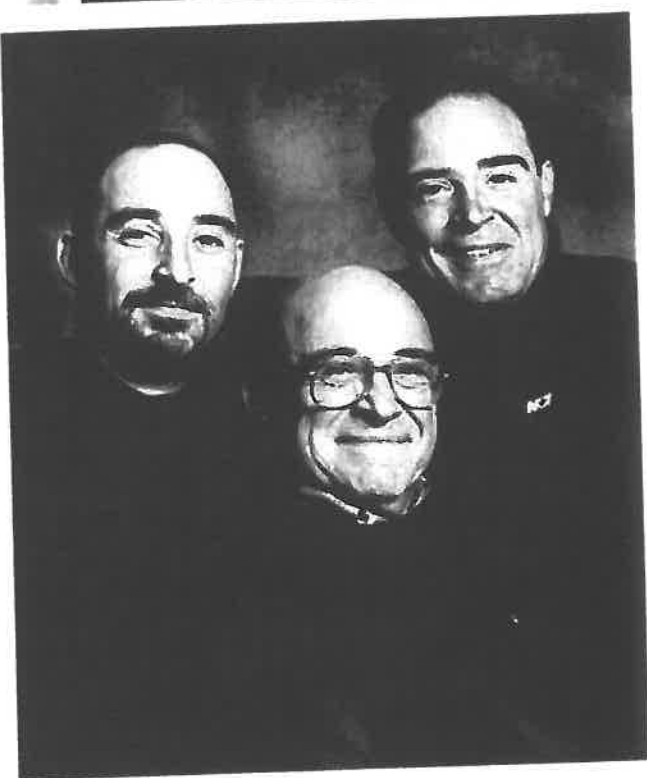
**FLORIDA CRYSTALS CORPORATION'S COMMENTS
CONCERNING FLORIDA CITY GAS'S RESPONSE TO
NOTICE OF APPARENT VIOLATION**

EXCERPT FROM NUI CORPORATION 2002 ANNUAL REPORT

**SUBMITTED:
NOVEMBER 17, 2016**

NUI Corporation

Annual Report 2002



*Generations
of Value*

1855 — 2002

Generations of Value

NUI Corporation (NYSE:NUI), based in Bedminster, NJ, is a diversified energy company that operates four natural gas utilities, and businesses involved in natural gas storage and pipeline activities; wholesale energy portfolio management; retail energy sales; telecommunications; and customer information and field operations systems and services.

The NUI story began in 1855 and has been defined by countless employees spanning many generations. Families have made NUI their home across three centuries, drawing each other to the rewards of working for the company and collectively providing the organization with its character of solidarity, integrity and stability. On the cover of this report and in the following pages you will meet four such generational families of employees and read about how they feel to be part of NUI. As NUI has grown beyond its origins as a natural gas utility, it has never lost its sense of family – as much among those who are unrelated as those who are kin.

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The Year 2002

Generating Value

- Virginia Gas Company continues growing, expanding NUI's energy hub presence in mid-Atlantic region
- Richton, Mississippi, energy hub draws a wealth of interest in phase 1 of potential seven-billion-cubic-foot project
- Production at sugarcane giant tastes sweeter as Florida Crystals begins burning natural gas from City Gas pipeline
- United Water taps Utility Business Services for national contract
- NUI further strengthens its balance sheet through sale of 1.7 million shares and debt reduction of \$75 million
- Elizabethtown Gas Company receives \$14 million increase in annual operating revenues



1664 – The colonial city of Elizabethtown is founded, named in honor of Queen Elizabeth of England. More than a century later, Elizabethtown and its citizens would play a major role in the creation of a new nation during the revolution.

1855 – The Elizabethtown Gas Light Company is founded "to manufacture, make and sell gas... for the purpose of lighting the streets, buildings, manufactories, and other places situated in Elizabethtown..."



1865 – Colonel John Kean is elected president of Elizabethtown Gas Light Company.



Financial and Operating Highlights

Fiscal Years Ended September 30,

<i>(Dollars in thousands, except per share amounts)</i>	2002	2001	2000
Financial:			
Operating revenues	\$556,468	\$659,866	\$498,744
Operating margins	210,884	205,030	182,540
Operations and maintenance expenses	121,886	104,615	96,821
Operating income	48,334	66,678	50,692
Income from continuing operations	16,159	27,356	20,643
Loss from discontinued operations	(14,405)	(11,043)	(85)
Effect of change in accounting	(17,642)	—	—
Net income	(15,888)	16,313	20,558
Stockholders' equity	288,252	274,727	250,896
Capital expenditures	55,670	59,449	50,104
Common Stock Data:			
Income from continuing operations per share	\$1.08	\$ 2.05	\$ 1.60
Loss from discontinued operations per share	(0.96)	(0.83)	(0.01)
Effect of change in accounting per share	(1.18)	—	—
Net income per share	(1.06)	1.22	1.59
Book value per share	18.03	19.97	19.33
Market value:			
Trading high	27.50	33.94	32.44
Trading low	15.87	20.08	22.94
Year-end close	21.60	20.43	30.21
Year-end price/earnings ratio	nm	16.75	19.00
Year-end price/earnings from continuing operations ratio	20.00	9.97	18.88
Average daily trading volume	53,417	47,663	36,423
Average shares outstanding (thousands)	14,938	13,356	12,929
Financial Statistics:			
Return on average common equity	(5.6)%	6.2%	8.4%
Market-to-book ratio	119.82	102.29	156.32
Common Dividends:			
Dividends paid per share	\$ 0.98	\$ 0.98	\$ 0.98
Indicated annual dividend rate	0.98	0.98	0.98
Operating Data:			
Utility gas sold or transported (MMcf)	81,698	86,717	86,600
Total gas sold or transported (MMcf)	185,416	181,689	232,242
Total degree days in New Jersey	3,973	5,036	4,579
Total average utility customers	385,359	381,409	376,185
Miles of main	6,178	6,587	6,518
Employees (year-end)	1,144	1,599	1,078

