BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Miami-Dade County through The Miami-Dade Water and Sewer Department for Approval of Special Gas Transportation Service Agreement with Florida City Gas

Docket No. 090539-GU

_____/

(REDACTED VERSION)

DIRECT TESTIMONY

OF

BRIAN P. ARMSTRONG

ON BEHALF OF MIAMI-DADE COUNTY WATER AND SEWER DEPARTMENT

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BRIAN P. ARMSTRONG

TO

THE STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

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December 29, 2010

DIRECT TESTIMONY OF BRIAN P. ARMSTRONG ON BEHALF OF MIAMI-DADE WATER AND SEWER DEPARTMENT

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Brian P. Armstrong and my business address is c/o Nabors, Giblin & Nickerson, P.A., 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND WORK EXPERIENCE?

A. I attended Boston College and St. John's University where I obtained my Bachelor of Arts degree in 1981. I graduated from the Georgetown University Law Center from which I received my Juris Doctor degree in 1984.

I began my legal career with the law firm of Cullen and Dykman in New York in 1984 where I was an associate in the firm's Utilities Department. While with Cullen and Dykman, I spent the vast majority of my time representing natural gas utilities, predominantly the Brooklyn Union Gas Company, now part of Keyspan, as well as some electric utility related work. I left Cullen & Dykman in 1990 to join Southern States Utilities, Inc., later known as Florida Water Services Corporation, which I will call "Florida Water," from 1990 until March, 2000. I was serving as Senior Vice President and General Counsel for Florida Water when I left the company.

In March 2000, I joined the law firm of Nabors, Giblin & Nickerson, P.A. in the Tallahassee office where I lead the Public Utilities Law practice area. Throughout my twenty-five year legal career, I have been involved in utility rate cases and rate-making, including some of the largest rate cases ever filed in the natural gas industry in New York and the water and wastewater industry in Florida. I also have negotiated and assisted clients in the negotiation of a wide variety of agreements in the public and private utility sectors.

As I indicated earlier, while with Florida Water, I not only performed legal

services but as Senior Vice President I also led the environmental compliance, contract administration, government relations and public relations departments of the utility and was involved in all material management decision-making.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. Miami-Dade contacted me when it ran into some difficulty with Florida City Gas, which I will refer to as "FCG," in relation to a gas transportation agreement, which I will call the "2008 Agreement." Miami-Dade explained that it had entered the 2008 Agreement, approved by Miami-Dade's Board of County Commissioners and FCG's President, Hank Lingenfelter, but that FCG refused to permit the Florida Public Service Commission, which I will refer to as the "Commission," to consider the agreement for approval. Miami-Dade asked me, together with Jack Langer, President of Langer Energy Consulting, Inc., to advise them in its dealings with FCG. When FCG refused to present the 2008 Agreement to this Commission for approval, and Miami-Dade was forced to file it, Miami-Dade asked me to present testimony on its behalf as to the appropriate policy decisions which the Commission should apply in its consideration of the 2008 Agreement.

Q. WHAT ARE YOUR POLICY RECOMMENDATIONS TO THE COMMISSION IN THIS PROCEEDING?

A. Briefly, to the extent this Commission believes that the 2008 Agreement is not exempt from Commission consideration pursuant to section 366.11 of the Florida Statutes and Rule 25-9.034(1), the Commission should approve the 2008 Agreement as it is written, including the rates contained in section VII.

Q. DOES FCG OPPOSE THE COMMISSION'S APPROVAL OF THE 2008

AGREEMENT RATES?

A. To summarize what has transpired in the past three years or so, FCG has changed its position regarding the propriety of the 2008 Agreement rates. Initially, FCG agreed with Miami-Dade that the rates were reasonable and proper. FCG advised the Commission at page 5, paragraph 11, of its petition for approval of the 2008 Agreement filed by FCG as follows:

> "The agreement provisions are justified, are in the best interest of FCG and do not harm FCG's ratepayers because (a) FCG will recover its cost to serve Miami-Dade County via the rates charged to Miami-Dade County, (b) serving Miami-Dade County removes from the general body of ratepayers costs that would otherwise be allocated to those ratepayers in the absence of the agreement, (c) losing Miami-Dade County as a customer would be detrimental to the general body of ratepayers, and (d) Miami-Dade County negotiated the agreement at arm's length with FCG and Miami-Dade County approved the agreement as being in the best interest [of] Miami-Dade County and its citizenry."

Then, in response to Commission Staff data request number 1 on December 30, 2008 FCG states that, "upon further review [FCG] believes that this assertion was incorrect and should not have been included in the original petition." Although FCG for the first time changed its position to suggest that the 2008 Agreement rates do not cover its cost of service, FCG continued to support the reasonableness of the rates suggesting that:

> "[t]he 1998 contract was offered at a rate that recovered less than the cost of service applicable to the contract due to the prospect of customer bypass . . . continued service to Miami-Dade at the contract rate provides incremental load to the [FCG] system therefore allowing certain O&M costs to be allocated to Miami-Dade that would otherwise have to be recovered by the general body or ratepayers."

After being advised by Commission Staff that Staff would not support Commission approval of the 2008 Agreement in large part due to Staff's belief that the rates were too low, and possessing a written directive from Commission Staff that FCG should be able to negotiate for higher rates from Miami-Dade, FCG dropped any pretense of support of the 2008 Agreement rates and has since affirmatively opposed the Commission approving the rates in the 2008 Agreement.

Q. DO YOU BELIEVE THE 2008 AGREEMENT SHOULD BE EXEMPT FROM COMMISSION CONSIDERATION UNDER THE RULE YOU MENTIONED?

A. Yes, I do. Miami-Dade is a unit of government with special privileges that are explicitly recognized in Florida's Constitution. Significantly, Miami-Dade is entitled to all of the privileges, including exemptions, available to Florida municipalities as well as counties. Miami-Dade and I continue to believe the exemption of government utilities and agreements between government utilities and investor-owned utilities regulated by the Public Service Commission found in section 366.11 and the Commission's Rule 25-9.034(1) should be applied to the 2008 Agreement as such an exemption is provided in recognition of the fact

that government utilities are owned and operated by individuals elected by the customers of the government utilities. As such, the elected representatives of the people are the ones who have determined whether an agreement entered by their utility department contains terms which are in the public interest. The Public Service Commission is not required to protect the interest of the customers serviced by the government utility. Whether the acts which FCG is required to perform on behalf of Miami-Dade are characterized as services, products, commodities or something else is irrelevant as the principal consideration is the possibility that the Commission will usurp the prerogative of duly elective government officials to operate the utilities serving their constituents in a manner consistent with their best interest, the public interest, or face not being re-elected.

