

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 10

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, December 6, 2016

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** All right. Circling back to
3 Item 10 .

4 **COMMISSIONER EDGAR:** Madam Chair, I know that
5 I asked and wanted us to get to work and I do, but
6 recognizing that we were given some information by staff
7 just as the meeting was started, would it be possible to
8 take just a couple of minutes?

9 **CHAIRMAN BROWN:** Yes. Let's take -- while
10 everyone is getting situated, we'll take about a
11 five-minute break and reconvene at 10:20.

12 **COMMISSIONER EDGAR:** Thank you.

13 (Recess taken.)

14 **CHAIRMAN BROWN:** Okay. We are reconvening the
15 Agenda Conference. If staff could kindly take their
16 seats. I like to always throw the word "kindly" in
17 there when I'm demanding that you do something.

18 All right. We have a lot of paper in front of
19 us. I hope everyone got an opportunity to organize it a
20 little bit before we get to this item.

21 Okay. We're on Item 10. So if staff could
22 walk us through an intro.

23 **MS. LEATHERS:** Yes. Good morning, Chairman
24 and Commissioners. Margo Leathers with Commission
25 staff.

1 Item 10 is a petition from Florida City Gas
2 for review of an existing gas transportation agreement
3 with Florida Crystals and for approval of an interim
4 service arrangement; however, today's item does not
5 address the substance or merits of City Gas's petition.
6 Rather, it addresses preliminary procedural items
7 related to it along with what the temporary rates should
8 be while this matter is pending before the Commission.

9 Issue 1 concerns Florida Crystals' motion to
10 be designated a party. Staff originally recommended
11 that this motion be denied as this proceeding is still
12 in the preliminary stages. However, staff notes that
13 the parties have since agreed to jointly request that
14 the Commission set this case directly for hearing and
15 that Florida Crystals be granted intervention with full
16 party rights.

17 Should the Commission vote to approve these
18 requests, staff would be happy to amend its
19 recommendation consistent with the Commission's
20 decision.

21 Issues 2 and 3 address Florida Crystals'
22 motion for oral argument on its motion to dismiss as
23 well as the motion to dismiss itself.

24 With regard to Issue 2, staff is recommending
25 that the Commission grant Crystals' request for oral

1 argument and allow each side ten minutes to address this
2 matter.

3 With regard to Issue 3, staff is recommending
4 that the Commission deny Crystals' motion to dismiss.

5 Issues 4 and 5 address City Gas's motion for
6 approval of the temporary interim service arrangement,
7 including revised interim rates, and Florida Crystals'
8 request for oral argument on that issue.

9 In Issue 4, staff is recommending that the
10 Commission deny Crystals' request for oral argument but
11 allow informal participation.

12 With regard to Issue 5, staff presents four
13 temporary rate options for the Commission's
14 consideration. Staff is recommending that the
15 Commission approve the rates laid out in Option 4 while
16 this matter is pending.

17 We'd also note that if this case is set
18 directly for hearing, staff's recommendation on Issues
19 5 and 6 will need to be amended to strike the references
20 to the filing of a limited proceeding. And as far as
21 the order of matters to be addressed today, staff is
22 recommending that the Commission take up Issues 2
23 and 3 first. And if the Commission grants the motion to
24 dismiss, all other issues are moot. But if the
25 Commission votes to deny the motion to dismiss, then

1 take up Issue 1 and then Issues 4 and 5 together.

2 **CHAIRMAN BROWN:** Okay. That sounds
3 reasonable. So we will then -- first, I just want to
4 get confirmation from the parties on what Ms. Leathers
5 said about the parties are in agreement to set this
6 straight to hearing. Mr. Wright.

7 **MR. WRIGHT:** Yes, Madam Chairman,
8 Commissioners, we are in agreement. Mr. Self and I have
9 worked this out and communicated it to the staff.

10 **CHAIRMAN BROWN:** Okay.

11 **MR. SELF:** Yes, Madam Chairman, that's
12 correct. Floyd Self for Florida City Gas.

13 **CHAIRMAN BROWN:** Okay. Thank you. So we'll
14 just go straight to Issue 2, which is should the
15 Commission grant the request, Crystals' request for oral
16 argument.

17 Commissioners, can I get a motion on Issue 2
18 so that we can proceed to Issue 3?

19 Commissioner Edgar.

20 **COMMISSIONER EDGAR:** Madam Chair, I would move
21 staff recommendation that we hear from the parties, but
22 I would suggest that five minutes each is probably
23 sufficient, recognizing the changed circumstances since
24 the recommendation was written.

25 **CHAIRMAN BROWN:** Okay. Is there a second?

1 **COMMISSIONER BRISÉ:** Second.

2 **CHAIRMAN BROWN:** Okay. I think that's
3 reasonable. All those in favor, say aye.

4 (Vote taken.)

5 Thank you. So I hope the parties can condense
6 their oral argument that they prepared to five minutes
7 and streamline it. And we will go ahead and begin with
8 Florida Crystals since it's their motion.

9 **MR. WRIGHT:** Thank you, Madam Chairman and
10 Commissioners.

11 First, I'd like to make appearances.
12 Robert -- thanks. Robert Scheffel Wright, Gardner law
13 firm, on behalf of Florida Crystals Corporation. Also
14 making an appearance with me is my law partner John T.
15 LaVia, III. Also with me to answer any questions you
16 may have for the company is Gaston Cantens, vice
17 president of corporate relations for Florida Crystals
18 Corporation.

19 **CHAIRMAN BROWN:** Thank you for that
20 introduction.

21 **MR. WRIGHT:** Thank you. And Florida Crystals
22 thanks you and I thank you for the opportunity to
23 address you. I timed this out right at five minutes, so
24 here we go.

25 In summary, Florida City Gas has asked the

1 Commission for an order declaring that the contract, the
2 project construction and gas transportation agreement,
3 is not a legally effective or enforceable special
4 contract under Florida law. This requested relief
5 interpreting and ruling on the validity of a contract
6 lies solely within the jurisdiction of Florida's courts
7 and, therefore, must be dismissed because it is a claim
8 that asks for relief that the Florida Public Service
9 Commission cannot grant.

10 Moreover, the Commission should dismiss the
11 rest of City Gas's petition because the agreement is
12 fully consistent with FCG's Rate Schedule KTS and
13 Schedule KDS under which Florida Crystals has taken
14 service since 2001 and, therefore, did not require
15 filing pursuant to Rule 25-9.034.

16 The KTS, KDS tariffs require that the rates
17 are to be negotiated between company and customer. I
18 did hand out the tariffs then, tariffs now. They're
19 essentially the same. The only substantive difference
20 is that the penny minimum is out of the current version
21 of the tariff. The rates shall be negotiated between
22 the company and customer, the rates shall not be set
23 lower than the incremental cost the company incurs to
24 serve the customers, and the rates shall be determined
25 by the company based on the company's evaluation of

1 competitive and overall economic market conditions and
2 the opportunity for the company to expand its system
3 into areas not served with natural gas.

4 This agreement, the deal that the parties
5 agreed to in 2001, meets these requirements to the
6 letter. The rates were negotiated at arm's length based
7 on Florida Crystal's competitive circumstances and
8 overall market conditions. City Gas was so thrilled
9 with the agreement that it issued a press release
10 proclaiming that it had executed a 30-year agreement
11 with Florida Crystals that would bring natural gas
12 service to the Okeechobee area, to South Bay, Clewiston,
13 and eventually they hoped on to the Fort Myers area.

14 Our contract with City Gas enabled Florida
15 City Gas to fulfill exactly the purpose of its Rate
16 Schedule KTS to create and support the opportunity for
17 Florida City Gas to expand its system into areas not
18 previously served with natural gas. Accordingly,
19 because the agreement satisfied and satisfies the
20 requirements of the rate schedules, it did not have to
21 be filed. Moreover, Florida City Gas represented to
22 Florida Crystals that the agreement did not have to be
23 filed, and Crystals reasonably relied on City Gas. The
24 minor differences between the tariff and the agreement
25 are slight and, accordingly, the agreement is so fully

1 consistent with the tariff that filing was not required.

2 If, on the other hand, the Commission were to
3 determine that the agreement did have to be filed, you
4 should recognize that in 2003, a mere two years
5 afterwards and 13 years ago now, Florida City Gas told
6 the Commission about the agreement in its 2003 rate
7 case, persuaded the Commission to approve all of City
8 Gas's rates, including the KTS rate schedule. Based on
9 the testimony of its witness who testified regarding the
10 investment cost incurred to serve Crystals explicitly
11 recognized that the annual O&M costs to serve Crystals
12 were relatively minor and concluded his testimony with
13 the statement that, quote, the company's negotiated rate
14 contract with Florida Crystals establishes a rate that
15 recovers its cost to provide service.

16 They also persuaded the Commission to approve
17 the modified KDS tariff, knowing that FCC, Florida
18 Crystals, was the only customer on the tariff. This is
19 at minimum substantial, albeit tardy, compliance with
20 the rule, and, accordingly, the Commission should
21 dismiss the petition.

22 Moreover, because the Commission's order
23 issued more than 12 years ago in the 2003 rate case
24 recognized that the rates paid by Florida Crystals to
25 recover the cost to serve under the specifically

1 identified agreement, administrative finality attaches
2 to the Commission's order approving the rate schedule
3 and all of City Gas's rates, including the rates paid
4 under the agreement by Florida Crystals.

5 We have been entitled to rely on the finality
6 of the Commission's order. We are still entitled to
7 rely on the finality of the Commission's order. We have
8 reasonably relied on the Commission's order in making
9 significant business decisions and investments.
10 Accordingly, Florida City Gas's petition should be
11 dismissed for this reason as well.