To Our Shareholders:



Fiscal 2002 truly challenged NUI, our shareholders and our employees, alike. A unique combination of events and developments aligned to bring disarray into the business arenas in which NUI operates. Many of these developments were not of our making yet drew us into their turbulence nevertheless. Others were more within our control as we took steps we felt were necessary to position the company for future success despite potential short-term costs. As a result, we produced results for fiscal 2002 that fell short of expectations – both yours and ours.

As we reported to you throughout 2002, many of our businesses started the year in a challenging business climate that worsened as the year progressed. We closely monitored developments within these business arenas, yet in certain instances we were unable to make operational or strategic changes quickly enough to offset the significant effects that unfolding events had on NUI's total operations. A few of these are:

The events of 9/11 changed our country forever and had a significant impact on several of our operations and many of our important customers throughout the fiscal year. That day's devastation destroyed a key

telecommunications facility in Manhattan, affecting our service to our telecom customers throughout most of the first quarter. Travel declined, affecting our customers that prepare food for airlines in Miami. Business suffered at resorts and restaurants in Florida and other areas we serve.

Record warm temperatures and a declining economy resulted in customers burning less gas. This created excess supplies in the marketplace, impacting both our utility operations and our wholesale energy portfolio management business throughout the year. The decline in the economy reduced customer usage as businesses cut back on operations to reduce expenses, and led to an increase in unpaid accounts.

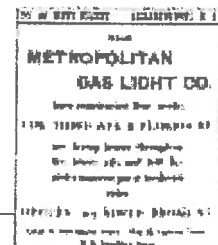
Eroding investor confidence in certain of our industries significantly impacted the credit quality of customers and wholesale trading partners. Declines in the stock market affected the values of retirement and pension funds, increasing the cost of these programs.

As fiscal 2002 unfolded we took steps to mitigate the impact of these events on our business activities. We increased our cost-containment efforts company-wide. We applied tight credit standards in our



1878 – Senator John Kean becomes president of Elizabethtown Gas Light Company.

1889 – Elizabethtown Gas Light Company begins selling and renting gas stoves for cooking and heating.



1892 – Elizabethtown Gas Light Company purchases rival Metropolitan Gas Light Company.

wholesale energy management activities. We focused on strengthening our financial condition. Perhaps most importantly, we maintained the course we set in 1995. These actions helped us weather the variety of storms we faced and avoid the precipitous situation in which many other companies operating in our business sectors currently find themselves. Moreover, despite the challenges of 2002, NUI finished the year with a stronger balance sheet and with earnings from continuing operations that covered the dividend.

Earnings per share from continuing operations for fiscal 2002 were \$1.08 on net income from continuing operations of \$16.2 million. Earnings before interest and taxes (EBIT) were \$48.6 million. Of particular note, EBIT in the company's Wholesale Energy Marketing & Trading segment increased by \$0.6 million in fiscal 2002, despite a significant turnover in its customer base resulting from the challenging market conditions that this business sector faced.

Looking forward to the remainder of this year and beyond, we will continue the action plans we initiated in 2002. In doing so, we believe we will improve earnings in 2003 and regain the pace of progress we enjoyed prior to 2002. We will focus on operational excellence, which will reduce costs and increase

business efficiencies. We will continue to increase cash flow to provide greater financial flexibility to develop our Energy Hub Strategy. This strategy is built on the ownership of regulated assets that should enhance predictability of future earnings. We will narrow our business focus in order to concentrate our resources on the exciting growth opportunities in our core energy business.

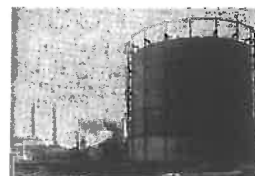
Generations of Commitment

As difficult as this past year was, we as a company have faced and overcome greater challenges in the past. During our 148-year history, NUI has weathered numerous wars, the Great Depression, stock market crashes, societal unrest and the energy crisis of the 1970s. Through each of these challenges, we have not only survived but have emerged stronger and better prepared to continue growing the company. A key element to the company's resilience is its people. Their knowledge of and history with NUI has provided strength and continuity throughout our history.

In this year's annual report we are featuring some present and past employees from the same families. These featured employees alone represent more than 254 years of experience at NUI and its family of



1932 – Captain John Kean takes leadership of the company.