Although the Commission has issued an order finding that it has jurisdiction to address the 2008 Agreement and that Miami-Dade is not entitled to an exemption, these unique facts presented in an agreement between a government-owned utility, like Miami-Dade, and an investor-owned utility, like FCG, should be considered by the Commission when deciding whether to approve such an agreement.

For example, the Commission has refused to consider the reasonableness of the terms of agreements between private water and wastewater utilities and their government utility counterparts due to a very similar exemption provided by Florida law. While working for Florida Water, I wrote and represented the utility in persuading the Florida Legislature to grant this exemption, with the cooperation and assistance of representatives of county and city governments, on the basis that the elected government officials were best suited to negotiate in

the best interest of their customers who are residents and voters within their respective political boundaries. If this Commission asserts jurisdiction over agreements between a government utility and a regulated utility, and particularly if it changes the terms in such an agreement, how is this different than asserting jurisdiction over the government utility itself, at least as to the agreement's impact on the government and its customers/voting constituents? This logic prevailed and the statutory exemption was enacted. The same logic applies in this case and should be applied by the Commission whether or not the 2008 Agreement is exempt under the Commission's interpretation of the rule. If the Commission does not approve the 2008 Agreement, it will have deprived Miami-Dade of the benefit of its bargain.

Miami-Dade understands that the Commission is tasked with determining the public interest which will best serve the utilities it regulates as well as their customers, including not only Miami-Dade but FCG's other customers. But I believe the Commission can do this by approving the 2008 Agreement, or finding it exempt from Commission jurisdiction, and leaving FCG to fulfill the bargain it made with Miami-Dade as set forth in the 2008 Agreement. To do otherwise, and specifically if this Commission was to find that Miami-Dade must pay more to FCG than FCG's president and legal counsel, as well as the senior management and legal counsel of its parent, AGL, had agreed to accept, would harm Miami-Dade and ultimately the 2,000,000 utility customers that it serves as the additional costs would have to be paid by them.

On the other hand, if the Commission either exempts the 2008 Agreement or approves it, Miami-Dade and its customers would have the benefit of the rates it bargained for, no additional costs would be imposed on Miami-Dade's

customers and no additional costs would have to be imposed on FCG's other customers.

Q. YOU STATE THAT "NO ADDITIONAL COSTS WOULD HAVE TO BE IMPOSED ON FCG'S OTHER CUSTOMERS" BUT HASN'T THE COMMISSION STAFF OBJECTED TO THE 2008 AGREEMENT RATES ON THE BASIS THAT OTHER FCG CUSTOMERS WOULD HAVE TO ABSORB COSTS ASSOCIATED WITH FCG'S TRANSPORTATION SERVICES TO MIAMI-DADE?

A. Yes, Commission Staff has indicated its concern that the 2008 Agreement rates are too low and that this causes concern because: (1) the Commission must protect the financial integrity of the utilities, like FCG, that it regulates, and (2) other FCG customers could be harmed if the Agreement is approved because they would have to absorb additional FCG costs above the costs paid for under the rates to be paid by Miami-Dade. The remainder of this testimony will address these Staff concerns but, briefly, neither FCG nor FCG's customers other than Miami-Dade need to bear any harm upon the Commission's approval of the 2008 Agreement.

Q. MIAMI-DADE WITNESSES RUIZ AND HICKS REFER TO A DOCUMENT PROVIDED TO THEM BY FCG WHICH IS DESCRIBED AS THE "MIAMI-DADE WATER PLANT - RATE DESIGN COMPARISON." THIS DOCUMENT HAS BEEN IDENTIFIED AS EXHIBIT ___ (JL-9) IN THIS PROCEEDING. HAVE YOU REVIEWED THIS EXHIBIT AND DO YOU HAVE ANY COMMENTS RELATED TO IT?

A. Yes, I have reviewed the exhibit. My comments are as follows:

First, the exhibit was provided to Miami-Dade as a purported incremental cost study. It is not.

Second, FCG has never provided a single document to substantiate any item identified on this exhibit. No original cost information or invoices for pipe or construction to establish FCG's investment in the incremental pipe, which I am told is less then two miles in length and was installed 25 years ago or more has ever been provided to Miami-Dade or, I believe, the Commission as of the day this testimony is being filed with the Commission. Therefore, even the figures under the column headed "1999 Rate Design" are suspect.

Third, using the information provided by FCG relating to the Alexander Orr plant for example, it is obvious that FCG has increased dramatically its alleged incremental cost associated with service to Miami-Dade in two categories, depreciation and O&M expenses.

Depreciation expenses allegedly increased from $11,230 in the "Pre 1999-Rate Design" to $45,503 in the "November '08 Surveillance Report" column. It appears that FCG may have changed its method for calculating incremental costs between the 2 columns. Also, FCG has never explained or demonstrated documentary support for this increase in depreciation expenses. The incremental depreciation cost to serve Miami-Dade, through the use of two miles of FCG pipe, should not have increased as FCG has not proven that it has made any additional investment at all in the two miles of pipe used to serve Miami-Dade since it was originally installed. As I mentioned earlier, FCG has failed to provide support for even its original investment in the pipe. Even the $11,230 depreciation expenses shown for 1999 may be higher than the depreciation cost which should be expected for two miles of pipe constructed 25

years or more ago and depreciated using a service life of many years.

Inexplicably, FCG suggests that its "O&M Expenses" have increased from $3,500 to $87,671 during this 10-year period. Again, FCG has provided no explanation or support for this astronomical increase. No documents, work orders or any proof whatsoever that FCG's costs of operating or maintaining the two miles of pipe used to serve Miami-Dade rose from a few thousand dollars to nearly $90,000 in only 10 years. Again, FCG appears to have changed its method for calculating its incremental operating cost. The 1999 cost appears much more reasonable as the operation and maintenance cost for two miles of pipe logically would be very small. I also note that this Commission granted AGL/FCG's request for an acquisition adjustment premised upon AGL's assertions that its purchase of FCG would bring economies and efficiencies to FCG customers. No such economy is evident in an inexplicable annual operating cost increase from $3,500 to nearly $90,000 in only 10 years.

Fourth, I note that federal and state taxes decreased from 1999 to 2008 and if the inflated depreciation and O&M expenses are reduced to reflect true incremental costs then it is likely that "Taxes Other Than Income" also may decrease.

