IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,283

CITY GAS COMPANY OF FLORIDA,

Appellant,

vs.

JOHN R. MARKS, et al.,

Appellees.

ANSWER BRIEF OF APPELLEE, MILLER GAS COMPANY

On Review from a Final Order of the
Florida Public Service Commission

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INTRODUCTION

Appellee, Miller Gas Company, herewith submits its Answer Brief to the Initial Brief of City Gas Company of Florida. References to the record below are shown by "R." followed by a page reference, to the prehearing conference transcript by "Prehrg. Tr." with a page reference, and to the transcript of the July 18 hearing by "Tr." followed by a page reference. References to the Initial Brief are shown by "Brief" followed by a page reference. Appellee, Florida Public Service Commission, is referred to as "PSC", and Dade County Water & Sewer Authority as "WASA".

STATEMENT OF THE CASE

The Statement of the Case prepared by and included in the brief of Appellant contains several mistakes. Miller Gas respectfully requests that the Court disregard the Statement of the Case submitted by City Gas and substitute therefor the following Statement of the Case.

This is an appeal of a decision of the Florida Public Service Commission (PSC) approving a tariff filing made by Miller Gas Company and denying a tariff filing of City Gas Company. The decisions are embodied in Order No. 15268, issued October 18, 1985, and Order No. 15511, issued January 2, 1986, denying reconsideration of the earlier order. (R. 147, 189).

The proceedings before the PSC were initiated by the filing of tariffs by both Miller Gas and City Gas. (R. 1, 196). Miller Gas filed its tariff and supporting schedules on March 20, 1985 (R. 196), while City Gas filed its tariff on April 4, 1985 (R. 1). Miller Gas filed a request for intervention and objection to the tariff filed by City Gas. (R. 5). City Gas thereafter filed an objection and motion to intervene in the Miller Gas proceeding. (R. 14). Subsequently, City Gas, not Miller Gas as stated by City Gas, filed a motion to consolidate the dockets. (R. 21). The PSC consolidated the dockets in the same order which suspended both tariffs. (Order 14469; R. 23). Dade County filed a notice of intervention, which was granted by the PSC. (R. 97).

A prehearing conference was held July 10, 1985, after which Order No. 14573 was issued. (R. 98). A final hearing was conducted

July 18, 1985, not July 18 and 19 as suggested by City Gas, in Miami, at which time both City Gas and Miller Gas presented testimony and conducted cross-examination. Although Dade County did not participate in the prehearing conference, they did appear and participate at the July 18 hearing. (Prehrg. Tr. 3-6).

Subsequent to the hearing, Miller Gas and City Gas submitted post-hearing statements. (R. 116, 132). At a regularly scheduled agenda conference, the PSC voted to approve the tariff filed by Miller Gas and deny the tariff filed by City Gas. (R. 143). On October 18, 1985, the PSC entered Order No. 15268 approving the Miller Gas proposal and rejecting the tariffs of City Gas. (R. 147).

A request for reconsideration of the order was filed by City Gas and, at the request of City Gas, oral argument was scheduled and held. (R. 154, 164). At the conclusion of oral argument the PSC voted to deny the petition for reconsideration and Order No. 15511 reflecting this vote was issued January 2, 1986. (R. 189).

City Gas then filed its notice of appeal, at the same time asking the PSC to vacate the order on reconsideration alleging that it was improperly entered by listing a member who was not on the PSC at the time the order was issued. Miller Gas filed a motion for leave to participate as an appellee, which was granted by the Court by order dated February 12, 1986. Dade County filed a similar motion which was also granted. (Order dated April 1, 1986). The requests by City Gas to vacate and then to stay the effectiveness of the PSC's order were denied

by Orders Nos. 15728 and 16098, respectively. City Gas filed a petition to relinquish jurisdiction before this Court, which was denied by an order entered May 15, 1986. City Gas filed a motion to supplement the record and a request to toll the briefing schedule, which was granted July 7, 1986. On July 31, 1986, the Court ruled on the motion to supplement, granting in part and denying in part the motion. City Gas thereafter submitted its initial brief, and the matter is now before the Court for resolution on the merits.