1951 – Natural gas flows into the Elizabethtown Gas Company distribution system for the first time, displacing manufactured gas.

1914 – Julian Kean succeeds his brother as president of the company, which then merges with the Cranford, Rahway and Metuchen Gas Light Companies.



1948 – Elizabethtown Gas Company builds the largest gas holding tank in the world.



companies. They and their families have provided the commitment and hard work that has always allowed us to overcome challenges and succeed as a company. They also are significant shareholders, are proud to be part of the NUI history and understand the benefit of growth for the long-term, having played a role in the company's development. These and other families like them within NUI are the source of the culture that defines and supports three of our key historical values – honesty, integrity and shareholder commitment.

These same values also have driven the way NUI has been governed in the past and is governed today. NUI has always maintained a board of directors that has been predominantly independent in its leadership and control. It has required that all board members themselves be shareholders to align their views with those of other shareholders, our customers and our employees.

The Outlook is Positive

Fiscal 2002 represents a very small part of NUI's long and stable history. The NUI Board of Directors does not believe in making long-term investment strategy decisions based upon short-term results. Therefore, in October the Board reaffirmed the company's



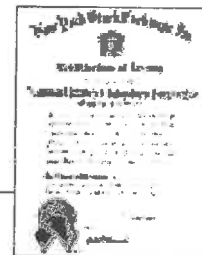
Five generations of Kean have led the NUI organization through 147 years of growth and stability. (Left): John Kean, Chairman of the Board; (right): John Kean, Jr., President and Chief Executive Officer.

commitment to maintaining the current dividend, based on its positive view of our future. We are continuing our commitment to this important component of the value received by our shareholders that has been in place for more than 100 years. With new legislation pending regarding taxes on



1963 – John Kean, current Chairman of the Board, is named president of Elizabethtown Gas Company.

1969 – Shareholders approve the formation of National Utilities and Industries, the precursor of today's NUI, as the holding company of Elizabethtown Gas. Business diversification follows.



1982 – NUI begins trading on the New York Stock Exchange.

dividends, NUI shareholders may soon realize even greater value from their investment in our company.

PricewaterhouseCoopers (PwC) recently completed audits of NUI's last three fiscal years, ending with 2002. The reaudits of fiscal years 2000 and 2001 were required due to new accounting standards affecting our industry and our change of accountants. The audits provided the company with the opportunity to review our accounting practices and ensure that our financial statements were fairly stated. As a result of the audits, we made certain non-cash adjustments within those periods. More importantly, PwC rendered an unqualified opinion on our financial statements.

In fiscal 2002 we significantly strengthened our balance sheet and provided greater future financial flexibility. We took advantage of current low interest rates to refinance some of our existing debt and reduced total debt by more than \$75 million. Including the refinancing, we still are on track to reach our target of 50 percent debt and 50 percent equity by the end of fiscal 2004. Our relationship with our lending partners continues to be strong. In December our banks unanimously extended our credit facility to February 2003. Following that

extension, the majority of them then reaffirmed their confidence in NUI by agreeing to renew the facility for an additional one-year term.

Progress Continues

We are confident NUI will improve its performance in 2003 and beyond as a result of business decisions we made in 2002. With regulatory approval to further develop our Virginia salt cavern storage facility by an additional 6.1 billion cubic feet, we will begin to serve the existing demand for natural gas storage in that region. This unique asset is the only one of its kind within a 700-mile radius, making it one of the most strategically located storage fields in the United States. We completed phase one of our cross-state pipeline in Florida and began providing natural gas service to our anchor customer, Florida Crystals. We will be able to create a strategic link for natural gas between the east and west coasts of the state through completion of this line after successful negotiations with new customers along the remainder of the route. We are excited by the opportunity we created with our purchase of mineral and land rights for a salt dome storage facility in

1988 – City Gas Company of Florida joins NUI, the company's first utility operation outside New Jersey.



1994 – Pennsylvania & Southern Gas becomes part of NUI, with operations in Pennsylvania, New York, North Carolina and Maryland.



1994 – John Kean, Jr., becomes the sixth Kean to be named president of the company.



1993 – NUI enters the space age with an agreement to provide natural gas service to the Kennedy Space Center.



Mississippi. Through this facility we intend to create both storage and transfer capabilities at a key supply location for the mid-Atlantic and southern regions of the nation. These all are key steps we are taking in developing our Energy Hub Strategy as the core of our future growth.

Our wholesale energy portfolio management business maintained disciplined credit policies and adhered to our strategy of managing risks within our energy portfolios and those of our customers. We believe we will remain profitable in this sector even as it continues to change by remaining true to these self-imposed rules. Our hard work to add United Water and Alagasco to UBS' customer base means new opportunities for growth for our customer information and field operations systems and services business. The successful conclusion of a rate case for our New Jersey utility will add \$14.2 million in annual operational revenues. This is the first rate increase for our New Jersey utility in more than 12 years and will help offset anticipated increases in pension, medical, insurance and other costs in 2003.

With 2002 and its challenges behind us, we are now focusing on the actions that will make 2003 a better year. More importantly, we will make this a year that further strengthens NUI for success in the years ahead. We are focusing during 2003 on increasing cash flow, improving profitability and further developing our unique and valuable assets.