12 At a rock bottom minimum, Commissioners, you
13 should dismiss that part of City Gas's request that
14 they -- in which they ask you to rule that the agreement
15 is not a valid or legally enforceable contract under
16 Florida law. It is black letter law which you have
17 recognized in prior Commission orders set forth in our
18 motion to dismiss, that only the courts can interpret
19 contracts, and the Commission should expressly dismiss,
20 at a minimum, this request made by Florida Crystals.
21 For the reasons that I've discussed, Florida Crystals
22 urges you to dismiss City Gas's petition in its entirety
23 and let the Courts resolve the issues between Florida
24 City Gas and Florida Crystals. Thank you.

25 **CHAIRMAN BROWN:** Thank you, Mr. Wright.

1 Mr. Self, I feel like you two are always on
2 the opposite sides here before the Commission. Welcome.

3 **MR. SELF:** I won't comment on that.

4 Thank you, Madam Chair, and good morning,
5 Commissioners. Floyd Self of the Berger Singerman law
6 firm on behalf of Florida City Gas. With me today on my
7 right is Carolyn Bermudez, who is the vice president of
8 operations for Florida City Gas. Sitting next to her is
9 Archie Hickerson, who's the director of rates and
10 tariffs for the company. We appreciate the opportunity
11 to be here this morning.

12 The staff recommendation with respect to the
13 motion to dismiss is very simple and straightforward,
14 and we certainly support the staff recommendation.

15 When you cut through all of this, the issue
16 that we're ultimately here to address is within your
17 exclusive jurisdiction, and that is whether the rates
18 for the upcoming extended term of this document are, in
19 fact, recovering of their rates and consistent with the
20 tariffs and orders of this Commission.

21 In your order approving the KTS tariff, and I
22 passed that out a little earlier to you, if you look at
23 the last sentence of the first paragraph, it says,
24 "Under the proposed KTS tariff, the negotiated rate may
25 not be less than one cent per therm and will not be set

1 lower than the incremental costs the company incurs to
2 serve the customer."

3 The legal-sized confidential spreadsheet that
4 you all have, if you look on the far right column where
5 it says, "Analysis 5," those are the rates under the
6 extended or third period of the contract which is about
7 to start. As you can see, when you look at Column L,
8 one of those rates is below one cent. Your order says
9 the rate, one cent. Their argument is that the average
10 is above one cent. It's not the average. It's whether
11 the rate complies.

12 The second thing is if you look down in
13 Column M on Row 12, that big red number that you see,
14 that's how much below cost those rates are projected to
15 generate if they are, in fact, implemented below cost.
16 I'm sorry. It's the bottom right number, the one that
17 ends in nine on Row 15. That's how much below cost.
18 That's a clear, on its face a clear violation of what
19 the tariff and your order approving the rates at least
20 recover their incremental costs.

21 With respect to the 2003 rate case, you know,
22 that was certainly the testimony at that time. And it
23 may well have been true then looking at what was
24 presented to the Commission at that time, which, by the
25 way, the contract was never filed as a part of that

1 case.

2 And that testimony may well have reflected the
3 rates at that particular point in time and the expected
4 gas flows at that point in time, but the testimony
5 certainly did not address the significantly lower rates
6 that are going to apply in the extended term, nor did it
7 address the significantly increased gas flows that would
8 be possible 12 years later. So what happened in the
9 rate case happened, but it's not relevant and didn't
10 address what was going to happen starting in 2017.

11 I think the ultimate solution to this, and
12 this may not be the right time to talk about this, but
13 I'd like to offer this at this point anyway and we can
14 take this up at the appropriate time. With respect to
15 the spreadsheet that we provided you, in the center
16 Columns G and H discuss the cost of service and what
17 rates that would recover cost of service would look
18 like. And I know this is getting ahead to Issue 5, but
19 what we would propose to settle this and have you issue
20 as a PAA today would be those rates that are reflected
21 there in Column G on Rows 6, 7, and 8. Those rates
22 would recover their costs, nothing more, at the
23 projected 20 million therms.

24 And the staff recommendation has pointed out
25 to you, in fact, that from their analysis of the cost of

1 service study, which is that letter size confidential
2 document that you have, that's just a summary, that
3 that, in fact, is the methodology, and we've corrected
4 in this particular case in the legal size spreadsheet to
5 reflect the anticipated 20 million therm flow that
6 they've projected.

7 And I'm here to represent to you today that if
8 you approve those rates as a PAA, that Florida Crystals
9 would not object to that, to you implementing rates at
10 that level, which would, in fact, be consistent with
11 your order and our tariff and the Commission's rule that
12 those rates recover their incremental cost. We're here
13 about rates, not contract interpretation. It's solely
14 do these rates -- the points that Florida Crystals has
15 raised in their motion to dismiss extend far beyond the
16 four corners. They're affirmative defenses and not
17 appropriate. When you look within the four corners,
18 have we presented a prima facie case with respect to
19 whether -- within your jurisdiction, and we certainly
20 have done that. Thank you.

21 **CHAIRMAN BROWN:** Thank you.

22 **MR. WRIGHT:** Madam Chairman, may I have, like,
23 45 seconds?

24 **CHAIRMAN BROWN:** Mr. Self was getting into
25 Issue 5. We're really just on Issue 3 right now.

1 **MR. WRIGHT:** Yes, ma'am.

2 **CHAIRMAN BROWN:** I will give you an
3 opportunity -- I'll give you an opportunity when we get
4 to Issue 5 on what Mr. Self just proposed. But let's
5 just go to Issue 3, sir, thank you, which is the motion
6 to dismiss.

7 Commissioners, staff is recommending to us
8 that we deny the -- Crystals' motion to dismiss because
9 there is -- the petition does state a cause of action
10 upon which relief may be granted, and I tend to agree.
11 Thoughts, comments, or questions on Issue 3.

12 Commissioner Edgar.

13 **COMMISSIONER EDGAR:** Madam Chair, I think
14 there -- the two issues that we have taken up so -- thus
15 far are procedural and the next few probably are
16 basically procedural as well, although there is some
17 substance, and I look forward to having a further
18 discussion about that. But on Issue 3 as to where we
19 are today, I would move approval of the staff
20 recommendation.

21 **CHAIRMAN BROWN:** Thank you. Is there a
22 second?

23 **COMMISSIONER BRISÉ:** Second.

24 **CHAIRMAN BROWN:** Any comment? All right. All
25 those in favor, say aye.

1 (Vote taken.)

2 The motion passes unanimously. Thank you.

3 Now getting back to Issue 1, and the parties
4 have represented to us today that they would like to go
5 straight to hearing, and staff has said -- acknowledged
6 that if we agree with that, then we might -- then we
7 will change Issue 1 with the staff recommendation.
8 Right, Ms. Leathers?

9 **MS. LEATHERS:** Yes, Madam Chair. We would
10 change it to -- it would need to be changed to read,
11 "Should the Commission set the matter directly for
12 hearing?" And staff is in support of that. And as
13 well, "Should Crystals be granted intervention?" And
14 staff is in support of that as well.

15 **CHAIRMAN BROWN:** Okay. Commissioners.

16 Commissioner Brisé.

17 **COMMISSIONER BRISÉ:** So moved.

18 **COMMISSIONER EDGAR:** Second.

19 **CHAIRMAN BROWN:** Any discussion? All those in
20 favor, say aye.

21 (Vote taken.)

22 The motion passes. This will be set straight
23 for hearing with the proposed time frame somewhere
24 between six and eight months.

25 Okay. Now getting back to Issue 4

1 and 5 together. Although staff is denying approval of
2 oral argument on Issue 4, I would like to hear a little
3 bit more on Issue 5. So, Commissioners, I'm more
4 inclined to allow it. Okay. Seeing heads nod, we'll
5 give the parties -- we'll deny staff recommendation and
6 give the parties -- my suggestion is to deny staff
7 recommendation and give them five minutes each on this
8 item.

9 Commissioner Brisé.

10 **COMMISSIONER BRISÉ:** So, Madam Chair, on
11 Item 4 we seek to deny staff's recommendation and
12 provide oral argument of five minutes apiece.

13 **CHAIRMAN BROWN:** All right. Is there a
14 second?

15 **COMMISSIONER EDGAR:** Second.

16 **CHAIRMAN BROWN:** A second. Any discussion?
17 Seeing none, all those in favor, say aye.

18 (Vote taken.)

19 Okay. We're going to go ahead and allow oral
20 argument on this. Mr. Wright, now you may address the
21 Commission.

22 **MR. WRIGHT:** Madam Chairman, this really is a
23 discussion on the company's motion for approval of its
24 rates and it's their proposed rates. I thought they
25 might go first.

1 **CHAIRMAN BROWN:** Okay. That's fine.

2 **MR. SELF:** Thank you, Madam Chairman. As I
3 indicated a moment ago in an effort to kind of cut
4 through and expedite this, the company would propose
5 that you issue as a proposed agency action the rates
6 that are specified on the legal size confidential
7 spreadsheet in Column G, Rows 6, 7, and 8, and the tiers
8 associated with that in those rates.

9 As I said a moment ago, fundamentally this
10 case is about what are the rates going to be charged?
11 And we brought this to you, and Ms. Bermudez is
12 available and she would be happy to give you some of the
13 background to this situation and why it was incumbent
14 upon us to bring this to you. But the bottom line is,
15 is when the company looked at these rates and saw what
16 was going to be happening when they became effective and
17 realized that, given the fact that this agreement had
18 never been filed and approved with the Commission, as
19 was required by your rule -- and, in fact, if you go
20 back and you look at the original order approving the
21 rule, this Commission said in Order 5718, a true oldie
22 goldie, "When a utility seeks to enter into a new
23 contract or renegotiate an existing contract with
24 another party, such may be entered into only upon our
25 prior approval upon procedures described more fully in

1 the proposed rule." That was the driver for initiating
2 these proceedings and bringing this to you.

3 It's obviously a very difficult situation for
4 the company. This is certainly a major customer of the
5 company. But it was important to kind of get right with
6 God and get you to address this situation.