STATEMENT OF THE FACTS

Although Appellant has included in its initial brief a Statement of the Facts, Appellee, Miller Gas, does not agree with the statement as set forth. As presented, the Statement of City Gas does not present a complete characterization of the factual situation in this case and, in some instances, is conjecture more than fact. Miller Gas does not adopt the Statement of the Facts set forth in Appellant's brief and instead requests that the Court substitute the Statement herein set out.

This proceeding began as a result of tariff filings made by Miller Gas Company and City Gas Company of Florida on March 19 and April 5, 1985, respectively. The tariff filed by Miller Gas sought approval of the establishment of a new interruptible category of service for Interruptible Gas Service - Large Volume (IS-LV) users. (R. 196). City Gas submitted its petition and tariff schedule wherein it requested approval of a Preferred County Governmental Service tariff designed to provide special rates to the Dade County Water & Sewer Authority/Alexander Orr, Jr. (WASA/Orr) water treatment facility. (R. 2, 3).

On April 30, 1985, Miller Gas filed a petition to intervene and an objection to the tariff filing of City Gas (R. 5); and on May 3, 1985, City Gas filed a response to the petition and objection to the tariff filing made by Miller Gas. (R. 14). City Gas also submitted a motion to consolidate, which was granted by Order No. 14469, issued June 13, 1985. The latter referenced order also suspended both of the proposed tariffs and proposed to schedule the matter for hearing. (R. 23).

Both Miller Gas and City Gas are public gas utilities providing natural gas service pursuant to Chapter 366, F.S., and the rules and regulations of the Florida Public Service Commission. Miller Gas provides natural gas service solely in Dade County to 4,822 residential customers, 61 commercial customers, and one (1) interruptible customer, that being the WASA water treatment facility at the Alexander Orr, Jr. plant. (Tr. 26). City Gas, on the other hand, provides natural gas service in portions of Dade and Broward Counties, as well as Brevard County. City Gas also provides service to some customers within the service area of Miller Gas, despite directives and contracts that they not do so. (Tr. 34; Ex. 4). For the most part, these customers were in the service area when Miller Gas commenced business or are located such that it would not be economically feasible for Miller Gas to serve them, but it would be possible for others to provide service. (Tr. 43-45, 61-63, 65, 66).

Pursuant to Rules 25-9.04 and 25-9.23, F.A.C., both companies provide a description of the territory which they hold themselves out to serve in the tariffs which are filed with and approved by the PSC. (R. 9, 12; Ex. 101, 202. Also for reference, Appendix A hereto is the map of the Miller Gas territory identified as Exhibit 1 below. Appendix B is the tariff sheet map of the City Gas territory found at page 162 of the record, and Appendix C is a schematic showing the present and proposed points of service at the Orr plant, Exhibit 2 below.)

The map depicting the service area of City Gas, as included in their approved tariff, specifically excludes a portion of Dade County which coincides with the area served by Miller Gas. (Appendix B).

Located within the service area of Miller Gas is a water treatment facility operated by the Dade County Water and Sewer Authority (WASA). (Appendix C). The plant is used to provide potable water to over 50% of Dade County. (Tr. 26, 27). Miller Gas is now and has been for over 20 years providing natural gas service to the water pump facilities at the WASA/Orr plant and is prepared to continue to provide both the present and future demands of the WASA/Orr facility. (Tr. 37).

In addition to the existing water pump facilities which are serviced by Miller Gas, WASA has converted a lime kiln at the Orr plant to utilize natural gas to dry lime used in the water treatment process. (Tr. 150). Miller Gas was first contacted by WASA in 1983 regarding the provision of the additional consumption required for the lime kiln. (Tr. 28, 29). The lime kiln is located within the confines of the Orr plant just south of the existing Miller Gas facilities serving the water pump. (Tr. 29; Ex. 2, 2-A; Appendix C).