NUI and its employees have a strong track record of overcoming challenges. NUI is positioned with the right assets that will enable us to continue our growth and deliver value to both this and our next generation of shareholders. Just ask those employees whose families have been here for generations. They understand the value of investing for the long term.

Sincerely,

John Kean, Jr.
President and
Chief Executive Officer

John Kean
Chairman of the Board

January 27, 2003

1995 – NUI begins to “unbundle” the utility to allow for greater development of business skills.



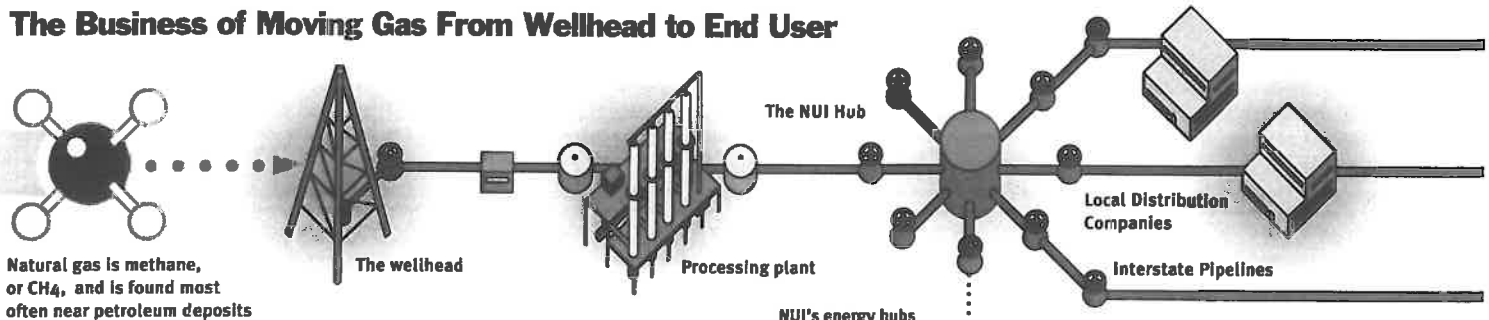
2001 – Virginia Gas Company and its salt cavern storage facilities are acquired by NUI and immediately become an integral component of NUI's energy hub strategy.

2002 – NUI acquires the property and mineral rights of a potential salt dome natural gas storage facility in Richton, Mississippi, and receives overwhelming response to its “open season” solicitation of interest to participate.



NUI's Energy Hub Strategy:

The Business of Moving Gas From Wellhead to End User



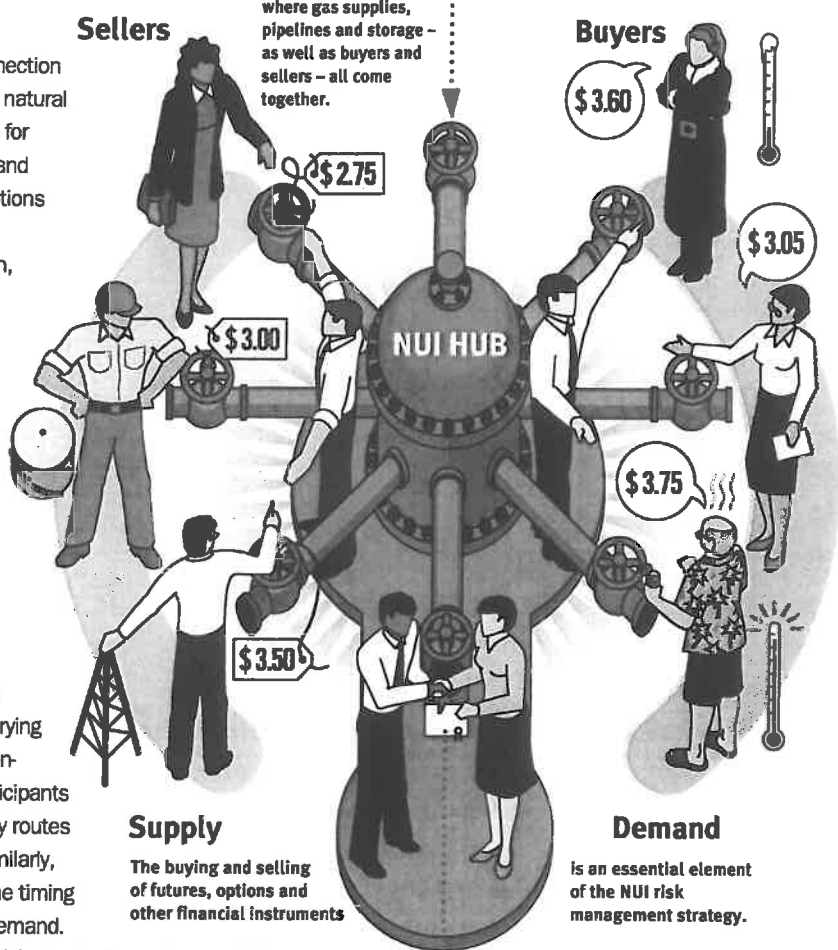
NUI's Energy Hubs

An energy hub is, first and foremost, a physical interconnection of pipelines and/or storage facilities and the supplies of natural gas they carry. Secondly, it is a business gathering point for buyers and sellers and a point at which supply and demand reach balance. The more supply, storage and delivery options in one location, the greater the variety of market and trading opportunities. NUI's energy hub strategy is to own, operate, lease or have access to the physical assets of pipelines, gas supplies and storage facilities, and to create strategic energy hubs in geographic areas where demand is high. NUI seeks to continually optimize the capacity of these assets. The more numerous the buyers and sellers and the greater the volumes of gas moved, the more vigorous the marketplace — and the greater the opportunity to earn profits.