7 With respect to the staff recommendation on
8 the issues, the fundamental problem we have is two-fold.
9 First, whatever rates are approved on an interim basis,
10 to the extent we're talking about interim rates, if
11 you're going to have a true-up, then the true-up needs
12 to be two-way and not one-way.

13 In order to protect the ratepayers ultimately,
14 if the rates that were approved in a subsequent
15 proceeding ended up being higher than what you approved
16 as interim rates, that would adversely impact the
17 company's ratepayers. And so if there's going to be a
18 true-up on interim rates, it truly needs to be a two-way
19 true-up.

20 With respect to the rates, however, what we've
21 said is we've proposed that -- to kind of cut through
22 this and issue as a PAA these cost-based rates. If you
23 also look on the spreadsheet in Column H, you can see
24 that by proposing these rates -- and we're proposing
25 them as permanent rates subject to -- we can certainly

1 negotiate a subsequent agreement, if we wish, but we
2 would propose these as PAA rates. You can see we've
3 come more than halfway, that percentage that's there in
4 Row 13, we've come more than halfway between the rates
5 that are in the GTA, which is the far right column, and
6 the tariff rates, which our legal opinion is what the
7 rates should, in fact, be. And that's Columns C and D
8 reflect what the tariff rates should be.

9 So we think the best way, issue a PAA with the
10 cost rates and let's move forward on that. To the
11 extent you don't want to do that in interim rates, we
12 still think these would be appropriate as the interim
13 rates subject to a true-up both ways.

14 **CHAIRMAN BROWN:** Thank you. Mr. Wright, I
15 want to confirm you have a copy of this document in
16 front of you. Do you have a copy of it?

17 **MR. WRIGHT:** This is the documents that were
18 handed out in the red folder?

19 **MR. SELF:** Yes.

20 **MR. WRIGHT:** Yes, Madam Chairman, thank you.
21 I do have copies.

22 **MR. SELF:** And if I may, Madam Chairman, for
23 the record, I filed these two confidential documents
24 with the clerk yesterday, provided counsel for Florida
25 counsel -- Florida Crystals these documents yesterday.

1 **MR. WRIGHT:** He did indeed. Thanks.

2 **CHAIRMAN BROWN:** Okay. Great. Thanks. And I
3 know the Commissioners, we just got it, so these numbers
4 are new and fresh to us.

5 **MR. SELF:** And we're certainly happy to walk
6 you through what's on here. The staff pointed out I
7 mislabeled one of the columns. It's not relevant to
8 what we've discussed so far, but, you know --

9 **CHAIRMAN BROWN:** We'll get to that, yes,
10 definitely.

11 **MR. SELF:** But, you know, if you want to do
12 that, we can certainly do that.

13 **CHAIRMAN BROWN:** We'll get to that definitely.
14 Thank you, Mr. Self.

15 Mr. Wright.

16 **MR. WRIGHT:** Thank you, Madam Chairman, and
17 thank you again for the opportunity to address you.

18 More than 15 years ago Florida Crystals
19 entered into the agreement with Florida City Gas in good
20 faith to support City Gas's efforts to build a pipeline
21 to extend service to areas not previously served.
22 Florida Crystals has consistently complied with and
23 performed its duties under the agreement, including
24 paying hundreds of thousands of dollars in guaranteed
25 take-or-pay payments to City Gas in several years in

1 which we took no service at all.

2 With respect to Issue 5, the rates going
3 forward from today, the only fair, just, and reasonable
4 outcome is for Florida Crystals to pay the rates
5 identified in the staff recommendation as Option 3, the
6 extended term rates under the gas transportation
7 agreement.

8 I've got to say a couple of things. You know,
9 Mr. Self said they just discovered that they needed to
10 do something about these rates. By their own admission,
11 they identified this contract and the possible -- what
12 they characterize as a problem. We don't think so
13 because we don't think it needed to be filed at all.
14 They identified this, quote, sometime during the
15 2010-2011 period, unquote. They didn't tell us. They
16 didn't tell you.

17 The dispute in this docket is before you only
18 because Florida City Gas wants more money. They
19 realized sometime the middle of this year that the
20 extended term rates were going to kick in and become
21 applicable, and they went looking for a way to avoid the
22 financial consequences to Florida City Gas and its
23 owners that they agreed to willingly and proudly 15
24 years ago.

25 Mr. Self's references to impact on the general

1 body of customers are a total red herring. There is
2 nothing pending that would impact Florida City Gas's
3 other customers. The money at issue here is money that
4 Florida City Gas wants to get from Florida Crystals to
5 which they are not entitled by the contract that they
6 willingly and proudly agreed to 15-plus years ago. They
7 have not -- they are not entitled to, they have not
8 demonstrated any need for any rates other than the rates
9 in the contract. They have not shown any entitlement to
10 or any need for interim or interim type rate relief.
11 They didn't follow the interim rate statute, they didn't
12 follow the Commission's interim rate rule, and they've
13 not made any showing that it will suffer any real
14 economic harm, impact on ROE, inability to provide
15 service. No. No showing, no evidence. All they've
16 said is we won't have any -- as much money if you -- if
17 we -- if City Gas -- if Florida Crystals pays the rates
18 that we agreed to in the contract.

19 They have not presented any evidence as to
20 when, if ever, any impact on other City Gas customers
21 might occur or what that impact might be. All they've
22 come to you and said is, "We broke the rules. Please
23 invalidate this contract, and let's have more money."

24 On the other hand, Florida Crystals has
25 consistently performed its duties under the gas

1 transportation agreement. We relied on the gas
2 transportation agreement to make additional business
3 decisions, including changing our fuel supply strategy
4 and abandoning other contracts for alternate fuel
5 supplies over the past year in reliance on the contract.

6 The cost standard advocated by City Gas in
7 these spreadsheets is an average embedded cost standard.
8 That is not incremental cost. They are trying to
9 rewrite their tariff on the fly. The tariff clearly
10 says the rates shall cover incremental cost.

11 And by the way, the penny a therm minimum, I
12 have two things to say about that. If we took the
13 absolute maximum, we would never pay less than 1.2 cents
14 a therm. But more significantly, the tariff that's been
15 in effect since 2004, the KDS tariff, which is the
16 second block on the handout I gave you, shows that in
17 their 2004 tariff, they took out the penny a therm
18 minimum anyway. So that argument is of no avail to
19 Florida City Gas.

20 City Gas's tariff approved by the Commission,
21 which has the force and effect of law, requires that the
22 tariff cover incremental costs, be negotiated at arm's
23 length based on competitive circumstances and overall
24 market conditions, and support the provision of natural
25 gas service to where it doesn't -- did not previously

1 exist. We satisfied this on every point.

2 Your jurisdiction, your statutory mandate is
3 to ensure that Florida City Gas provides service to all
4 of its customers, including Florida Crystals, at rates
5 and under terms and conditions that are fair, just, and
6 reasonable.

7 Consider the facts here. It is undisputed
8 that Florida Crystals has kept its part of the bargain
9 for the past 15 years. The Commission recognized in the
10 2004 order, based on City's testimony, that the rates
11 cover the cost of service. We were the only customer
12 then. We may still be the only customer under Rate
13 Schedule KTS. In 2003, the Commission recognized that
14 the rates paid by Florida Crystals cover its cost of
15 service in the last adjudicated City Gas rate case based
16 on record evidence.

17 **CHAIRMAN BROWN:** Mr. Wright, if you could wrap
18 it up.

19 **MR. WRIGHT:** Yes, ma'am. City Gas has not
20 attempted to comply with the interim rate statute. They
21 haven't shown any evidence. They haven't attempted to
22 comply with the rule. And the only fair, just, and
23 reasonable outcome here is to have Florida Crystals,
24 going forward from today, pay the rates that Florida
25 City Gas and Florida Crystals negotiated in good faith

1 more than 15 years ago. Those are the rates identified
2 in Option 3 of staff's recommendation. Thank you.

3 **CHAIRMAN BROWN:** Thank you.

4 All right. This is one of those items that
5 has a lot of interesting facts in it and allegations.
6 And it's very hard as a contract attorney from
7 background looking at this arrangement that has occurred
8 in the -- as been alleged.

9 Staff, you have a copy of the handout that
10 Mr. Self passed out?

11 **MS. LEATHERS:** Yes, Madam Chair.

12 **CHAIRMAN BROWN:** Are you willing to address
13 your -- that at this time?

14 **MS. LEATHERS:** Madam Chair, the Commission has
15 already voted to set the matter for hearing, and staff
16 just received these numbers very recently and hasn't had
17 an adequate amount of time to review them, I don't
18 believe. So our suggestion would just be to address
19 Issue 5 as it is in the recommendation right now. We've
20 already had Crystals notify us that -- I don't believe
21 that they're very agreeable to the numbers that have
22 been presented by City Gas as well. So I believe we
23 would just suggest to move forward with Issue 5 as it
24 is.

25 **CHAIRMAN BROWN:** Thank you.

1 All right. Commissioners, questions for the
2 parties, staff?

3 I have just a big question, but I think
4 Ms. Draper --

5 **MS. DRAPER:** Elisabeth Draper for staff.

6 Just one comment staff would like to make.
7 City Gas mentioned having the protection going both
8 ways, and we had some discussions among ourself, and
9 staff does believe that is a reasonable request, to have
10 the true-up go either way, depending what the final
11 rates will be after we have a proceeding.

12 **CHAIRMAN BROWN:** Okay. That's with
13 Issue 4 -- I mean, pardon me, Option 4; right?

14 **MS. DRAPER:** It's the discussion in
15 Issue 5, but staff continues to stay with Option 4 on
16 the rates.

17 **CHAIRMAN BROWN:** Okay.

18 **MR. WRIGHT:** Madam Chairman, because of the
19 limited time, I was not able to address that issue. I
20 do have Commission precedent that I would like to bring
21 to your attention on that very issue.

22 **CHAIRMAN BROWN:** Okay.