Fifth, the increase in depreciation expenses does not appear logical as such an increase would suggest that FCG has invested additional capital in the two miles of pipe used to serve it. However, FCG shows its "Required Return on Investment (Rate Base x ROR)" as decreasing from $30,399 under the "Pre 1999-Rate Design" to $28,502 under the "Per Nov '08 Surveillance Report." The required return on investment logically would increase if FCG increased its investment in the two miles of pipe in the 10 years between 1999 and 2008. Another possible explanation is a change in depreciation rates used, for instance,

if FCG was authorized by the Commission to accelerate significantly the depreciation of the pipe. However, Miami-Dade has not been provided any evidence of such authorization and given the rather small investment of FCG in the pipe and the 25 years or more that it has already been in service, it could be presumed that if the depreciation of the lines was accelerated at some point, FCG's investment, and associated depreciation cost would reduce to 0 quickly.

Q. WHY IS THE ANALYSIS OF THE INFORMATION PROVIDED BY FCG IN EXHIBIT ___ (JL-9) SO IMPORTANT?

A. This exhibit apparently was provided to the Commission staff and Miami-Dade as proof that certain components of FCG's incremental cost of service and thus the "Incremental Cost Rate," as FCG calls it, increased greatly between 1999 and 2008. This is not reasonable absent production of original cost and subsequent continuing property records as well as evidentiary support that FCG increased its investment in the two miles of pipe serving Miami-Dade and that is costs to operate and maintain the pipe, which FCG has admitted were merely routine during this period, has increased by between 400% and 500% in only ten years. This also is not likely or logical.

This information also appears to be the basis for Commission Staff's initial disfavor for the 2008 Agreement.

Q. I SHOW YOU EXHIBIT ____ (BPA-1) UNDER COVER PAGE TITLED "COMMISSION STAFF REJECTION OF 2008 AGREEMENT." WAS THIS EXHIBIT PREPARED BY YOU OR UNDER YOUR DIRECTION AND SUPERVISION?

A. Yes. This exhibit contains copies of certain documents provided to Miami-Dade in response to a document production request to FCG. The document

consists of electronic correspondence and an attachment from Commission Staff to FCG's attorney. The correspondence dated January 15, 2009 states:

> "knowing that everyone is anxious to move this matter along, I spent yesterday going over the responses and additional information from the utility's most recent rate case and CRA filing. The only conclusion I can come to at this point is that the contract is not in the best interests of the general body of ratepayers. I've detailed my concerns in the attached document. Please let me know how the utility wants to proceed."

The remainder of the exhibit includes a copy of the one page attachment delineating staff's concerns regarding the rates in the 2008 Agreement.

The first reason for Staff's disfavor is Staff's belief that the tariff rate schedule identified in the 2008 Agreement is not applicable primarily because it addresses incremental load only. As Mr. Hicks testifies, and FCG has admitted in response to a Miami-Dade inquiry, FCG selected the tariff schedule identified in the 2008 Agreement and changed the Agreement to replace the previously identified tariff schedule with the "KDS" Rate Schedule which Staff now objects to.

Next, Staff describes the purpose for the Commission approving what Staff describes as "load retention contract rates" under the KDS Rate Schedule. Staff explains as follows:

> "The fundamental reason the Commission has approved load retention contract rates is the theory that retaining a customer who is paying something above the incremental

> cost of service is better than losing all supporting revenue and thereby shifting all fixed costs to the general body of ratepayers. This concept was underscored in the company's last rate case (DN 030569-GU) '. . . the [flex] rate adjustment enables the Company to retain customers that, even at reduced rates, make significant contributions to the recovery of fixed costs.'"

Staff then lists 5 reasons why the 2008 Agreement rates do not satisfy Staff "[a]ssuming the incremental is correctly calculated in the company's response dated December 30 . . . ." Staff then advises FCG as follows:

> "The ceiling for any negotiated rate is the cost of the customer's alternative energy source. Based on the estimated cost of bypass provided in the utility's response dated January 9, it appears there is considerable room to increase the contract price without danger of losing the load."

As Miami-Dade witness Ruiz testifies, Miami-Dade is mystified that Commission Staff first presumed that the incremental cost information provided by FCG was accurate, which Miami-Dade does not believe it is, and then as much as instructed FCG to go extract higher rates from Miami-Dade.

Shouldn't Staff, or couldn't Staff in the alternative have advised FCG that it believed the revenue to be received by FCG was too low and that Staff would recommend that the 2008 Agreement be approved by the Commission with the further recommendation that FCG not be authorized to recover the difference between the contract revenue and FCG's incremental cost from other FCG

customers? After all, FCG had signed a binding contract with Miami-Dade, and Commission Staff already had determined that FCG had attempted to use the wrong tariff schedule in the Agreement. The potential adverse impact upon Miami-Dade and its customers from the advice Staff actually gave to FCG apparently never entered Staff's mind as it expressed concern only for "the best interests of the general body of [FCG's] ratepayers." What about the ratepayers/customers of the Miami-Dade Water and Sewer Department many of whom likely are also FCG customers?

Miami-Dade witness Ruiz provides a litany of facts demonstrating "bad acts" by FCG in relation to its efforts to extract higher rates from Miami-Dade once it received this direction from Commission Staff.

These bad acts include FCG's incredible claim to Miami-Dade that the 2008 Agreement is null and void because FCG delayed filing the 2008 Agreement with the Commission and then unilaterally withdrew the Agreement from Commission consideration thus making it impossible for the Commission to act upon it within the 180-day deadline provided in the Agreement. No party to a contract can avoid its obligations by affirmatively taking steps which makes the performance of such obligations impossible. Florida law is clear on this point. For FCG to even make this argument is outrageous. FCG should not be rewarded by this Commission for this act and the other acts of mismanagement identified by Mr. Ruiz.

FCG, a large investor-owned utility, owned by an even larger multi-state utility, both of which have been in the utility business for many years, both of which have senior management and counsel skilled in the regulatory arena, and which assigned senior management and both inside and outside counsel to different

phases of the negotiation of the 2008 Agreement, should not now be permitted to escape the obligations they committed to perform in the 2008 Agreement with Miami-Dade, including the rates to be charged.

Q. DOES THE COMMISSION POSSESS THE DISCRETION AND AUTHORITY TO APPROVE THE 2008 AGREEMENT AND REFUSE TO ALLOW FCG TO RECOVER FROM OTHER FCG CUSTOMERS THE DIFFERENCE, IF ANY, BETWEEN THE REVENUE RECEIVED UNDER THE AGREEMENT AND FCG'S COST OF TRANSPORTING GAS FOR MIAMI-DADE?

A. Yes, it does. The Commission's authority to do so is demonstrated by the Commission's authorization for FCG to include the Flexible Gas Rate Schedule in FCG's tariff. This rate schedule clearly provides FCG wide latitude and discretion when entering transportation agreements, the terms of which deviate from any other FCG tariff rate schedule. Most important, this rate schedule authorizes FCG and its shareholders to bear the risk and enjoy the rewards from these types of special agreements. Had FCG inserted a reference to the Flexible Gas Rate Schedule into the 2008 Agreement, as Miami-Dade prefers, instead of the KDS Rate Schedule, this proceeding likely never would have occurred.