Risk Management

Risk is present in the buying and selling of natural gas, perhaps the most dominant being changes in available supply and demand, and in prices that accompany these changes. Weather changes, world political events and varying economic conditions create a fluctuating business environment. Pipeline interconnections allow energy market participants the option of finding alternate supply sources and delivery routes that could lessen the impact of these risks on prices. Similarly, storage facilities allow customers the option of shifting the timing of gas delivery, based on the timing and volume of gas demand. NUI operates these storage and pipeline assets, and participates in the exchange of these options among many market participants. The trading of these options is backed by NUI's ability to deliver gas from the physical assets it owns, and is managed using strict internal controls over trading operations. This discipline reduces the speculative aspects otherwise present in trading activities.

NUI's energy hubs are physical locations where gas supplies, pipelines and storage — as well as buyers and sellers — all come together.

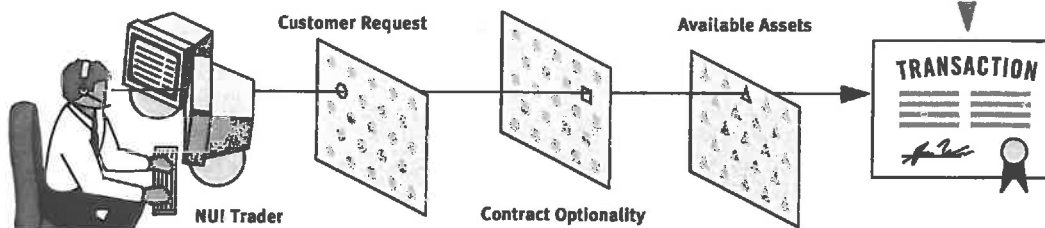


Supply

The buying and selling of futures, options and other financial instruments

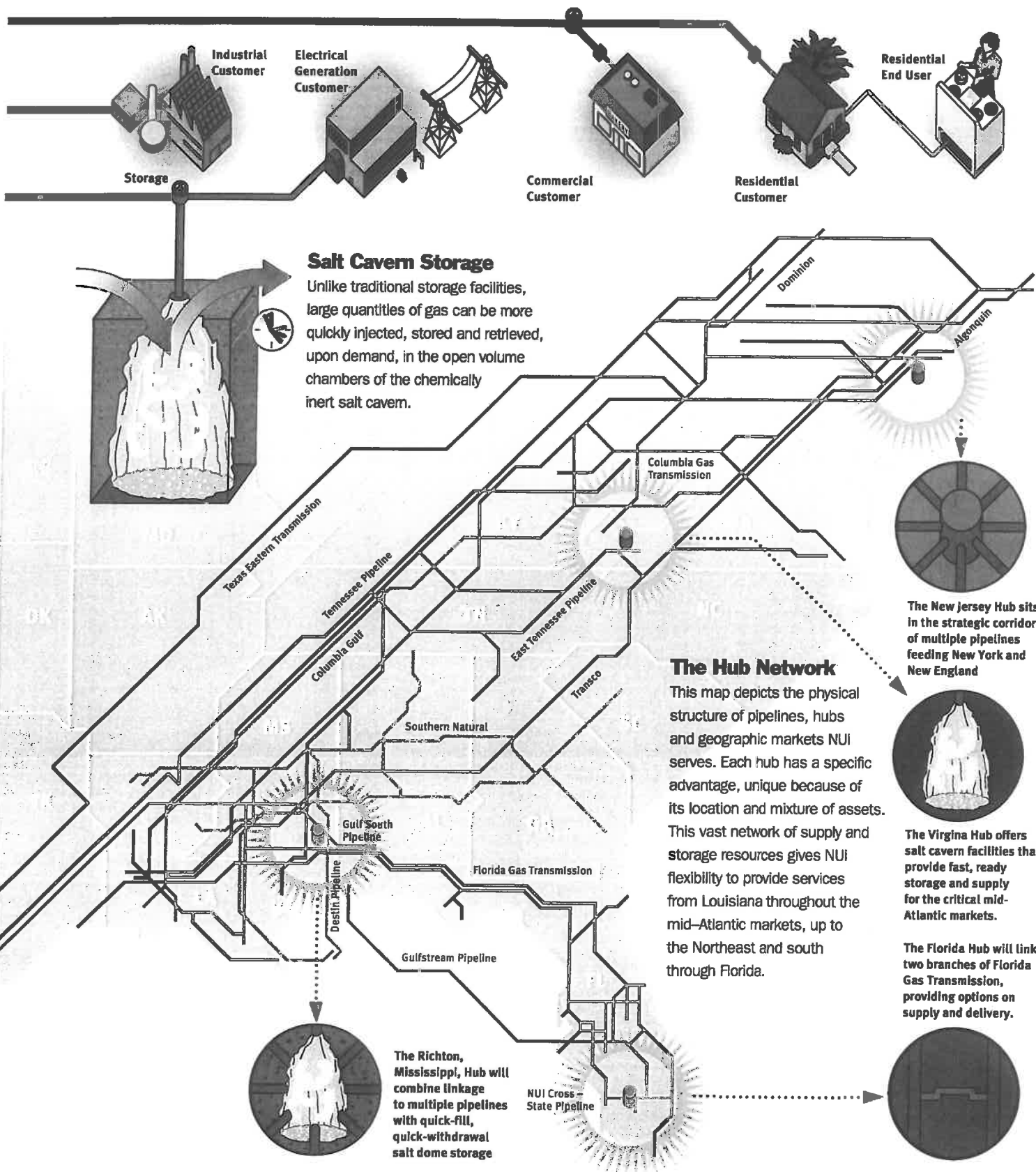
Demand

is an essential element of the NUI risk management strategy.



A contract is concluded only when the NUI trader aligns all three elements of the transaction — thereby controlling risk.

A Disciplined Flow of Value



Salt Cavern Storage