23 **MR. WRIGHT:** Thank you. I'm trying to get to
24 my organized comments. Thank you.

25 The Commission has spoken directly on the

1 propriety of a true-up surcharge relative to interim
2 rates. Even though City Gas did not follow the interim
3 rate statute or the interim rate rules, these are
4 somewhat in the nature of interim rates, and FCG has
5 even called its proposal an interim rate arrangement.

6 In Docket No. 960234, water and sewer, the
7 utility asked the Commission to give it the authority to
8 impose a surcharge ex post equal to, quote, the
9 difference between its interim and final rates in the
10 form of a surcharge from customers who received service
11 during the interim period, unquote. That's Order
12 97-1544 on page 4.

13 The Commission rejected the utility's claim,
14 stating that interim rates, quote, provide the utility
15 relief pending our final decision on rates requiring
16 only a prima facie showing of entitlement to relief. As
17 such, interim rates are not intended to provide a
18 utility with the same level of relief which may be
19 established by a complete evidentiary hearing. The
20 utility's requested surcharge would undermine the
21 purpose of interim rates. The interim rate statute does
22 not contemplate a true-up or surcharge of any alleged
23 deficiency later. A surcharge would defeat the purpose
24 of interim rates and, based on the foregoing, Gulf's --
25 a different water utility, not Gulf Power -- requested

1 surcharge is denied.

2 Here, City Gas didn't even try to follow the
3 interim rate rule. They didn't provide any evidence
4 that showed they need any rate relief. They didn't try
5 to follow the interim rate statute. I think your prior
6 order speaks for itself and you should deny the request
7 for a true-up. Thank you.

8 **CHAIRMAN BROWN:** Okay. Thank you.

9 Mr. Self.

10 **MR. SELF:** Thank you, Mr. Chairman.

11 Mr. Wright is actually correct; we did not
12 file under the interim rate statute because, if you read
13 the interim rate statute, it only applies if you're
14 filing for a rate case. This is not a rate case. This
15 is an issue involving service to one customer pursuant
16 to a special contract that was never filed and approved
17 by the Commission. The fundamental -- so the interim
18 rate statute doesn't apply.

19 To the extent that you are going to be -- our
20 legal position is that the rates that now should be in
21 effect are the tariff rates because, pursuant to your
22 orders, your rule, our tariff, there never was a
23 lawfully approved special contract because the condition
24 precedent to that contract, filing and approval by you,
25 never occurred. And so in the absence of that, we're

1 legally required to charge our tariff rates. That's
2 pretty simple. So that's why we didn't file in the
3 interim statute.

4 In terms of a going-forward-while-
5 this-is-pending rate, therefore, to the extent that
6 we're talking about a rate other than the tariff rate
7 that's going to be charged, there needs to be, in order
8 to protect us -- you may determine that a special
9 contract is not appropriate under these circumstances,
10 in which case they should be paying the tariff rate all
11 along. And, again, if you look at the legal
12 spreadsheet, you can see in those red numbers down there
13 the extent of the discrepancies through the various
14 scenarios, whether it's the cost base rates, the
15 extended term rates, or even the continuation of the
16 makeup period rates. And so in order to protect both
17 parties ultimately, if you're going to require a refund
18 by us to Florida Crystals if you later adopt lower
19 rates, then, in fairness, it's only appropriate that if
20 the rates go the other way as interim rates, that there
21 indeed be a true-up and that they pay that difference if
22 that occurs.

23 **CHAIRMAN BROWN:** Okay. Thank you, Mr. Self.

24 You mentioned in your oral argument that the
25 information that you have under Item G would resolve all

1 issues. Is that a proposed settlement? This Commission
2 just set this matter straight for hearing. Are you --
3 it sounded to me that you were proposing a settlement to
4 Crystals.

5 **MR. SELF:** Yes. We were proposing that the
6 cost base rates in Column G be a settlement. You issue
7 that as a PAA, and then they would have the option of
8 protesting that. We would hope they wouldn't. But we
9 think that to the extent we're talking about the
10 cost-based rates, compliance with the order and the
11 tariff, that that -- that's a reasonable compromise and
12 would be a settlement that the company would be able to
13 live with going forward.

14 **CHAIRMAN BROWN:** And Mr. Wright didn't address
15 it, so I just wanted to at least throw it out there, and
16 obviously conferring with your client or your --
17 Mr. Wright.

18 **MR. SELF:** That would be fair, yes. Thank
19 you.

20 **CHAIRMAN BROWN:** Mr. Wright.

21 **MR. WRIGHT:** Thank you, Madam Chairman.

22 In the first place, these rates are based on
23 what are average embedded costs. They are again trying
24 to write the terms of the Commission-approved tariff
25 right out of this matter.

1 The tariff simply says, "Cover incremental
2 cost." You know what incremental costs are. And if
3 you'll look at -- on the single -- the 8 by 11,
4 8½ by 11 page, you can see the cost categories which are
5 not confidential include one category, O&M expenses,
6 that might include some incremental cost. Depreciation
7 on a pipeline is not an incremental cost. Property
8 taxes are not an incremental cost. Income taxes are not
9 an incremental cost. Required return on investment are
10 not an incremental cost. That's what they're trying to
11 get here. They're trying to freight in and violate
12 their tariff under which we have taken service.

13 **CHAIRMAN BROWN:** So the answer is no. Got it.

14 **MR. WRIGHT:** Well -- and the answer is no, and
15 it's clearly not acceptable for -- it violates the
16 tariff, it violates the agreement.

17 **CHAIRMAN BROWN:** Got it.

18 **MR. WRIGHT:** And it's four, it's four, roughly
19 four times what we think they owe. Thank you, ma'am.

20 **CHAIRMAN BROWN:** Mr. Wright, it was a very
21 direct question. Thank you.

22 **MR. SELF:** Madam Chairman, Mr. Hickerson --

23 **CHAIRMAN BROWN:** Just one second, Mr. Self.
24 There's a lot of information here and there's
25 a lot of emotion here. This has been a relationship

1 that has gone on for 15 years. It's the first that the
2 Commission has heard about this contract other than the
3 rate case in 2003, this Commission.

4 Mr. Self and maybe Ms. Bermudez, why did City
5 Gas not come to the Commission when this contract was
6 entered into? Was AGL or City Gas -- did AGL own City
7 Gas at that time?

8 **MS. BERMUDEZ:** No, they did not.

9 **CHAIRMAN BROWN:** Can you give us the history
10 of how this evolved?

11 **MS. BERMUDEZ:** Okay. AGL acquired City Gas in
12 two thousand and -- was it four?

13 **MR. WRIGHT:** Four.

14 **MS. BERMUDEZ:** 2004, yes, which was long after
15 the contract was signed. We became aware of the
16 contract, management became aware of the contract. And
17 as soon as we became aware of the contract, we did
18 notify then staff that this contract existed. Staff
19 asked, and we mutually agreed, that we delay the filing
20 of this contract.

21 **CHAIRMAN BROWN:** When was that?

22 **MS. BERMUDEZ:** This was during the Miami-Dade
23 contract hearing. So as -- because we were going
24 through that process, we agreed with staff that we would
25 delay bringing this contract in. And that process

1 lasted a number of years. And then immediately
2 following the initial contract issue with Miami-Dade, we
3 immediately had to go into the next negotiation because,
4 as you may recall, that contract was expiring the very
5 next year. So we went back through negotiation for the
6 current contract that's in place now.

7 There were several business opportunities we
8 looked at that would have actually prevented us from
9 even coming in with this contract, things that we were
10 trying to work through. Unfortunately those things did
11 not materialize.

12 So as soon as all of those things were
13 resolved, we filed a contract. It was my decision to
14 bring the contract in as the current executive for
15 Florida City Gas, and we filed the contract immediately
16 following those situations that did not materialize.

17 **CHAIRMAN BROWN:** Thank you for that
18 information. That was something that jumped out at me
19 in this situation because it does seem that this has
20 been a long-standing -- and the fact that the agreement
21 is a 30-year term when it was entered into was another
22 eye opener.

23 **MS. BERMUDEZ:** And just to address that, this
24 contract was negotiated many years ago, and it was
25 negotiated by executives out of New Jersey. And no one

1 in the local operations had any involvement or had any
2 of the details pertaining to the contract, so this was
3 not something that was locally negotiated or managed.

4 **CHAIRMAN BROWN:** Okay. Commissioners, any
5 questions of the parties or staff on Issue 5 or about
6 any of the options being proffered?

7 Commissioner Edgar.

8 **COMMISSIONER EDGAR:** Thank you. Thank you,
9 Madam Chair.

10 I'm a little confused. If I'm the only one, I
11 apologize. But if I could look to staff on -- again,
12 looking at Issue 5, Mr. Wright has talked about a
13 tariff, but I'm not sure the tariff is where we are, but
14 I'll look for clarification on that. And Mr. Self has
15 talked about setting rates for a PAA, but I'm not sure
16 that that's the posture that we're in. So I'd like some
17 additional information and analysis on those two points.
18 And then I have -- and then I want to talk about or ask
19 some questions about the options.

20 **MS. LEATHERS:** Yes. Commissioner, I can
21 address the posture of the case as it is right now. And
22 I'm inclined to agree with Mr. Self; we're not in an
23 interim rate posture at this point. We had a lot of
24 conversations of that among staff, how we would treat
25 this. And we are not in PAA. We are not in tariff

1 mode. How we are considering it is as a temporary rate.
2 In some water -- past water and wastewater cases, the
3 Commission has actually termed them as temporary
4 emergency rates. So that is where we believe we are at
5 right now just within the Commission's broad authority
6 to set a temporary rate while the matter is pending.

7 **MS. HELTON:** And, Madam Chairman and
8 Commissioner Edgar, if I could add to that. I don't
9 believe that setting any rates today using the PAA
10 process is appropriate. We've already -- you've already
11 voted to set this matter for hearing, so to me that
12 doesn't conceptually make sense to set it for hearing
13 and also set PAA rates.