Miller Gas submitted proposals to WASA to provide the additional consumption utilizing the approved rates and charges then set forth in its approved tariff. (Tr. 29). WASA, after being contacted by City Gas, and despite being advised by the PSC that the Orr plant was within the service area of Miller Gas (R. 10, 11), nevertheless requested bids for the provision of

gas at the Orr plant. Miller Gas objected to this process and also filed a petition to resolve a territorial dispute with the PSC. (Tr. 31; R. 26). Both Miller Gas and City Gas submitted bids to Dade County. (Tr. 30; Ex. 3). The County requested bids for the entire gas requirements and, although both companies submitted bids on this basis, City Gas later testified they intended to serve only the lime kiln and would serve the water pump only if told to do so by the PSC. (Tr. 198, 203, 211).

Service to the Orr plant is presently provided by Miller Gas through a 4" dedicated line which terminates at a gas meter on the premises of the Orr plant. (Tr. 28; Ex. 2-A). Miller Gas could serve the lime kiln simply by extending their existing line, but, because of the existence of other lines and equipment at the Orr plant, WASA specified the route to be used. While Miller Gas would only have to extend a line from one side of the plant to the other, City Gas would have to run a line 6,800 feet to serve the lime kiln alone. (Tr. 229, 260). Miller Gas has the nearest lines to the kiln. (Tr. 263). The cost to provide service to the lime kiln along the route designated by WASA is $74,051 for Miller Gas (Tr. 22), and $182,000 for City Gas (Tr. 226). However, while Miller Gas' estimate was all inclusive, that submitted by City Gas was for the lime kiln only and did not include allowances for all expenses. (Tr. 229, 241, 242).

On July 10, 1985, the PSC held a prehearing conference and identified the issues to be addressed at the hearing. There was discussion at the prehearing conference as to the jurisdiction

and authority of the PSC to resolve territorial disputes. The parties and Commission staff expressed their opinions, and, although the issue was not resolved, they did enter into the following stipulation:

> 1. Staff, City Gas and Miller Gas stipulated that neither WASA/Orr Plant site point of service is located within the territory City Gas holds itself out to serve as represented by the map contained in City Gas' tariffs and, further, that both points of service are within the narrative service area description contained in Miller Gas' tariffs. (Order 14573 at 9; R. 106).

A final hearing was held in Miami on July 18, 1985, at which time all parties were afforded an opportunity to present testimony and question witnesses. Parties were thereafter permitted to file post-hearing statements (R. 116, 132), and the PSC voted at an agenda conference held September 3, 1985. (R. 143). Based on the record before them, the PSC approved the tariff of Miller Gas and denied that of City Gas, and, as to the territorial dispute issue raised by Miller Gas, the PSC determined it to be moot in light of their reading of the controlling tariffs. (R. 147-153). Reconsideration was requested, oral argument held, and an order denying reconsideration was issued. (R. 189). City Gas thereafter took this appeal.

SUMMARY OF THE ARGUMENT

The orders of the PSC at issue in this proceeding are based upon competent, substantial evidence and do not constitute an abuse of discretion. Given the evidence - or lack of evidence, the decisions are the only ones which the PSC could have entered.

City Gas sought approval of a tariff which was properly found to be discriminatory. The rate was not supported by any competent, substantial evidence and was merely developed to undercut the rate of Miller Gas. The tariff filed by Miller Gas, on the other hand, was shown to be an appropriate rate and was adequately supported by cost and accounting data.

The order of the PSC is based on a review of the tariffs and service areas of the parties involved and not on the resolution of a territorial dispute. The PSC considered the approved tariffs, as well as testimony and stipulations of the parties, in arriving at the conclusion that the Orr plant is, as stipulated by parties, within the service area of Miller Gas. The tariff approved for City Gas specifically excludes the area from the service area of City Gas. Since the PSC disposed of this matter by exercising their authority to review and approve tariffs, they did not find it necessary to invoke their authority to resolve territorial disputes.

City Gas has failed to establish that there was an abuse of discretion by the PSC or that the orders of the PSC should not stand as issued.

I.

The PSC acted reasonably and prudently by denying the proposed tariff of City Gas.