Unlike traditional storage facilities, large quantities of gas can be more quickly injected, stored and retrieved, upon demand, in the open volume chambers of the chemically inert salt cavern.

The Hub Network

This map depicts the physical structure of pipelines, hubs and geographic markets NUI serves. Each hub has a specific advantage, unique because of its location and mixture of assets. This vast network of supply and storage resources gives NUI flexibility to provide services from Louisiana throughout the mid-Atlantic markets, up to the Northeast and south through Florida.

The New Jersey Hub sits in the strategic corridor of multiple pipelines feeding New York and New England



The Virginia Hub offers salt cavern facilities that provide fast, ready storage and supply for the critical mid-Atlantic markets.

The Florida Hub will link two branches of Florida Gas Transmission, providing options on supply and delivery.

The Richton, Mississippi, Hub will combine linkage to multiple pipelines with quick-fill, quick-withdrawal salt dome storage

A Company's Legacy

The Next Generation

For the Sliker family, NUI is all about the people. With a combined 102 years service, they have known their share. "I wouldn't have kept coming back if I didn't enjoy being here," said Carol, veteran among the group with 35 years. "The greatest asset NUI has is its people."

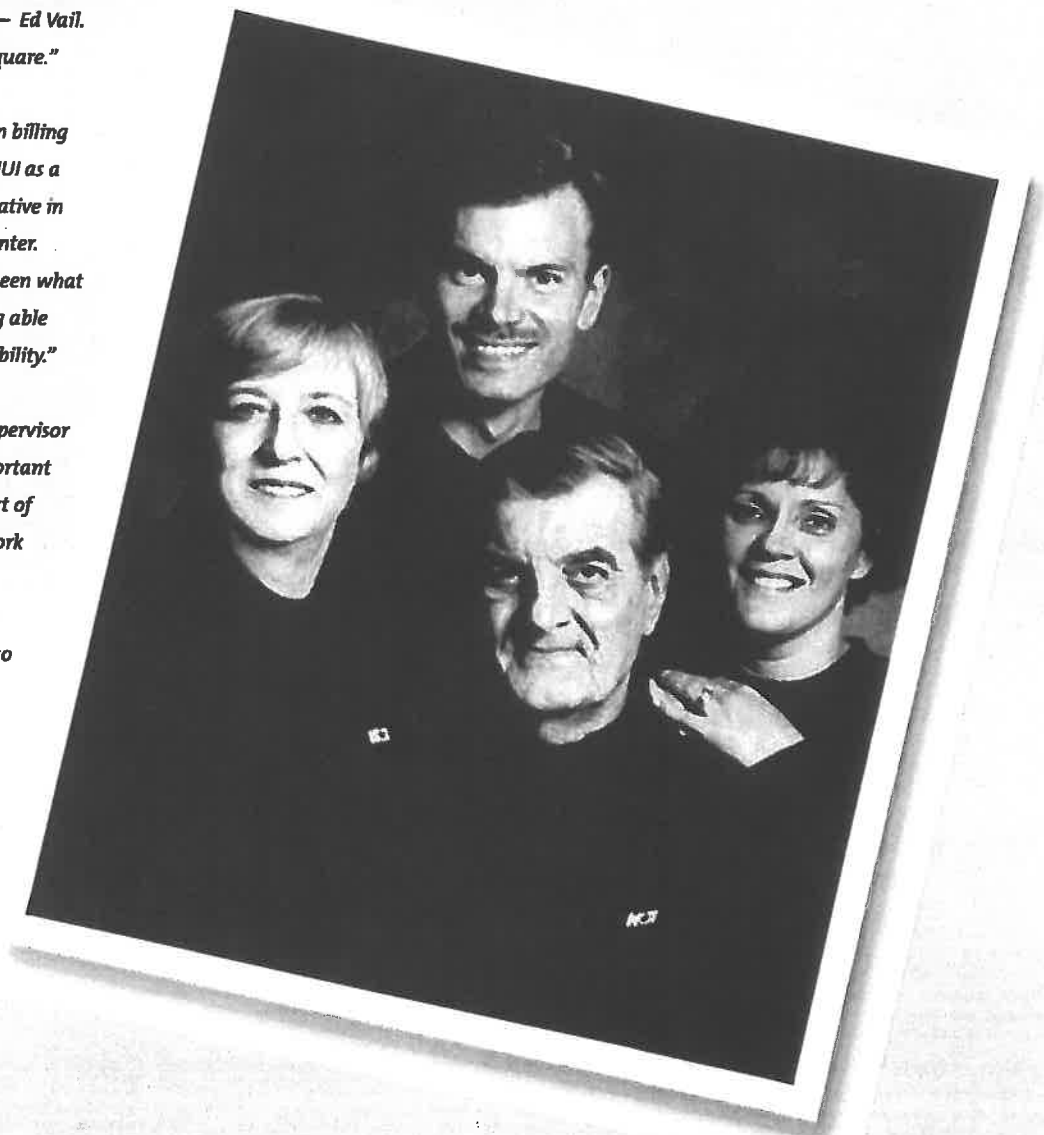
1963 – Woody Sliker, senior marketing representative when he retired, quickly determines he'll like working for Elizabethtown Gas. "My initial supervisor was the greatest thing since sliced bread – Ed Vail. The place was always run fair and square."