14 With respect to the order that Mr. Wright
15 quoted from, I can't find that exact order. But when I
16 look at Docket No. 960234, that docket is styled as an
17 investigation of rates of Gulf Utility Company for
18 possible overearnings. So that was an overearnings
19 docket, I'm assuming, which is a different posture than
20 we find ourselves in today.

21 In 1996 there is a -- there was a court case,
22 *GTE vs. Clark*, that talked about ratemaking as a matter
23 of fairness. And when you set rates, you need to think
24 about fairness in terms of the utility and the customer.
25 And in that case, the Commission had entered an

1 erroneous order, and the court found that surcharges
2 were appropriate even though they weren't first
3 contemplated by the Commission. So I hope that gives a
4 little bit of background.

5 **COMMISSIONER EDGAR:** Madam Chair, I did then
6 want to ask a couple of questions about the options, but
7 I don't know if there are other questions about
8 procedural posture before I do that.

9 **CHAIRMAN BROWN:** I see one other light.

10 **COMMISSIONER EDGAR:** Okay.

11 **CHAIRMAN BROWN:** Commissioner Graham.

12 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
13 This whole thing seems to be a mess.

14 **CHAIRMAN BROWN:** Yes.

15 **COMMISSIONER GRAHAM:** I'm just going to go
16 ahead and sum it up.

17 I guess the first question is to staff. Is --
18 shame on us, I guess, for -- when we were notified about
19 this contract back in '03 during the rate case that we
20 didn't do more due diligence to actually pull the
21 contract and read to see what the contract said. I
22 think that's a Commission fault.

23 Question to staff. Is there any sort of
24 penalty that's assigned to failure to communicating with
25 the Commission and bringing this contract forward?

1 **MS. HELTON:** I think that's something that the
2 staff is looking at. I don't think it's ripe to come
3 before you today, but I think it is part of the
4 information gathering process that the staff is
5 considering what is the appropriate action to take
6 because the contract -- if there is an appropriate
7 action to take on a going-forward basis because the
8 contract was not filed with the Commission when it was
9 first entered into.

10 **COMMISSIONER GRAHAM:** So does that all come
11 out during the full-blown hearing?

12 **MS. HELTON:** Yes, sir.

13 **COMMISSIONER GRAHAM:** Okay. You know, I
14 think -- not getting into the details and which one of
15 these options we're going to take, I think the request
16 from the utility as far as whichever rate we go with,
17 that the sword cuts both ways, you know, that the
18 true-up fix both sides. I think that's probably the
19 best way to handle this.

20 Our jobs, I guess, as Commissioners is to make
21 sure that the ratepayers, all of the ratepayers are
22 protected by this utility. So I guess I'm open to the
23 discussion on which one of these options to go with, but
24 I do think that we need to make sure -- because this is
25 kind of guesswork here, that whichever way we go,

1 whichever direction we choose to go, that we make sure
2 both parties are kept whole at the end of it. Thank
3 you.

4 **CHAIRMAN BROWN:** Okay. Thank you,
5 Commissioner Graham. And I completely agree with you
6 and also with what Mary Anne Helton said about fairness
7 and that we have to make sure that there is fairness
8 here.

9 Commissioner Edgar, I think now is a good time
10 to get into the options, seeing that there are no other
11 lights on.

12 **COMMISSIONER EDGAR:** Thank you, Madam Chair.

13 My understanding -- and, again, I've said that
14 I'm confused and I am a little confused. So my
15 understanding is that Florida City Gas has today
16 requested that we would, for -- on a temporary basis, as
17 was described, direct that rates be set during this
18 period prior to a full Commission decision on what has
19 been termed on the confidential document as Analysis 5,
20 which is not one of the options that's -- or slightly
21 different than the four options that were presented in
22 the staff recommendation, and that Florida Crystals has
23 requested approval of what is termed Option 3, and that
24 our staff has recommended what is termed Option 4 or
25 Analysis 4. Is that accurate?

1 **MR. ROME:** Commissioner, if I might clarify.

2 **COMMISSIONER EDGAR:** Please.

3 **MR. ROME:** What is shown under Analysis 3 on
4 the spreadsheet that was provided by City Gas,
5 Analysis 3 is an option that is new, in essence, in
6 terms of the time in which it was presented. We just
7 received it. It is not contemplated in any of the staff
8 recommendation options.

9 **COMMISSIONER EDGAR:** Okay. Thank you for that
10 clarification. So just to -- and I apologize for
11 interrupting, but just, again, so Analysis 3 is not the
12 same thing as Option 3.

13 **MR. ROME:** Correct.

14 **COMMISSIONER EDGAR:** Okay. Thank you. Go
15 ahead.

16 **MR. ROME:** And then Analysis 5 on the
17 spreadsheet is commensurate with Option 3 in staff's
18 recommendation.

19 **COMMISSIONER EDGAR:** Okay.

20 **MR. ROME:** Analysis 1 on the spreadsheet is
21 commensurate with Option 1 in staff's recommendation.
22 Analysis 2 on the spreadsheet is commensurate with
23 Option 2 in staff's recommendation. Option 4 is not
24 addressed on the spreadsheet at all. What is shown as
25 Analysis 4 is a different scenario.

1 **MR. SELF:** And if I may, Analysis 4 is
2 mislabeled, and I would just ignore that for purposes of
3 -- that's a whole more complicated and it's not worth
4 discussing. So just X through Columns I and J.

5 **CHAIRMAN BROWN:** Okay.

6 **COMMISSIONER EDGAR:** Okay. Well, sort of is
7 what I'll say to that.

8 But, again, I appreciate the clarification
9 because the going back and forth between the two
10 different documents was not clear to me.

11 So with that in mind, could I ask staff to
12 speak to the pros and cons of what is Option 2 in the
13 staff recommendation that from this discussion I believe
14 is also commensurate with Analysis 2 in the confidential
15 document primarily? Could you speak to me about
16 Option 2/Analysis 2, kind of pros and cons, recognizing
17 that the numbers are confidential?

18 **MR. ROME:** Yes. Option 2 presents a scenario
19 which was presented by the company in response to a
20 staff data request, and the rates that were embodied in
21 that response were represented by the utility as being
22 cost compensatory. The disadvantages that staff sees
23 with Option 2 are that the rates as shown represent a
24 significant difference from the rates that have been
25 assessed all along under the contract. So there would

1 be a significant adverse impact to Florida Crystals
2 under that scenario.

3 **COMMISSIONER EDGAR:** Okay. That's all I've
4 got right now. And thank you, thank you.

5 **CHAIRMAN BROWN:** We do have other lights.
6 Commissioner Brisé.

7 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.
8 So for the Option 4 that is in the
9 recommendation, which one of the four analyses that are
10 made available to us, excluding Analysis 4 that now we
11 know that it's no good, which one is most analogous to
12 that in terms of the bottom line number?

13 **MR. ROME:** Commissioner, actually there really
14 is not a good analog comparison on the spreadsheet for
15 Option 4.

16 **COMMISSIONER BRISÉ:** Okay. All right. Do we
17 have a -- and I don't know if you can give me the number
18 on that, what that might look like in terms of a revenue
19 perspective, and I don't know if that would be a
20 confidential number.

21 **MR. ROME:** I can give you what I think will be
22 responsive.

23 **COMMISSIONER BRISÉ:** Okay.

24 **MR. ROME:** Staff's recommended Option 4 would
25 result in an annual revenue number that is between what

1 is labeled on the spreadsheet as Analysis 3 and
2 Analysis 4, and it would be --

3 **COMMISSIONER BRISÉ:** Okay.

4 **MR. ROME:** It would be --

5 **COMMISSIONER BRISÉ:** About --

6 **MR. ROME:** -- a little closer to --

7 **COMMISSIONER BRISÉ:** To 3.

8 **MR. ROME:** -- to 3. Yes, sir.

9 **COMMISSIONER BRISÉ:** In the ballpark of five
10 digits in terms of a difference -- right? -- or six
11 digits in terms of a difference.

12 **MR. ROME:** Six at least. Yes, sir.

13 **COMMISSIONER BRISÉ:** Yeah, okay.

14 **MR. SELF:** Madam Chairman.

15 **CHAIRMAN BROWN:** Yes.

16 **MR. SELF:** Commissioner Brisé, we did file
17 those rates. I have them -- unfortunately I have one
18 piece of paper. I would be happy to let you look at
19 this. Mr. Wright has seen this. If --

20 **CHAIRMAN BROWN:** Commissioner Brisé, I don't
21 know if -- would you like a copy of it or --

22 **COMMISSIONER BRISÉ:** I think I have a sense of
23 where that number falls into, so I'm comfortable.

24 **MR. SELF:** It's between Analysis 3 and 4.

25 **CHAIRMAN BROWN:** Okay. Thank you. And along

1 the same lines as Commissioner Brisé, so of the analysis
2 and what the -- Crystals is paying currently under all
3 five, do we have that reflected in the analysis of what
4 they're currently paying? Anyone?

5 **MR. SELF:** If I may, the number -- if you look
6 at Column J, Row 10, that number that's there, that's
7 the revenue that would be projected for 2017 at the
8 20 million therms.

9 **CHAIRMAN BROWN:** Okay. Got it. Got it.

10 **MR. SELF:** And, Madam Chairman, if it would
11 facilitate moving this along, Florida City Gas would
12 agree to Option 4 on the two-way true-up, if that helps
13 move this along.

14 **CHAIRMAN BROWN:** And I think we heard
15 Ms. Draper say that that is acceptable to staff, to have
16 it both ways, the true-up. So I don't think that part
17 is the problem necessarily.