Also, consider if it was Miami-Dade providing transportation service for FCG. Assume that Miami-Dade enters an agreement with FCG to transport FCG's gas and the parties agree to the rates to be paid by FCG for the service. As the Commission has admitted in an order issued earlier in this proceeding, the Commission has no regulatory authority over Miami-Dade. Consider that in FCG's next rate case, FCG requests recovery in rates of the payments it is making to Miami-Dade for the transportation services being provided. If the

Commission determines that FCG agreed to pay Miami-Dade too high a rate for the service, the Commission would determine the reasonable rates which FCG should have been paying and deny FCG the ability to recover the difference from its customers. FCG could not then demand that Miami-Dade reduce the rates it was charging FCG under the agreement because the Commission thought the rates were too high. FCG and its shareholders would have to absorb the difference between the rates paid to Miami-Dade under the contract and the rates found reasonable by the Commission. Why should there be any different result here? Nothing prevents the Commission, if it finds the 2008 Agreement rates are too low, from disallowing recovery by FCG from its other customers of the difference between the Agreement rates and what the Commission determines they should be.

The Commission makes decisions of this nature all of the time in rate proceedings where the Commission may: (1) disallow recovery of imprudently incurred or unreasonably high contract expenses whether such expenses be incurred to pay for labor, materials and supplies, vendor or contractor expenses, etc.; (2) disallow recovery of a return, and depreciation and tax expenses, on imprudently made or unreasonably high investments; (3) impute contributions-in-aid-of-construction where the utility acted imprudently or unreasonably in the collection of payments from developers or new customers to reduce the impact on existing customers when a new customer connects to the utility; (4) impute revenue in a test year when the Commission determines that the utility mistakenly under-charged or did not charge customers during the identified test year; (5) disallow recovery of a return, depreciation and tax expenses on investments made in utility facilities which are non-used and useful; and (6) any

number of circumstances where the Commission may find that the utility made an imprudent or unreasonable decision which customers should not be obligated to pay for in rates. Neither Commission Staff nor FCG have presented any facts or arguments to date as to why the Commission cannot or should not hold FCG accountable in this proceeding if its management has acted imprudently or unreasonably. Again, how would principles of equity be served by allowing FCG to avoid its obligations under the 2008 Agreement and forcing Miami-Dade and its customers to pay higher rates to FCG than FCG agreed to accept, in writing, after prolonged and diligent negotiations? Equity and Commission past practices dictate that the Commission should approve the 2008 Agreement and if there is a difference between the revenue received by FCG under the 2008 Agreement and FCG's incremental cost of providing the transportation service for Miami-Dade over two miles of FCG's pipes, FCG and its shareholders should absorb the difference.

Q. IS THERE ANYTHING ELSE REGARDING EXHIBIT ___ (JL-9) WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COMMISSION?

A. Yes. The Commission should note that even assuming that the "Incremental Cost Rates" identified by FCG in the exhibit are correct, which Miami-Dade does not concede, FCG suggests that its total incremental costs to serve Miami-Dade is only $414,169. Yet, FCG is attempting to charge Miami-Dade rates under its GS-1250K rate tariff which would produce more than $1 million of revenue for FCG--more than twice its cost of serving Miami-Dade. This rate is extraordinarily high and FCG's attempt to impose it on Miami-Dade is patently abusive and discriminatory.

Q. DO YOU BELIEVE THESE FACTS ALSO SHOULD BE CONSIDERED IN LIGHT OF THE COMPETITIVE RATE ADJUSTMENT MECHANISM WHICH FCG HAS APPLIED TO THE 2008 AGREEMENT?

A. Yes. These inflated costs of service numbers suggest that the $110,000 or so of annual revenue received by FCG from Miami-Dade under the 2008 Agreement rates, which have not changed from the 1998 Agreement rates, is $304,000 below FCG's alleged $414,000 cost of service. Yet, in FCG's response to Commission Staff interrogatory 4 dated December 30, 2008, FCG states that it recouped [redacted] from FCG's other customers under the CRA mechanism in 2008, or about [redacted] more than FCG's alleged cost of serving Miami-Dade. When added to the $110,000 collected from Miami-Dade under the 1998 Agreement rates, FCG has collected more than [redacted] in one year for providing Miami-Dade access to two miles of its pipe. This is more than twice the highest cost of providing such service alleged by FCG to date and perhaps seven times higher than Miami-Dade witness Saffer's cost of service calculation. This is highly inequitable for FCG's customers and an unjustified windfall to FCG.

Q. SHOULD THE FACT THAT FCG HAS BEEN RECOVERING LARGE SUMS FROM ITS OTHER CUSTOMERS FOR YEARS UNDER THE COMPETITIVE RATE ADJUSTMENT MECHANISM BE CONSIDERED BY THE COMMISSION IN THIS PROCEEDING?

A. Yes. FCG admits that it has been recovering as much as [redacted] through the Competitive Rate Adjustment or "CRA" mechanism as it has been applied to the 1998 Agreement. Apparently, FCG has been recovering this revenue on the

basis that FCG was under-recovering costs in these amounts from the revenue produced under the 1998 Agreement. These amounts are far in excess of the costs which even FCG has suggested as its cost to serve or incremental cost to serve Miami-Dade. Based on the testimony and preliminary cost of service study presented by Miami-Dade witness Fred Saffer, FCG's incremental cost of serving Miami-Dade is far, far below this amount and below the rates established in the 2008 Agreement. Therefore, when you add the revenue paid to FCG by Miami-Dade to the amount FCG had been collecting for years from other customers under the CRA mechanism, it is clear that FCG has been collecting a large windfall of hundreds of thousands of dollars each year. This fact should be considered by the Commission in approving the 2008 Agreement and the rates provided in it while having FCG absorb the difference, if any, between the rates generated under such rates in the future and FCG's incremental cost of serving Miami-Dade.

Q. DOES MIAMI-DADE'S COST OF SERVICE WITNESS SAFFER AGREE WITH THE POSITIONS OF MIAMI-DADE AS YOU HAVE JUST EXPRESSED THEM?

A. Yes. Mr. Saffer testifies that he concurs in each of these positions based upon his many years of service in many proceedings and in several states as a cost of service expert. Mr. Saffer further presents evidence that the revenue derived by FCG under the 2008 Agreement rates does indeed cover FCG's true incremental costs.