1981 – Dolores Sliker, transportation billing representative, begins her career at NUI as a customer service telephone representative in Elizabethtown Gas Company's call center. Contact with customers has always been what she enjoys most about her job. "Being able to help customers to the best of my ability."

1988 – Ken Sliker is promoted to supervisor at Elizabethtown Gas. "My most important accomplishment is earning the respect of my coworkers, especially the guys I work with every day."

1989 – Elizabethtown Gas is poised to move into its new headquarters in Union, NJ, and Carol Sliker, assistant corporate secretary, has the mammoth task of creating work spaces for everyone. "The thing I enjoy the most is being part of the team that creates nice spaces for people to work in."

Woody, Carol's husband, agreed. "Those of us who worked here always felt we were treated well, and we did not hesitate to recommend it to family members and the next generation." Two of the next generation followed – Woody's nephew Ken and his wife Dolores. "It's like a second family here," said Ken. "Whether fixing a gas leak or helping a fellow employee, we come together all the time." Added Dolores, "Everybody always knows each other and takes care of each other."



A distribution system of... Core Services, Core Results

This is the gas company. Distribution Services remains the core business of NUI, providing safe and reliable natural gas service to nearly 365,000 customers in four states. It accounts for the largest earnings base and capital investment among NUI's business segments.

Distribution Services, comprising NUI's natural gas distribution operations, reported margins of \$158.8 million in fiscal 2002, compared to \$164.0 million in the prior year. The 3 percent reduction was primarily due to the impact of temperatures in fiscal 2002 that averaged 23 percent warmer than normal and 21 percent warmer than fiscal 2001. The results also reflect the continued effect of a sluggish economy on commercial and industrial gas usage. On the upside, after 12 years of innovative cost-containment efforts that enabled Elizabethtown Gas Company to maintain profitability despite inflation while not increasing rates, the company was authorized in November to increase annual operating revenues by \$14.2 million, or approximately 5 percent. NUI also was allowed to change the tracking period upon which it sets its base rates and weather normalization clause from a 30-year average to a 20-year average, more accurately reflecting true weather patterns. Meanwhile, the base rate increase awarded to NUI in Florida in 2001 resulted in a \$4.0 million contribution to margins in fiscal 2002, its first full year in place. NUI further honed its energy hub strategy in this business segment by selling three of its smaller distribution operations that no longer fit well with its business plans, for a combined \$41 million.

"Distribution Services remains the core business of NUI."