18 **MR. SELF:** And, Madam Chairman, that would
19 basically maintain the status quo rates during this
20 temporary --

21 **CHAIRMAN BROWN:** I understand that. Thank
22 you. But, Mr. Self, what I'm stuck on is the extended
23 term and the date. Is -- from reading the
24 recommendation, it looked like the extended term was
25 November 1st, commenced on November 1st. So we're in

1 the extended term right now. Is that correct?

2 **MR. WRIGHT:** That --

3 **CHAIRMAN BROWN:** I'll allow Mr. Self first.

4 **MR. ROME:** November 15th.

5 **CHAIRMAN BROWN:** Was that Mr. Rome?

6 **MR. ROME:** Yes, it was.

7 **CHAIRMAN BROWN:** Oh.

8 **MR. ROME:** Sorry.

9 **CHAIRMAN BROWN:** Good for you.

10 Mr. Self, do you have any comment?

11 **MR. SELF:** If you would give me just one
12 second.

13 If you approve the staff recommendation on
14 Option 4 as a two-way, because that maintains the makeup
15 period rates on a going-forward basis, then whether it's
16 November 15th, December 1st --

17 **CHAIRMAN BROWN:** That wasn't my question.

18 **MR. SELF:** -- it doesn't matter.

19 **CHAIRMAN BROWN:** That wasn't my question.

20 Mr. Wright.

21 **MR. WRIGHT:** Mr. Rome answered your question
22 correctly, Madam Chairman.

23 **CHAIRMAN BROWN:** Okay. So here's where I'm
24 at, Commissioners. I mean, they're currently in the
25 extended term. I mean, they are in it. Obviously this

1 just came to us even though this contract has been in
2 effect since 2001. So the utility knew that when they
3 entered November 15th, 2016, they would be going into an
4 extended term at a different rate and, hence, this is
5 before us now coincidentally.

6 I kind of want to get a clear understanding of
7 why Option 4 is where staff got to rather than Option 3.
8 To me, it would be -- just looking at it, it would make
9 sense to go with Option 3 since we are in the extended
10 period today. Can you elaborate, Mr. Rome, why you got
11 to Option 4, the reasons?

12 **MR. ROME:** Yes, ma'am. In looking at the
13 various scenarios that potentially are available, what
14 staff endeavored to do in arriving at Option 4 was to
15 establish on a temporary basis going forward just while
16 the matter is being resolved a compromised proposal, if
17 you will, that would give the parties to the agreement
18 an opportunity to negotiate and perhaps work out a
19 mutually agreeable arrangement. And --

20 **CHAIRMAN BROWN:** Does this send a signal,
21 though, to work out a mutually agreeable solution when
22 we've already also just set this straight for hearing?

23 **MR. ROME:** There is no prohibition for them to
24 negotiate during that hearing process. And really what
25 we tried to do was to say -- to try to share the pain,

1 if you will, on a balance basis the best we could.

2 **CHAIRMAN BROWN:** Ms. Draper.

3 **MS. DRAPER:** If I may just add also, under the
4 extended term contract rates, based on staff's
5 preliminary analysis, we do believe that those extended
6 term rates do not cover costs to serve. And, therefore,
7 that was another reason to go with the makeup period
8 rates. Again, this is just staff's preliminary analysis
9 of the numbers.

10 **CHAIRMAN BROWN:** So that was the answer I was
11 looking to hear. Thank you.

12 All right. Commissioners, back to us. Anyone
13 want to take a stab at this?

14 Commissioner Graham.

15 **COMMISSIONER GRAHAM:** Well, I want to just
16 throw all this paper off my desk. It's sad that we've
17 gotten to this position that we are. I can understand
18 where Florida Crystals is, where they thought they
19 entered into a contract that was going to be this way
20 for the next 30 years. But I would imagine, and, staff,
21 tell me if I'm incorrect, that if there's a contract
22 dispute, then that's more of the courts and not
23 necessarily us; correct?

24 **MS. LEATHERS:** That's correct, Commissioner.
25 In a damages type situation, the parties could still

1 litigate that in court.

2 **COMMISSIONER GRAHAM:** So to me, that's -- even
3 though it's sad, it's still out of our purview. I think
4 our purview is to the ratepayers across the board. And
5 as staff says, if Option 4 is going to be the one that's
6 going to add a little pain to both sides so hopefully
7 they're going to be motivated, and at the end,
8 regardless of how this ends up after we have our
9 full-blown hearing, that there is going to be the
10 true-up so nobody is going to be the injured party at
11 the end of all this, I think that's probably the best
12 way to go.

13 **CHAIRMAN BROWN:** Is that a motion?

14 **COMMISSIONER GRAHAM:** That is a motion.

15 **CHAIRMAN BROWN:** Okay. The motion is to adopt
16 staff recommendation for Option 4. Is there a second?

17 **COMMISSIONER BRISÉ:** Second.

18 **CHAIRMAN BROWN:** Okay. Commissioner Edgar.

19 **COMMISSIONER EDGAR:** And just to clarify, that
20 would then include what has been termed a two-way
21 true-up?

22 **COMMISSIONER GRAHAM:** That's correct.

23 **CHAIRMAN BROWN:** Okay. So we're clear.

24 Commissioner Edgar, anything further?

25 **COMMISSIONER EDGAR:** I was just going to say

1 we've had some discussion about, you know, cost of
2 service but also, you know, the ability for -- within a
3 contractual arrangement for parties to negotiate. I'd
4 just recognize that cost of service is something that
5 this Commission has historically and traditionally used
6 as a general sort of underlying principle, and I would
7 expect that that would be something that would have
8 additional information and data and discussion when this
9 does go to hearing. But, again, recognizing that the
10 parties certainly have the ability to continue to
11 discuss and negotiate and bring a settlement forward
12 and, as always, we would encourage -- I would encourage
13 that that proceed.

14 **CHAIRMAN BROWN:** Thank you, Commissioner
15 Edgar. And I would also encourage that matter to be
16 resolved amicably outside of the litigation process
17 here.

18 All right. So we have a motion and a second
19 on the floor to adopt Option 4 proposed in the staff
20 recommendation, with the caveat that the true-up would
21 go both under -- under or over.

22 **MR. HETRICK:** Madam Chair, this would be a
23 temporary interim rate as part of that motion.

24 **CHAIRMAN BROWN:** That's right. Thank you,
25 though, for the clarification, Mr. Hetrick.

1 All right. Any further discussion? Mary
2 Anne?

3 **MS. HELTON:** I'm sorry, Madam Chairman, but I
4 think we do need to make one other clarification which I
5 think is obvious, but just for purposes of the record.
6 Staff had included in its recommendation some language
7 that if there was not an agreement reached by a date
8 certain, then there would be a limited proceeding that
9 should be filed, and obviously that now --

10 **CHAIRMAN BROWN:** Is struck.

11 **MS. HELTON:** -- is stricken.

12 **CHAIRMAN BROWN:** That's correct. Right. All
13 right. That's clear since we have set this straight for
14 hearing. Thank you. So I'm sure the order will reflect
15 that accordingly.

16 All right. Any further discussion on this
17 interim rate?

18 All right. All those in favor, say aye.

19 (Vote taken.)

20 Opposed?

21 (No response.)

22 The motion passes. Thank you.

23 And, again, I'd like to --

24 **MR. SELF:** Thank you, Commissioners.

25 **CHAIRMAN BROWN:** -- before we get to the last

1 issue, which is just close the docket, just encourage,
2 emphasize the -- we definitely always -- at least I love
3 to see a matter that has obviously been very
4 contentious, love to see it resolved amicably outside
5 the ratepayers' dollars being spent through this
6 process. So I want to encourage that.

7 On -- Issue 6 is close the docket. Can I get
8 a motion?

9 **COMMISSIONER EDGAR:** I would move staff
10 recommendation with the understanding that the language
11 would reflect the decisions made today.

12 **CHAIRMAN BROWN:** Okay. Thank you. Is there a
13 second?

14 **COMMISSIONER PATRONIS:** Second.

15 **CHAIRMAN BROWN:** All those in favor, say aye.

16 (Vote taken.)

17 Motion passes. Any further comment to the
18 parties or staff?

19 Thank you all for being here today.

20 **MR. SELF:** Thank you, Commissioners.

21 **CHAIRMAN BROWN:** Thank you.

22 **MS. HELTON:** Madam Chair, if we could get
23 staff to recollect the red folders and give them back to
24 Mr. Self. Since we already have a copy here, we don't
25 need to keep all these red folders.

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CHAIRMAN BROWN: Can you designate --

Ms. Draper is doing it. Thank you.

We're going to be taking a short five-minute break before we get to the issue -- actually Item 12, which is a panel.

(Recess taken.)

(Agenda item concluded.)

1 STATE OF FLORIDA)
 :
2 COUNTY OF LEON) CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney, or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 9th day of December, 2016.

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LINDA BOLES, CRR, RPR
Official FPSC Hearings Reporter
Office of Commission Clerk
(850) 413-6734

Dear Commissioners and Other Addressees:

I believe the rate increase for Aquarina Utilities, Inc. under current consideration is flawed in as much as a significant related party transaction(s) of \$184,269 was not addressed by your audit staff in its audit report issued April 3, 2015 (Document No. 01846-15). Also, compensation may be paid for an absentee officer, Kevin Burge who is devoting substantially all his time at Polk City Water and Sewer.

The auditor's report on page 32 fourth paragraph states that "Order NO. PSC-05-0621-PAA-WU requires "heightened scrutiny" for Related Party transactions. So in their report they make note of the importance of related party transactions and provide a schedule of some related party transitions. Yet, this very significant amount of \$184,269 was not noted. Page E5 of the 2014 annual report has a flow chart showing all the related parties so it should not be a secret to the staff as to whom the related parties are.

The importance of this regards total compensation to Kevin and Holly Burge, the officers who run this utility on behalf of its owner, Reginald Burge, who is Kevin Burge's father.

