

State of Florida



## Public Service Commission

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

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

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**DATE:** January 26, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Leathers, Crawford) *MLJ JSC*  
Division of Economics (Guffey, Draper, Rome) *ESTD SKGCS*

**RE:** Docket No. 160175-GU – Petition for review and determination on the project construction and gas transportation agreement between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation, and approval of an interim service arrangement.

**AGENDA:** 02/07/17 – Regular Agenda – Motion for Clarification – Oral Argument Not Requested – Decision Prior to Hearing – Participation is at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Patronis

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Florida City Gas (FCG or City Gas) is an investor-owned natural gas utility subject to the Commission's jurisdiction, pursuant to Section 366.02(1), Florida Statutes (F.S.). Florida Crystals Corporation (Florida Crystals or Crystals) is a national sugar manufacturer.

On July 22, 2016, City Gas filed a Petition for Review and Determination on the "Project Construction and Gas Transportation Agreement (GTA) between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001" and Approval of an Interim Service Arrangement. City Gas filed a subsequent Motion for Approval of a Temporary Interim Service Arrangement on August 31, 2016. Florida Crystals filed several

preliminary, procedural motions including: a Motion to be Designated a Party or in the Alternative Motion to Intervene; a Motion to Dismiss City Gas's Petition, along with a Request for Oral Argument; and a Response in Opposition to City Gas's Motion for Approval of a Temporary Interim Service Arrangement, along with a Request for Oral Argument. On September 19, 2016, City Gas filed its Response in Opposition to Florida Crystals' Motion to Dismiss Petition.

At the December 6, 2016 Agenda Conference, after considering the written and oral arguments provided by the parties, the Commission voted: (1) to deny Crystals' Motion to Dismiss; (2) to set the matter for hearing; (3) to grant Crystals' Motion to be Designated a Party or in the Alternative Motion to Intervene; (4) to deny City Gas's August 31, 2016 Motion for Approval of a Temporary Interim Service Arrangement; and (5) that the Make-Up Period GTA rates will be in effect for a transition period beginning on December 6, 2016, subject to true-up, until a final Commission decision in this docket.

On January 6, 2017, Florida Crystals filed its timely Motion for Clarification of Order No. PSC-16-0581-PCO-GU, pursuant to Rules 25-22.0376 and 28-106.204, Florida Administrative Code (F.A.C.), which is the subject of this recommendation. On January 13, 2017, City Gas filed its response to Crystals' motion. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant Florida Crystals Corporation's Motion for Clarification of Order No. PSC-16-0581-PCO-GU?

**Recommendation:** Yes. The Commission should clarify that Order No. PSC-16-0581-PCO-GU is preliminary and based solely on the representations of the parties that the Commission has before it at this time. Further, the Commission should clarify that no party is precluded from raising and identifying appropriate issues or from presenting evidence and argument on any issue in this case. (Leathers)

### **Staff Analysis:**

#### **Florida Crystals' Motion for Clarification**

Florida Crystals requested that the Commission clarify Order No. PSC-16-0581-PCO-GU (Order) to state that:

This Order is preliminary and based solely on the representations of the Parties that the Commission has before it at this time. No Party is precluded from raising and identifying appropriate issues or from presenting evidence and argument on any issue in this case.

Crystals asserted that this clarification is necessary because it believes certain statements in the Order may be susceptible to being construed or interpreted as being declarative and potentially determinative of issues in this docket. Crystals also represented that it conferred with both City Gas and Commission staff prior to filing its motion and understood that both City Gas and staff agreed that such clarification is appropriate and did not oppose such clarification being granted.

#### **City Gas's Response**

On January 13, 2017, City Gas filed its response to Crystals' motion. City Gas stated that its representatives previously informed Crystals that they believe clarification is unnecessary. Further, City Gas did not agree to Crystals' representation that City Gas agreed that clarification is appropriate. However, City Gas confirmed that it did agree to not oppose the motion.

#### **Analysis and Conclusion**

Staff believes that the Commission intended for the Order to be preliminary in nature. As such, staff does not believe that the Order may be susceptible to being construed or interpreted as being declarative or potentially determinative of issues in this docket. However, to the extent that Crystals' proposed language clarifies the Commission's intent, staff does not oppose Crystals' Motion for Clarification and recommends that it be granted.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open pending the Commission's final action in this docket. (Leathers)

**Staff Analysis:** This docket should remain open pending the Commission's final action in this docket.