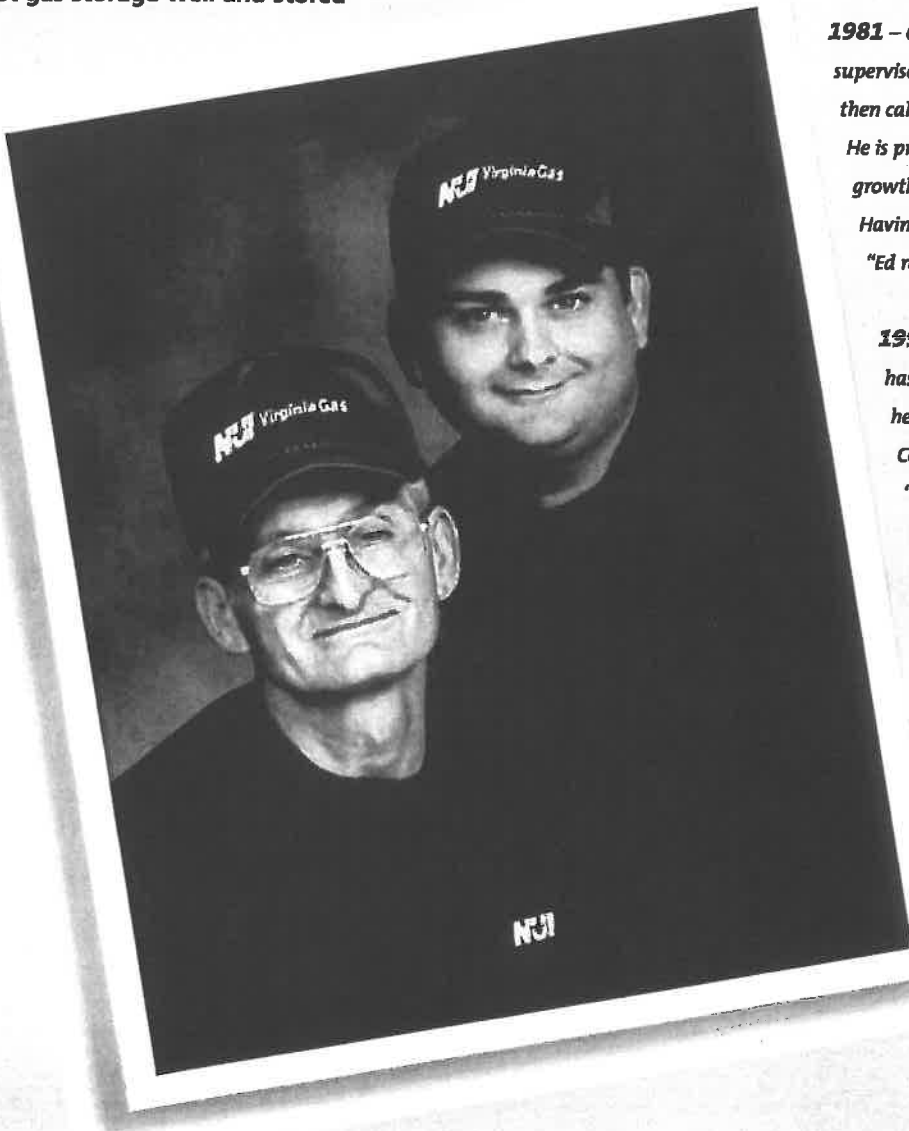


Service Upgrade: An Elizabethtown Gas Company crew – (from the rear) Mark Smith, Robert Crotty and Ruben Rivera – upgrade a service line to improve customer service.

Virginia Storage Field... Holds Family Teamwork

The four employees who operate Virginia Gas Company's Early Grove storage field count on each other. Being responsible for 1.6 billion cubic feet of gas will do that. "We're like family," said Ed Taylor. Two really are. Ed followed his father, Charlie, to Virginia Gas and Early Grove in 1992. Charlie has been with the company since 1981. Both are excited by the growth and accomplishments of the company. Virginia Gas opened the first gas storage well and stored

the first million cubic feet of gas underground in the state of Virginia. Now even bigger things are coming. "I took a look at what was going on and I liked what I saw," Charlie said of his first few days at work. Added Ed, "We built Virginia Gas from scratch. Then a company like NUI took interest in us. That tells me we did something right."



1981 – Charlie Taylor, operations supervisor, joins Virginia Gas Company, then called United Coal Company. He is proud of his role in the company's growth and confident in its future. Having his son Ed with him is special. "Ed really helps carry the load."

1992 – Ed Taylor, plant operator, has no idea what to expect when he comes to work at Virginia Gas Company for the first time. "They told me we were building a company. With blood, sweat and tears, we got it done."

As others struggle... The NUI Strategy Succeeds

As Chicken Little's scenario became a reality for many players in the wholesale energy management arena during fiscal 2002, NUI's Wholesale Energy Marketing & Trading business segment continued to enjoy sunny skies. Margins for this segment, which includes NUI's non-regulated wholesale energy portfolio manage-

"NUI Energy Brokers continued its trend of achieving profitability every year since its inception."

ment business, NUI Energy Brokers, Inc., and the storage and pipeline operations of Virginia Gas Company, grew by 28 percent

to \$29.4 million in fiscal 2002, compared to \$22.9 million in fiscal 2001. NUI Energy Brokers continued its trend of achieving profitability every year since its inception, remarkable considering the dramatic reduction in counterparties with which to do business as other companies either curtailed or shut down their wholesale energy management operations. Virginia Gas continued developing its salt cavern storage facility in Saltville and anticipates interest in the expanding capacity to grow as a broader group of customers gain access to the facility through Duke Energy's planned Patriot pipeline extension. NUI laid the foundation for an additional energy hub with the acquisition of mineral and property rights for a planned salt dome storage facility in Richton, Mississippi, which sits in the heart of the Southeast-Gulf Coast interstate pipeline system. In Florida, fiscal 2002 saw the completion of Phase 1 of NUI's planned cross-state pipeline and the flow of gas to the company's anchor customer on the line, Florida Crystals Corporation.



More than three decades after plugging the old brine caverns he helped create to produce salt, Kermit Allen now works to help open them again for natural gas storage. "I wished to heck I hadn't plugged them so well."