My attached spreadsheet shows that known compensation to the Burges is \$197,992 or 42.048%. This is very high in relation to total operating expenses of \$470,871 per their annual report for 2014. If you assume 50% of the \$184,269 paid to Aquarina Waterworks, Inc. (owned 100% by Holly Burge) is some form of compensation or management fees, then total compensation is \$290,111 or 61.16%.

Just think that the total compensation paid to the Burges is \$197,992 plus this payment to Aquarina Waterworks, Inc. of \$184,269 together totals \$382,261 or 81.18% of total operating expenses. I have not included other payments made to the Burges from Aquarina Utilities, Inc. of some leases and other reimbursements to them, otherwise this percentage would be even higher.

Additionally, compensation to Kevin Burge must certainly be scrutinized by the audit staff as to time he spends at Aquarina Utilities, Inc. The reason, he works substantially all his time at Polk City Water and Sewer where Aquarina Waterworks, Inc. has a \$450,000 management contract. So how can he justify a large compensation for Aquarina Utilities, Inc. if he is not putting in the time?

I call your attention to Docket No. 021228-WS: PSC Staff Report issued 11/24/03, page 29 where the hourly rates for a utilities manager was questioned and your staff recommended a rate of \$28.63 per hour for services of a general manager instead of the \$80.00 per hour which the staff found unreasonable. What rate and how many hours does your staff find for Aquarina Utilities, Inc.?

When folks start creating several entities commonly owned, then this opens opportunities for hiding transactions. That is why the Order PSC-05-0621-WU was created, to heighten auditors of the possibility of things being hidden from them or disguised.

In summary, I request the auditors take a hard look at the payment(s) to Aquarina Waterworks of \$184,269 very thoroughly and ask for back up documents to support this charge or charges. I think they will find part of it is hidden management fees. In addition, the staff should look at the time Kevin Burge puts in at Aquarina as of current and not the past as the contract at Polk City that he is running started October 2015 and was renewed October 2016. He should be paid a reasonable salary for the hours he is at Aquarina Utilities, Inc.

Parties/Staff Handout
Internal Affairs/Agenda
on 12 / 6 / 16
Item No. 8

When your staff has done this work, please reevaluate the compensation of all types paid to Holly and Kevin Burge and then set the rates accordingly.

We customers of Aquarina Utilities, Inc. want this company to be successful. We need them but we do not want to pay excess salaries or other forms of remuneration to the officers. They should be paid what is reasonable for the time put in and allowed a reasonable profit.

Thank you for allowing me the opportunity to address this serious issue with you.

Sincerely,

Phillip Mills
857 Aquarina Blvd.
Melbourne Beach, FL 32951

Aquarina Utilities, Inc
 List of Compensation for 2014

	Compensation	Percent of Total
	Expenses for 2014	
These taken from Staf Audit Report dated April 3, 2015 for year 2014 page 32		
Salaries of Kevin and Holly Burge (do not know how much for each)	137,160	
Payroll taxes on salaries	35,710	
Management fees	5,790	
Health Insurance	4,264	
Allowable meals	2,704	
TOTAL COMPENSATION	185,628	39.4223%
Expenses paid by Aquarina for Burges but not allowed in rate case (pages 24/26 Audit Report)		
Dissallowed fuel for vehicles	3,727	
Personal airline ticket	750	
Dissallowed repairs to vehicles	1,487	
Dissallowed vehicle insurance	1,163	
Dissallowed vehicle insurance	2,327	
Dissallowed personal meals	1,940	
Dissallowed personal meals	970	
EXPENSES PAID BY AQUARINA FOR PERSONAL USE DISSALLOWED	12,364	2.6258%
Total Compensation and personal expenses for 2014 without knowing how much of the \$184,269 may be a form of compensation	197,992	42.0480%
Payments to Aquarina Water Works	184,269	Unknown
(Note: because the auditors did not audit this expense and disclose the details under Related Party Information we do not know how much of this expense, if any, is management fee or some other form of compensation)		
Total operating expenses for 2014 for Aquarina Utilities, Inc, was \$470,871 Per Their Annual Report Recorded 3/23/15		

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-

DATE: April 3, 2015
TO: Office of Commission Clerk
FROM: Lynn M. Deamer, Chief of Auditing, Office of Auditing and Performance Analysis
RE: Docket No.: 150010-WS
Company Name: Aquarina Utilities, Inc.
Company Code: WS949
Audit Purpose: Staff-Assisted Rate Case
Audit Control No: 15-015-4-1

Attached is the final audit report for the Utility stated above. I am sending the Utility a copy of this memo and the audit report. If the Utility desires to file a response to the audit report, it should send a response to the Office of Commission Clerk. There is no confidential work papers associated with this audit.

LMD/cp

Attachment: Audit Report

cc: Office of Auditing and Performance Analysis File

Parties/Staff Handout
Internal Affairs/Agenda
on 12/6/16
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Finding 10: Information on Related Parties

Audit Analysis: The Utility is owned 100 percent by Reginald Burge who serves two additional roles as the Utility's Vice President, and as a part-time contractor for maintenance services. Kevin Burge, the son, serves dual roles as President and Utility Director/Maintenance Foreman. Holly Burge, Kevin's spouse, serves dual roles as Secretary/treasurer and Office Manager/Controller.

Reginald Burge is reimbursed for time, materials, transportation and meals for the services he provides as a contractor for utility services. He also receives monthly payments for personal equipment that he leases to the Utility.

Kevin and Holly Burge are employees of Aquarina Waterworks, Inc., an affiliated company that is wholly owned by Kevin and Holly Burge. Their entire salary as well as all associated payroll and employment taxes is charged to the Utility, as if they were utility employees. Additionally, they are reimbursed for parts, materials, supplies, transportation and meals for services they provide as utility employees. They also receive monthly payments for personal equipment and maintenance building space that they lease to the Utility.

Order No. PSC-05-0621-PAA-WU, issued June 6, 2005, found that, "Related party transactions require heightened scrutiny. Although a transaction between related parties is not per se unreasonable, it is the utility's burden to prove that its cost are reasonable. This burden is even greater when the transaction is between related parties. The Courts have established that when affiliate transactions occur, that does not mean that unfair or excessive profits are being generated, without more evidence to contrary. The standard is to evaluate affiliate transactions and determine whether those transactions exceed the going market rate or are otherwise unfair".

The reimbursement amounts included in the test year for these services are detailed below.

Lessor/Expense	Amount
Reginald Burge	
Time	\$2,512
Materials & Supplies	\$8,268
Transportation	\$280
Meals	\$185
Equipment lease	\$5,400
Kevin & Holly Burge	
Salaries	\$137,160
Payroll & Employment Taxes	\$35,710
Management Fee	\$5,790
Materials & Supplies	\$16,258
Office Supplies & Materials	\$8,084
Testing & Chemicals	\$790
Insurance & Dues	\$4,264
Transportation	\$15,676
Meals	\$2,704
Office lease & phones	\$5,050
Equipment lease	\$18,000
Total	\$249,487

A portion of the costs included above are the result of direct reimbursements that are supported by adequate documentation. However, we believe that the salaries, associated payroll and employment taxes, and lease payments, though not necessarily excessive, fall under the “heightened” level of scrutiny as described in the Order above.

We made adjustments that increased the test year expense for leased property and equipment by \$2,600 (Property increase of \$8,000 less equipment decrease of \$5,400) based on the new 2015 lease agreements which are discussed in Finding 8. Time constraints prevented us from determining whether the new lease rates included for the equipment and building exceed the going market rate or are otherwise unfair.

Additionally, for the same reason, we were unable to determine whether the salary expenses displayed above were reasonable based on the job descriptions provided and task that the employees’ perform.

The transportation costs are discussed in Finding 11.

We defer the disposition of leased property and equipment and the employee salary amounts to the analyst and engineer in this rate proceeding.

Effect on the General Ledger: None

Effect on the Filing: To be determined by Tallahassee staff.



Commission OKs utility contract in Polk City

Tuesday

Posted Sep 22, 2015 at 11:36 AM

The City Commission selected a bid proposal for water and sewer utility facility management at Monday's meeting.

By Mark CavittNews Chief

POLK CITY — The City Commission selected a bid proposal for water and sewer utility facility management at Monday's meeting.

Aquarina Water Works Inc. was chosen to manage the city's water and sewer utilities after submitting a one-year contract proposal for \$425,000 that will begin Oct. 1.

Final approval of the contract will be made by the commission Sept. 28 after its final 2015-16 budget hearing, which will begin at 7 p.m.

Four bid proposals were presented to the commission on Sept. 15 to manage the city's water and sewer utilities. Representatives of Aquarina Water Works, Severn and Trent Water, U.S. Water, and Veolia each gave a presentation. Each proposal was for a one-year contract.

The four bids ranged from \$425,000 to \$521,921, with Aquarina Water Works the lowest bidder.

There is \$510,000 budgeted for fiscal year 2015-16 for water and sewer utility services but that figure would have provided no reserves under the contract with Woodard and Curran, which now operates the systems. The contract with Aquarina Water Works Inc. will allow for reserves.

“There will be a mutual release of our contract between the city, and Woodard and Curran, which will end their contract effective Oct. 1,” said City Manager Patricia Jackson.

The commission approved a five-year contract with Woodard and Curran in November 2010 to outsource the management of water and sewer utilities. That contract is for \$491,000 per year.

“Their (Aquinara Water Works Inc.) contract has pretty much spoken for itself,” said Commissioner Keith Prestage. “After talking with them I feel confident they can do the job for the amount and stay within that \$425,000.”

Commissioner Don Kimsey said he felt that this contract would be in the best interest of the city moving forward.

“This was simply a financial decision made by a small city,” said Mayor Joe LaCascia. “This had nothing to do with Woodard and Curran’s performance over the past five years. Woodard and Curran have done an incredible job.”

In other business

The commission:

- Heard a presentation from Florida Gas Transmission Company regarding a federally mandated test of the Saint Petersburg Lateral Pipeline. This pipeline provides the majority of the natural gas for power generation in Polk County. The purpose of the standard test is to confirm the safety and reliability of the pipeline.