As public utilities, City Gas and Miller Gas are required to furnish services at rates and charges which are fair and reasonable. (Sec. 366.03, F.S.). The PSC, as the regulatory body charged with insuring that the statutory requirements are followed, has the authority to fix and prescribe rates which are just, compensatory, fair and reasonable. (Secs. 366.041 and 366.05, F.S.). In seeking changes to established and approved rates it is incumbent upon the petitioner to establish that the requested rates are fair and reasonable and such as ought to be approved. Absent any support for a revision, as is the case here, the PSC has no alternative but to deny a request. As noted by Appellant, in determining whether the rates should be approved, the PSC may give consideration to a number of criteria and is not limited to one specific item. (Brief at 13). When a utility justifies its need for an increased rate, the PSC may not deny the rate increase for grounds other than those specified by law. Aloha Utilities, Inc. v. Florida Public Service Commission, 376 So.2d 850 (Fla. 1979). It remains incumbent upon the petitioner to establish that it is entitled to approval of the proposed tariff, however. {Compare: Florida Power Corp. v. Cresse, 413 So.2d 1187 (Fla. 1982)}. It is only when a proposed rate has been substantiated that there is any obligation on the part of the PSC to grant approval. Whether or not a rate

has been substantiated is for the PSC to decide, rather than another body. Occidental Chemical Company v. Mayo, 351 So.2d 336 (Fla. 1977). The tariff filed by City Gas for approval was discriminatory, not initially supported by any cost information, and was developed only to undercut a rate proposal by Miller Gas. (Tr. 190, 231).

The tariff which City Gas sought to have approved proposed a rate for Preferred County Governmental Service. As filed, the tariff would apply to only one of 28 interruptible customers of City Gas and was specifically intended to permit City Gas to submit an acceptable response to the WASA request for natural gas service at its Orr plant. (R. 1, 2). On its face, this is a discriminatory tariff prohibited by Chapter 366, F.S. City Gas suggests in its brief that the tariff is not a specialty tariff, but, given the petition and limitation of the applicability to one customer, it is difficult to understand how the tariff is not a specialty tariff and how it would not be discriminatory in its application.

During the hearing, the chairman of the board attempted to eliminate the discriminatory nature of the tariff by seeking to amend it and make it applicable to any of their interruptible customers who would agree to the same requirements as set forth in the tariff. (Tr. 192). This came as some surprise to the accounting witness who later testified. (Tr. 233). This attempt to breathe some life into an improper, unsupported, discriminatory tariff only further exacerbates an already unacceptable, insufficient filing. Even assuming that this revision corrects the discriminatory

objections, City Gas had absolutely no idea what effect the revisions of this tariff would have on the company or its customers, nor is there any indication as to whether or not any of the other customers would be able to enjoy the option of exercising the tariff.

The initial filing was inappropriate and discriminatory and was not based upon any generally accepted ratemaking principles, even though City Gas had opportunities to provide such information. (Tr. 236, 238). The truth of the matter remains that the rate was designed simply to undercut the rate of Miller Gas.

Assuming that the amendment corrects the objection that the tariff is discriminatory, the rate still must be disapproved for lack of any support. City Gas chose not to file any cost support with its initial tariff, despite Rule 25-9.05, F.A.C., which requires certain minimum cost information to accompany filings. At the hearing, City Gas attempted to support its rate, but did not present any competent cost of service study or any other cost support for the rate. (Tr. 236, 237, 239, 241). The rationale used by City Gas was that, since they were not earning their rate of return, they did not have to do a study. (Tr. 239). Miller Gas was not earning their rate of return, but they did perform a study. (Tr. 239). Despite repeated requests and opportunities to support their proposed rate, City Gas chose not to do so. The only credible support for the rate was given by the chairman of the board when he testified that he sought to undercut the rate proposed by Miller Gas. (Tr. 190). The chairman cannot be faulted for his candor, but neither should

his company be heard to complain about PSC action disapproving his proposed rate when the only competent testimony for the rate is that it was intended to undercut that of another company. Given this, it is difficult to understand how City Gas could suggest that the PSC did not act prudently in disapproving the tariff. In truth, the only prudent action with regard to City Gas' proposal was denial.