Q. HAS FCG EVER IDENTIFIED ITS ORIGINAL INVESTMENT IN THE INCREMENTAL FACILITIES IT USES TO SERVE MIAMI-DADE?

A. Yes. In response to Staff's second date request, FCG identified the original cost

to serve Miami-Dade's Hialeah plant as $[redacted] and the original cost to serve Miami-Dade's Alexander Orr plant as $[redacted] Miami-Dade witness Langer calls the accuracy of these alleged amounts of FCG investment in the incremental facilities serving Miami-Dade into question. FCG has not produced for Miami-Dade any copies of continuing property records, bills, construction contracts, contributed property records, cash or in kind, or any other documents to substantiate these figures, nor to establish their depreciated book value. FCG should be required to produce these documents to substantiate these alleged investments before they are included by this Commission in the calculation of FCG's incremental cost to serve Miami-Dade.

Q. HAS FCG PROVIDED MIAMI-DADE THE INFORMATION NECESSARY TO DETERMINE THE NET PLANT IN SERVICE VALUE OF FCG FACILITIES NECESSARY TO SERVE MIAMI-DADE?

A. No. FCG has informed Miami-Dade in response to interrogatory number 18 that FCG

> "does not depreciate individual assets, but rather assets are depreciated as a class based upon additions and removals from service. Since individual assets are not individually depreciated, it is not possible to state whether the pipelines to the three Miami-Dade plants have been fully depreciated or not."

FCG's assertion that it is "not possible" to determine the depreciated value of the incremental pipes serving Miami-Dade is not true. While FCG failed to identify the original cost of such pipes when Miami-Dade asked for such information in interrogatory number 21, FCG did provide its alleged original cost information

to Commission Staff.

With the original cost information in hand, FCG simply needs to review its continuing property records to determine the date that the pipes were placed into service. If FCG can identify the pipes' original cost, it should be able to identify the plant in service date. With these two pieces of information, unless FCG has replaced the pipes, which Miami-Dade has never seen done, it is certainly possible to determine the depreciated value of FCG's pipes.

FCG simply appears to wish to avoid presenting the information for consideration as the net plant in service value is a critical component for determining FCG's true incremental cost to serve Miami-Dade. Finally, as I will make clear later in this testimony, FCG is required by its tariff to present this information and should be held accountable for its failure to do so before even signing the 2008 Agreement.

Q. COMMISSION STAFF NOTIFIED FCG ON JANUARY 15, 2009, THAT STAFF DID NOT BELIEVE THE CONTRACT DEMAND SERVICE OR "KDS" RATE TARIFF APPLIES TO FCG'S SERVICE PROVIDED UNDER THE 2008 AGREEMENT. DO YOU HAVE ANY COMMENTS IN THIS REGARD?

A. Yes. As other Miami-Dade witnesses have testified, FCG unilaterally changed the tariff rate schedule identified in the 2008 Agreement. The 1998 Agreement referred to the Large Volume Interruptible Rate Schedule, the original draft of the 2008 Agreement referred to the Large Volume Interruptible Rate Schedule and FCG, basically at the last minute of negotiations changed the tariff rate schedule identified in the 2008 Agreement to the Contract Demand "KDS" Rate Schedule.

Special condition number 4 of the KDS Rate Schedule selected by FCG states as follows:

> "When entering into a service agreement with a Customer under this Rate Schedule, [FCG] will take reasonable steps to mitigate the potential of any revenue shortfalls between the revenue received under a service agreement and the total cost and expenses relating to the associated capital investment made by [FCG], including minimum annual requirements."

Section 1 of the KDS Rate Schedule further states:

> "The Distribution Charge shall be an amount negotiated between Company [FCG] and Customer [Miami-Dade], but the rate shall not be set lower than the incremental cost the Company [FCG] incurs to serve the Customer [Miami-Dade]."

Under the heading "Applicability" in the KDS Rate Schedule, this Rate Schedule provides:

> "Absent a service agreement with company [FCG] under this Rate Schedule, Company [FCG] has no obligation to provide, and the Customer [Miami-Dade] shall have no right to receive, service under this Rate Schedule, and Customers [Miami-Dade] may elect to receive service under other applicable Rate Schedules."

This review of the terms of the KDS Rate Schedule which FCG selected and included in the 2008 Agreement confirms that:

(1) FCG was not obligated to provide service to Miami-Dade under this schedule, but it chose to do so voluntarily and entered the 2008 Agreement accordingly;

(2) FCG was obligated to negotiate a rate which is not lower than the incremental cost FCG incurs to serve Miami-Dade; and

(3) FCG was obligated and had the responsibility to take steps to mitigate any potential revenue shortfall between the revenue received under the 2008 Agreement and its total costs and expenses, including the associated capital investment made by FCG.

FCG failed to comply with its obligations and responsibilities to this Commission and to Miami-Dade under the KDS Rate Schedule. If FCG management and counsel identified the wrong rate schedule, if FCG entered a service agreement with Miami-Dade but failed to comply with special condition 4 or the requirements of section 1 of the Rate Schedule relating to the distribution charge, is Miami-Dade to be held culpable? Is Miami-Dade to be forced to pay FCG higher rates if FCG is guilty of these transgressions? Is FCG to be permitted to escape the obligations and responsibilities it agreed to perform in the 2008 Agreement and which were incumbent upon it to perform under the KDS Rate Schedule, and instead be permitted to select another rate schedule to charge Miami-Dade, unilaterally, and in direct conflict with its KDS Rate Schedule which provides that the customer, in this proceeding, Miami-Dade, shall make the selection?

FCG would answer each of these questions with a "Yes." But, it would be unjust and unreasonable for the Commission to treat FCG and Miami-Dade in this manner. Pursuant to the "Applicability" section of FCG's KDS Rate

Schedule, Miami-Dade would select FCG's Flexible Gas Rate Schedule as the alternative schedule to be referenced in the 2008 Agreement.

Also, whether or not the terms of the KDS Rate Schedule, as written, apply to the transportation service FCG provides to Miami-Dade, Miami-Dade suggests that the Commission rule authorizing utilities and customers to enter "special contracts" which deviate from the terms of the tariff rate schedules, upon Commission consideration and approval, would be rendered a nullity if the Commission disapproves the 2008 Agreement on the basis that the terms of the KDS Rate Schedule do not apply.