The test will be conducted Oct. 5 from midnight to 4 a.m. Road closures in Polk City will include Commonwealth Avenue North from Voyles Loop South to Voyles Loop North.

- Renewed a work squad contract with Florida Department of Corrections for three years. This will cost the city \$57,497 per year, the same as the previous contract.
- Approved an ordinance on first reading regarding the continuation of a moratorium on the collection of impact fees, other than the impact fees for water and sewer services for three months from Oct. 1 through Dec. 31.



TO THE GREEN SWAMP

GOVERNMENT

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Sewer Department

Responsibilities

- Maintain two lift stations
- Daily inspections
- Making repairs
- Mow and weed grounds

Sewer Lines

- Needed repairs
- Installing new lines
- Locating lines
- Line locates

Contractor Contact Information

Aquarina Water Works

Keith Burge - 863-984-1375 x 226
Kevin Burge - 863-984-1375 x 227

CONTACT US

Chasity Hall, Supervisor

Utilities, Collections
863-984-1375 x ext 243

Kathy McKinney

Utilities, Collections
863-984-1375, ext 241

863-874-4808 Direct Line

After Hours Emergency

Number
1-866-815-0074

Hours

Monday - Thursday
7:30 a.m. - 5:30 p.m.

Hours Open to the Public

Monday - Thursday
8:00 a.m. - 5:00 p.m.

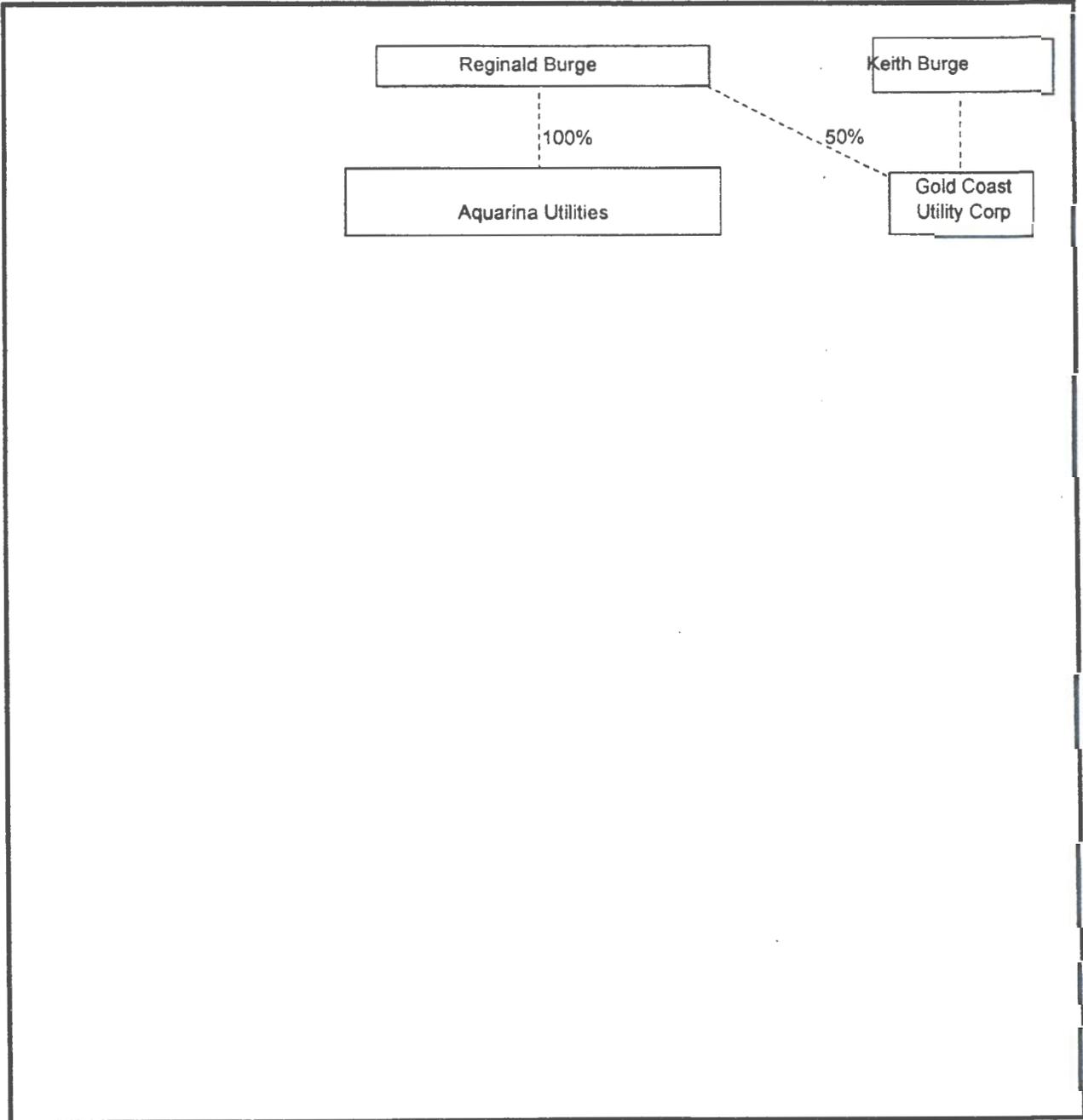
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UTILITY NAME: Aquarina Utilities, Inc.

YEAR OF REPORT
December 31, 2015

PARENT / AFFILIATE ORGANIZATION CHART
Current as of 12/31/15

Complete below an organizational chart that shows all parents and subsidiaries of the utility. The chart must also show the relationship between the utility and the affiliates listed on E-7, E-10(a) and E-10(b).



E-5

Parties/Staff Handout
Internal Affairs/Agenda
on 12/6/16
Item No. 10

UTILITY NAME: Aquarina Utilities, Inc.

YEAR OF REPORT December 31, 2015
--

COMPENSATION OF OFFICERS

For each officer, list the time spent on respondent as an officer compared to time spent on total business activities and the compensation received as an officer from the respondent.			
NAME (a)	TITLE (b)	% OF TIME SPENT AS OFFICER OF UTILITY (c)	OFFICERS COMPENSATION (d)(1)
Kevin R. Burge Reginald J. Burge Holly Burge	President	100 %	\$ -
	VP	50 %	\$ -
	Secretary / Treasurer	100 %	\$ -
			% \$
			% \$
			% \$
			% \$

(1) Compensation per contract for direct labor

COMPENSATION OF DIRECTORS

For each director, list the number of director meetings attended by each director and the compensation received as an director from the respondent.			
NAME (a)	TITLE (b)	NUMBER OF DIRECTORS MEETINGS ATTENDED (c)	DIRECTORS COMPENSATION (d)
None			\$ None \$ \$ \$ \$ \$ \$ \$ \$ \$

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to
implement contract
transportation service by City
Gas Company of Florida.

DOCKET NO. 000717-GU
ORDER NO. PSC-00-1592-TRF-GU
ISSUED: September 5, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

ORDER GRANTING AUTHORITY TO IMPLEMENT CONTRACT TRANSPORTATION
SERVICE BY CITY GAS COMPANY OF FLORIDA

BY THE COMMISSION:

On June 15, 2000, City Gas Company of Florida, a Division of
NUI Corporation, (City Gas or the Company) filed its petition for
approval to implement a Contract Transportation Service Rate
Schedule KTS. The proposed tariff has been designated Rate
Schedule KTS, since the Company already has a Rate Schedule
Commercial Transportation Service (CTS). Jurisdiction over this
matter is vested in the Commission by Sections 366.04, 366.05, and
366.06, Florida Statutes. 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 will not
be set lower than the incremental cost the Company incurs to serve
the customer.

The proposed KTS Rate Schedule would apply to new and existing
customers who bring 250,000 therms per year of incremental load
onto the Company's natural gas distribution system. The CTS Rate
Schedule is for any non-residential customer using more than
120,000 therms per year, and who would otherwise qualify for the
Company's Large Commercial Sales Service.

We have recognized the competitive pressures 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's Commercial Industrial Service

Parties/Staff Handout
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DOCUMENT NUMBER-DATE

10936 SEP-58

FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-1592-TRF-GU
DOCKET NO. 000717-GU
PAGE 2

Rider (CISR), Order No. PSC-96-1219-FOF-EI, Tampa Electric's CISR, Order NO. PSC-98-1081-FOF-EI, Florida Power & Light and Florida Power Corp's Economic Development Rider Rate Schedule, Order No. PSC-98-1222-FOF-EI and Order No. PSC-98-0603-FOF-EI, respectively, and Peoples Gas Contract Transportation Service tariff, Order No. 20529-A. All of these riders allow the utility to enter into negotiated contracts with customers meeting a minimum threshold of new or retained/added load.

Our basis for allowing these utilities the ability to negotiate a contract rate, is that a large volume usage customer can have a substantial impact on the financial viability of the utility.

Under the proposed contract transportation service, the Company's existing customers will not be adversely affected. The Company will not require the use of its competitive rate adjustment clause 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that City Gas Company of Florida's Petition for Authority to Implement Contract Transportation Service is granted. It is further

ORDERED that if no protest is filed within 21 days of the issuance of this Order, this docket shall be closed upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance of this Order, the tariff shall remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest.

Rate Schedule KTS, Original Sheets Nos. 76 & 77, effective as of 2/15/2001

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.

Rate Schedule KDS, Original Sheet No. 49, effective as of 12/7/2004

MONTHLY RATE

1. The Distribution Charge shall be an amount negotiated between Company and Customer, but the rate shall not be set lower than the incremental cost the Company incurs to serve the Customer. The charge shall include any capital recovery mechanism. The charge shall be determined by the Company based on Company's evaluation of competitive and overall economic market conditions 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 KDS rate will only apply to the additional load added to the Company's system.

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