In contrast to the discriminatory, unsupported tariff filed by City Gas, is the request filed by Miller Gas. Throughout this proceeding, Miller Gas has supported the rate which it proposed in its tariffs and indeed welcomed the opportunity to do so. The initial filing made by Miller Gas was accompanied by a calculation of the development of the rate, consistent with Commission rules, and the testimony submitted by Miller Gas included exhibits reflecting development of the rate. (Ex. 5-9). Furthermore, when the cost of service study was performed, as requested by the PSC, Miller Gas included amounts for items such as cathodic protection, meter and regulating testing, and other items, including a reserve for contingencies which were not included by City Gas in their development.

These studies reflect that it would cost Miller Gas $74,051 to serve the lime kiln (Tr. 22), whereas it would cost City Gas $182,000 to serve the kiln (Tr. 226). The accuracy of this figure is at question and, since the figure encompasses only the cost to serve the lime kiln and not the total plant as requested by WASA, it is not a comparative calculation. Of equal significance is that if City Gas is permitted to serve the Orr facility,

they will have to duplicate existing facilities of Miller Gas, and Miller Gas will be left with stranded investment of $7,783. (This represents the remaining investment in the facilities which are in place to serve the Orr plant. If Miller Gas does not serve the Orr plant, this investment would be stranded in that the company would not recover it.) The chairman of City Gas testified that it would not be fair for the Commission to allow City Gas to serve the area and leave the stranded investment for Miller Gas because they would lose on what they are currently getting. (Tr. 210).

City Gas has suggested that the cost of service study performed by Miller Gas was a "quick and dirty" study, and indeed the accounting witness for Miller Gas did suggest that he had performed a quick and dirty study (Tr. 154), but the characterization which City Gas attempts to place on the comment is totally inappropriate and taken out of context. Miller Gas utilized the cost of service study which was prepared by the PSC staff for a previous rate case which had been consummated just months prior to this tariff filing and expanded on that. Under those circumstances, Miller Gas felt it appropriate to simply use that base study and extend it over to the rate here in question. That was the "quick and dirty" study; but, at no time during the proceedings was the methodology ever questioned.

Just as candid as City Gas was in admitting that they simply designed a rate to undercut Miller Gas, so too is Miller Gas in acknowledging that the additional consumption of WASA and the resulting additional revenues to Miller Gas would have a

substantial affect on Miller Gas' rate of return. (Tr. 127; Ex. 7). Miller Gas is a small gas utility operating within a small, well defined geographic area. In the year prior to this proceeding, Miller Gas had total sales of 2.3 million therms. (Tr. 32). By adding the estimated usage of the lime kiln of 2 million therms, total revenues for Miller Gas would increase substantially, all else remaining equal, as would the associated rate of return. Miller Gas proposed creating the new category rather than to revise all rates based on the projected usage because of the speculative nature of the increased consumption. (Tr. 127, 128). There is no assurance that any gas will be used by the kiln and, until any is used and it becomes necessary to revise rates because of overearnings, prudent and efficient management dictates that approved rates which are designed to afford the utility an opportunity to earn a fair rate of return not be adjusted. Given the additional revenues which will flow to Miller Gas if consumption increases and assuming that all other things remain equal, there is a good possibility that Miller Gas will earn in the upper range of its authorized rate of return, or even exceed it. This was recognized by City Gas. (Tr. 239). At that time, further rate adjustments would be in order and, should this occur, all of the ratepayers will benefit. Interestingly enough, City Gas has now advanced an argument that if their tariff had been approved, they would have more closely approached the authorized rate of return and present customers would have had an "increase-prevention rate

buffer". (Brief at 11, 12). However, while Miller Gas demonstrated through testimony and exhibits the projected effect on its rate of return and the potential benefits to its ratepayers, City Gas has given absolutely no information to support their contention other than pure conjecture in their brief.