Q. BASED ON THESE FACTS, WHAT DO YOU RECOMMEND THAT THE COMMISSION DO IN RELATION TO THE 2008 AGREEMENT?

A. Approve it. The Commission possesses the authority to approve the Agreement, including the rates, as a special contract under its rules. After all, facts like those presented in this proceeding are the reason that FCG has identified no other FCG customer that is similarly situated to Miami-Dade, particularly in terms of load factor. In fact, in a letter from FCG's Vice-President, Melvin Williams, a key FCG principal, to Commission Staff dated November 30, 2009 relating to, in pertinent part, the 1998 Agreement, the Amendment to the 1998 Agreement, the 2008 Agreement and two other FCG transportation agreements which apparently no longer were in effect, Mr. Williams stated:

> ". . . be advised that as part of its continuing efforts to add transparency to its service applications, [FCG] intends to make tariff revisions and other necessary filings to ensure appropriate documentation exists related to these contracts."

To Miami-Dade's knowledge, no such tariff filings have yet been made by FCG as relates to the gas transportation service rendered by FCG to Miami-Dade. FCG admits to its need to "add transparency" to its activities, but apparently has not yet addressed such issue more than a year after such admission. Miami-Dade should not be forced to pay for FCG's mistakes and lapses in "transparency" before the Commission.

Q. I SHOW YOU EXHIBIT ___ (BPA-2) UNDER COVER PAGE TITLED, "FCG ADMISSION THAT IT DID NOT PERFORM AN INCREMENTAL COST STUDY." WAS THIS EXHIBIT PREPARED BY YOU OR UNDER YOUR DIRECTION AND SUPERVISION?

A. Yes.

Q. PLEASE DESCRIBE THIS EXHIBIT.

A. This exhibit includes a copy of FCG's response to Miami-Dade's interrogatory number 1 requesting information regarding FCG's gas transportation service contracts. FCG admits that:

> "FCG does not perform customer-specific incremental cost studies so the incremental cost to serve each such customer does not exist. Further, as tariff services and rate customers, under the PSC's rules and regulations FCG is not required to calculate the incremental cost to serve such tariff customer. As such, identification of such customer, the number of therms transported annually, the incremental cost to serve each customer, and whether the pipeline is dedicated to serve each such customer is irrelevant."

FCG could not be more wrong. As I just testified, FCG's KDS tariff obligates

FCG to calculate its incremental cost to serve Miami-Dade. The KDS Rate Schedule was the schedule identified by FCG and included in the 2008 Agreement by FCG. FCG states in Article II, section 1 of the 2008 Agreement that "[b]ased upon governing applicability provisions, the Parties hereby confirm that Customer [Miami-Dade] qualifies for the Contract Demand Service Rate Schedule [KDS]." This article then provides the rates agreed to by FCG and notes that FCG's KDS Rate Schedule applies "[e]xcept to the extent expressly modified by the terms of the Agreement."

FCG's response to Miami-Dade's very first interrogatory in this proceeding tells the entire story. FCG has not fulfilled its obligations to this Commission or to Miami-Dade under its KDS Rate Schedule. FCG has acted in total disregard of the requirements of its own tariff. FCG failed to perform the incremental cost of service study required by the KDS Rate Schedules which FCG selected and included in the 2008 Agreement. Even after Miami-Dade was forced to take the unusual step to file the 2008 Agreement for approval, FCG remained obstinate in its refusal to do what this Commission, through FCG's authorized tariff, requires. Miami-Dade should not be forced to suffer from such outrageous misconduct and mismanagement by FCG.

Q. ARE THERE ANY OTHER SECTIONS OF FCG'S TARIFF WHICH THE COMMISSION SHOULD CONSIDER IN THIS PROCEEDING?

A. Yes. There are.

Q. WHICH OTHER SECTIONS OF FCG'S TARIFF SHOULD BE CONSIDERED BY THE COMMISSION?

A. Subsection H under section 12 of FCG's Transportation Rate Schedule - Special Conditions provides that:

> "[p]rior to the initial receipt of service hereunder, unless agreed otherwise, Customer [Miami-Dade] shall reimburse Company [FCG] in accordance with the terms of the Transportation Service Agreement [1998 Agreement, Amendment, 2008 Agreement], for the cost of any facilities which are constructed, acquired, or expanded by the Company [FCG] to receive or deliver Customer's [Miami-Dade's] gas. All facilities required to provide service, under each applicable Rate Schedule shall be designed, constructed installed, operated, and owned by Company [FCG], unless otherwise agreed to by Company [FCG]."

This section further states:

> "Company's [FCG's] execution of a Transportation Service Agreement under each applicable Rate Schedule may be conditioned on Customer's [Miami-Dade's] agreement to pay the total incremental cost of such facilities as specified herein and in the Service Agreement."

This section of the tariff is important as FCG has failed to produce documents proving its investment in the incremental facilities constructed to transport gas on Miami-Dade's behalf. As I testified earlier, the Commission should require that this proof be presented as FCG was obligated to determine its incremental cost to serve Miami-Dade before it voluntarily agreed to sign the 2008 Agreement and before it agreed to the rates contained in it. Miami-Dade should not be held accountable by this Commission for FCG's violation of its own tariff obligations.

Q. **MIAMI-DADE'S INTERROGATORY NUMBER 6 TO FCG ASKED FCG TO "DESCRIBE OR EXPLAIN THE DUE DILIGENCE FCG AND AGL [RESOURCES] PERFORMED IN DETERMINING THE CONTRACT RATES IN THE 2008 AGREEMENT." CAN YOU ADVISE THE COMMISSION AS TO FCG/AGL'S RESPONSE AND HOW SUCH RESPONSE IS RELEVANT IN THIS PROCEEDING?**

A. Yes. A copy of FCG/AGL's response to Miami-Dade's interrogatory 6 is provided in Exhibit ___ (BPA-3) under cover page titled, "FCG/AGL Response Concerning Due Diligence Performed Prior To Signing 2008 Agreement." In pertinent part, FCG's response is as follows:

> "The contract executed in 2008 extended the overall terms and conditions of service from the original contract, subject to the review and approval of the PSC prior to becoming effective. At the time, no further analysis on the impact on the general body of ratepayers was deemed necessary as the contract impact through the CRA had been reviewed and approved annually by the PSC."

I am truly surprised by this response. Based upon my 25 years of experience advising and managing both public and private utilities, it is inconceivable that FCG would exercise such nonchalance in entering a long-term gas transportation agreement with its largest natural gas transportation customer. Please recall that at the time the 2008 Agreement was being negotiated, FCG was aware that it was recovering more that $[redacted] from other FCG customers through the Competitive Rate Adjustment or "CRA" associated directly with the 2008 Agreement. FCG surely had an obligation to perform thorough due

diligence before continuing this level of recovery from other customers, assuming that such recovery was appropriate in the first place. Despite this fact, FCG admits again in response to Miami-Dade interrogatory number 11 that:

> "FCG has not done a cost of service study to determine the incremental cost to serve any of the Miami-Dade plants."

FCG's failure to reexamine its cost to serve Miami-Dade, as required by FCG's tariff, as I demonstrated earlier, and as a matter of reasonable due diligence before signing such a significant agreement is shocking.

Finally, and what is perhaps most disturbing, FCG admits that its cavalier attitude toward calculating the cost it has incurred and will continue to incur to serve Miami-Dade is founded upon its ability to recover any costs above the amount Miami-Dade pays from FCG's other customers through the CRA mechanism. This is unacceptable conduct and reflects poor management.

During 2009, after FCG informed Miami-Dade that the Amendment to the 1998 Agreement was terminated and FCG would begin charging Miami-Dade the rates identified in FCG's GS-1250K Rate Schedule, FCG informed Commission Staff that it no longer would seek recovery through the CRA of any shortfall between its cost of service and Miami-Dade's payments. No doubt this announcement was made based upon FCG's belief that the Commission would not approve the 2008 Agreement but instead would force Miami-Dade to pay higher rates, perhaps as exorbitantly high as the rates under the GS-1250K Rate Schedule. FCG should not be permitted to escape responsibility for its complete derogation of its responsibilities to the Commission, to Miami-Dade, and to its other customers, who in large part also are Miami-Dade's customers, to exercise due diligence in compliance with the requirements of its tariff and good utility

management practices before entering a substantial agreement with its largest transportation customers.

Finally, I further note the admission by FCG/AGL in response to Miami-Dade interrogatory number 10 that they were "not aware of any specific review of the [1998 Agreement]" as a part of AGL's acquisition of FCG. Having participated in the purchase and sale of perhaps a billion dollars worth of utility facilities to date, it is not conceivable that the transportation agreement between the utility to be acquired and its largest customer, an agreement set to expire soon after the anticipated closing of the acquisition, would not receive significant scrutiny from AGL and FCG. This admission is further evidence of the lack of diligence exercised by FCG/AGL in regard to the 2008 Agreement. Miami-Dade should not be held accountable for FCG's irresponsible and poor management conduct. The Commission should approve the 2008 Agreement and require FCG to absorb the difference, if any, between the revenue received from Miami-Dade and FCG's cost of serving Miami-Dade.

Q. MIAMI-DADE WITNESS HICKS HAS TESTIFIED THAT REGARDLESS OF WHETHER THE COMMISSION APPROVES THE RATES IN THE 2008 AGREEMENT, THE COMMISSION SHOULD APPLY NEW RATES IT MAY DETERMINE ONLY PROSPECTIVELY FROM THE DATE A COMMISSION ORDER BECOMES FINAL. DO YOU AGREE WITH HIS PROPOSAL AS A MATTER OF GOOD POLICY?

A. Yes. Mr. Hicks proposes that if the 2008 Agreement and associated rates are not approved that they should remain in place at least until a new rate is established. Therefore, he proposes that the Commission order FCG to refund

the payments which Miami-Dade paid to FCG, under protest, in excess of the payments which would have been required under the rates in the 1998 Agreement, Amendment to the 1998 Agreement and the 2008 Agreement, which are all identical rates. I concur with Mr. Hicks that, based on the facts presented by Miami-Dade and a simple matter of equity, FCG should be required to refund such over-payments to Miami-Dade.

Q. DO YOU BELIEVE THAT ANY OF THE PRIOR AGREEMENTS SIGNED BY FCG AND MIAMI-DADE IN RELATION TO GAS TRANSPORTATION SERVICE REMAIN EFFECTIVE?

A. Yes. To summarize Miami-Dade's position, which I agree with, FCG and Miami-Dade signed the 1998 Agreement and complied with its terms for 10 years. FCG never filed the 1998 Agreement for Commission approval. Miami-Dade provided FCG notice of its desire to extend the terms in a timely manner. When the expiration date of the 1998 Agreement approached, FCG and Miami-Dade agreed, in writing, to extend the terms of the 1998 Agreement in an Amendment. The Amendment never was filed with the Commission by FCG. The Amendment provides that it will continue in force until the 2008 Agreement is approved by the Commission, or if not approved by the Commission within 180 days after signed by both parties, the 2008 Agreement shall not become effective. Paragraph 3 of the Amendment further states, "If the [2008 Agreement] does not become effective and negotiations are terminated, the Parties will agree to terminate the [1998 Agreement]."

Miami-Dade has never agreed to terminate the 1998 Agreement. Miami-Dade did not terminate negotiations with FCG. Miami-Dade simply is attempting to secure Commission consideration of the terms of the 2008 Agreement. By its

sole actions, FCG has done everything in its power to prevent the Commission from considering the 2008 Agreement. FCG withdrew the 2008 Agreement from the Commission, waited until the 180-day deadline for Commission approval had expired and then suggested that the 2008 Agreement was not effective and could not become effective and that FCG possessed the unilateral right to declare the Amendment terminated.

Florida law for more than a century has applied what is known as the Prevention of Performance Doctrine to deny a party to a contract the ability to avoid compliance with contract obligations by engaging in activities which render the contract impossible to perform. FCG's withdrawal of the 2008 Agreement from Commission consideration, without notice to Miami-Dade, eliminated any possibility that the 2008 Agreement could be approved by the Commission in a timely manner and thus take effect. FCG's refusal to re-submit the 2008 Agreement to the Commission, and its decision to instead demand that the Board of County Commissioners of Miami-Dade agree to pay FCG higher rates when the Commission had never been given the opportunity to address the 2008 Agreement at all, was the sole reason that renegotiation of the 2008 Agreement was not possible. On what basis should the Board of Miami-Dade agree to an increase in the costs it must collect from its residents and utility customers to pay higher rates to FCG merely because FCG has engaged in a manner of conduct to deny Miami-Dade the benefit of its bargain?

Miami-Dade and I believe that the Amendment remains effective and, pursuant to paragraph 4 of the Amendment, all other provisions of the 1998 Agreement, including rates, remain effective as well until the Commission has determined whether the 2008 Agreement is approved.

For this reason also, whether or not the Commission ultimately approves the 2008 Agreement, the Commission must order FCG to reimburse Miami-Dade for any payment made in excess of the 1998 Agreement and Amendment rates during the course of this proceeding and the duration of the dispute as to the correct rates which FCG should be charging Miami-Dade.

Q. **IS THE TRANSPORTATION SERVICE PROVIDED BY FCG TO MIAMI-DADE UNIQUE?**

A. No. The service provided, the transportation of gas purchased by Miami-Dade from a third party over FCG's distribution system, is not unique. However, Miami-Dade is a unique customer in that it is by far the largest transportation customer of FCG, it may be the only transportation customer predominantly using the service on a 365 day a year, seven days a week, 24 hours a day basis and with less than two miles of incremental pipes necessary to provide this service.

Also, Miami-Dade possesses, and has possessed for years, authorization to install facilities to by-pass FCG's pipes altogether. FCG has identified no other customers presenting these characteristics and instead has admitted the unique character of its service to Miami-Dade by entering the 1998 Agreement, the Amendment to the 1998 Agreement, and the 2008 Agreement as special contracts with terms differing from the tariff terms prescribed for any other service classification identified in FCG's tariff rate schedules, past or current. The general rule of rate-making is that similarly situated customers must be treated similarly or discriminatory rates may result. This is the reason why customers are segregated into different service classifications. FCG has admitted by its agreement to special terms in special contracts with Miami-Dade

that Miami-Dade is not similarly situated to the other FCG customers served under FCG's tariff rate schedules. In fact, while FCG previously entered special contracts with two or three other transportation customers, unlike its entry into the 2008 Agreement with Miami-Dade, FCG did not renew those contracts upon their recent expiration but instead imposed existing tariff rates and terms on those customers, as FCG admitted in response to a Miami-Dade inquiry on this topic.

For these reasons, no FCG rate schedule or service classification reasonably should be applied to the transportation service provided by Miami-Dade, as they currently exist. As Miami-Dade Witnesses Saffer, Langer and I have demonstrated, the application of the GS-1250K Rate Schedule, in particular, would result in unjust, unreasonable and discriminatory rates being applied to Miami-Dade and windfall profits being unjustifiably earned by FCG. The 2008 Agreement should be approved or, at minimum, the rates to be charged Miami-Dade should be set forth in a different service classification and rate schedule.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

Docket No. 090539-GU
Commission Staff Rejection of 2008 Agreement
Exhibit ____ (BPA-1)

From: <CKummer@PSC.STATE.FL.US>
To: <matthew.feil@akerman.com>
Date: 1/15/2009 9:32 AM
Subject: Docket No. 080672-GU FCG contract with Miami Dade
CC: <MBrown@PSC.STATE.FL.US>, <ANWillis@PSC.STATE.FL.US>
Attachments: initial analysis of contract.doc

Matt,

Knowing that everyone is anxious to move this matter along, I spent yesterday going over the responses and additional information from the utility's most recent rate case and CRA filing. The only conclusion I can come to at this point is that the contract is not in the best interests of the general body of ratepayers. I've detailed my concerns in the attached document. Please let me know how the utility wants to proceed.

Thanks,

Connie

Matt,

I have reviewed the information submitted and unfortunately, based on the information I have, I cannot support the proposed contract with Miami Dade for the following reasons:

1. The tariff cited in the contract is not applicable. The KDS applies only incremental load. The load under this contract is the same as it was in 1998 when the original contract was signed. This does not preclude a special contract, but the utility should cite to the proper tariff.

2. The fundamental reason the commission has approved load retention contract rates is the theory that retaining a customer who is paying something above the incremental cost of service is better than losing all supporting revenue and thereby shifting all fixed costs to the general body of ratepayers. This concept was underscored in the company's last rate case (DN 030569-GU) "..the [flex] rate adjustment enables the Company to retain customers that, even at reduced rates, make significant contributions to the recovery of fixed costs." (Direct Testimony of Jeff Householder, p.23)

   a. At no time should the subsidy paid by the general body of ratepayers exceed the costs they would be responsible for if the at-risk customer left the system.

   b. Based on the information provided, the general body of ratepayers is paying (through the CRA) over twice the fixed cost which would be shifted to them if the customer were to leave the system (see the company's responses to the fourth and fifth questions submitted on January 9).

   c. Assuming the incremental is correctly calculated in the company's response dated December 30, the proposed rate does not even cover the incremental cost of providing service to this customer, much less provide any contribution over it, as required under the cited tariff (Tariff Sheet 49 under "Monthly Rate.").

   d. At the proposed rate, it appears the general body of ratepayers would be better off if the customer left the system.

   e. The ceiling for any negotiated rate is the cost of the customer's alternative energy source. Based on the estimated cost of bypass provided in the utility's response dated January 9, it appears there is considerable room to increase the contract price without danger of losing the load.

If I have misconstrued any of the data provided, or the company wishes to submit additional information, I will be glad to discuss it further.

Connie

Docket No. 090539-GU
FCG Admission That It Did Not Perform An Incremental Cost Study
Exhibit ____ (BPA-2)

INTERROGATORY OJECTIONS AND RESPONSES

1. List the 10 largest natural gas transportation customers served by FCG during the past 5 years and for each customer provide the annual number of therms transported; whether the pipeline(s) is solely dedicated for the customer, the annual incremental cost to serve the customer and how the incremental cost was determined.

FCG'S RESPONSE: FCG incorporates objections 5, 8, 12, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: FCG has numerous natural gas transportation customers all of which take service pursuant to an approved tariff service and pay the applicable tariff rate. As is discussed more fully in response to Interrogatory Nos. 11-13, FCG does not perform customer-specific incremental cost studies so the incremental cost to serve each such customer does not exist. Further, as tariff service and rate customers, under the PSC's rules and regulation FCG is not required to calculate the incremental cost to serve such tariff customer. As such, identification of such customers, the number of therms transported annually, the incremental cost to serve each customer, and whether the pipeline is dedicated to serve each such customer is irrelevant.

Responsible Person: Objections by Counsel. Substantive Response by Carolyn Bermudez, Director, Strategic Business and Financial Planning, Florida City Gas, 955 East 25th Street, Hialeah, Florida, 33013.

Docket No. 090539-GU
FCG/AGL Response Concerning Due Diligence Performed
Prior to Signing 2008 Agreement
Exhibit ____ (BPA-3)

6. Describe or explain the due diligence FCG and AGL [Resources] performed in determining the contract rates in the 2008 Agreement.

FCG'S RESPONSE: FCG incorporates objections 1, 2, 5, and 13. Notwithstanding the foregoing objections, and without waiving said objections FCG states: The rate in the 2008 Natural Gas Transportation Service Agreement between FCG and Miami-Dade was the same rate and the same maximum annual contact quantity of gas ("MACQ") as the 1998 Natural Gas Transportation Service Agreement between NUI Corporation (FCG predecessor in interest) and Miami-Dade. The contract executed in 2008 extended the overall terms and conditions of service from the original contract, subject to the review and approval of the PSC prior to becoming effective. At the time, no further analysis on the impact on the general body of ratepayers was deemed necessary as the contract impact through the CRA had been reviewed and approved annually by the PSC.

Responsible Person: Objections by Counsel. Substantive Response by David Weaver, Director, Regulatory Affairs, AGL Services Company, Ten Peachtree Place, 15th Floor, Atlanta, Georgia, 30309.