As noted, City Gas has cited a number of cases in its brief with the proposition that the PSC has the power to approve rate structure and that rates have often been approved based on criteria other than cost to serve. That is not at dispute. Miller Gas agrees that the PSC has those powers; however, none of the cited cases stand for the proposition that the PSC should approve a rate simply designed to undercut that of another utility. To permit such action only results in the initiation of unnecessary, expensive and destructive, competitive practices - an action not condoned by this Court. Storey v. Mayo, 217 So.2d 304 (Fla. 1968).

Given the record in this proceeding, City Gas simply did not offer any support whatsoever for the rate which it was proposing, other than that it undercut that proposed by Miller Gas. City Gas gave the PSC no reasonable basis upon which the PSC could support a decision to approve the tariff. Miller Gas, on the other hand, provided backup data from the initial filing and throughout this proceeding. Contrary to the suggestion of City Gas, the PSC acted prudently in this proceeding by denying the discriminatory, unfounded, unjustified tariff filed by City Gas, and by approving that which was submitted by Miller Gas. As agreed to by City Gas, the PSC should be guided by what is

in the best interests of the ratepayers of both utilities. (Tr. 213). This is precisely what the PSC did.

II.

The PSC did not exceed its jurisdiction by finding Miller Gas to be the appropriate utility to serve the WASA plant.

Despite the fact that City Gas devotes a substantial portion of its brief to argument with regard to the territorial dispute issue, the fact is that this proceeding was resolved simply as a matter of a tariff interpretation. (R. 143, 151, 152). City Gas has conveniently overlooked the lengthy discussions by the parties and the PSC in its order (Order 15268 at 5, 6; R. 151, 152) concerning the service areas of the respective companies contained in the tariffs. More importantly, City Gas has even overlooked a stipulation which was included in the Prehearing Order. Specifically, that stipulation provides,

> 1. Staff, City Gas and Miller Gas stipulated that neither WASA/Orr Plant site point of service is located within the territory City Gas holds itself out to serve as represented by the map contained in City Gas' tariffs, and, further, that both points of service are within the narrative service area description contained in Miller Gas' tariffs. (Order 14573 at 9; R. 106).

Indeed, there was further discussion during the hearings when the question was posed as to whether it could be stipulated that in order for City Gas to serve the Orr plant they would either have to serve under the existing tariff or the Commission would have to approve another tariff. City Gas agreed. (Tr. 169). Given the stipulation and concession by City Gas, they should

not be heard to complain that the PSC erred by determining that the Orr plant is within the service area of Miller Gas.

Both Miller Gas and City Gas have tariffs on file with the PSC, as required by Secs. 366.05 and 366.06, F.S., and Rules 25-7.33 and 25-9.04, F.A.C. Neither can provide service at rates other than those as described in their approved tariff, nor can they provide service except in the areas described in their tariff or under the rules and regulations set forth therein. (Secs. 366.05 and 366.06, F.S.). Once approved, tariffs are binding on the company and customers. Atlantic Coast Line Railroad Company v. Atlantic Bridge Company, 57 F.2d 654 (5th DCA 1932), Florida Power Corp. v. Florida Public Service Commission, 243 So.2d 195 (Fla. 4th DCA 1971), Florida Power & Light Corp. v. State ex rel. Malcolm, 144 So. 657 (Fla. 1944).

Although tariffs should be expressed in terms that are clear and plain, there are instances when there will be questions as to the applicability of a provision or even instances when the provisions are ambiguous. In situations where a tariff is ambiguous, the terms are construed in the most favorable light to the customer, not to the company. Atlantic Coast Line Railroad, supra.

Although both service area descriptions are clear, City Gas has attempted to create an ambiguity by testifying to differences between the filed and approved tariff and the intentions of the company. (Tr. 195-197). The approved tariff of City Gas clearly excludes the area within which the Orr plant is situated, and City Gas so conceded and stipulated. That this area was

intended to be excluded from the area serviced by City Gas is further supported by reference to orders of the Federal Power Commission (now the Federal Energy Regulatory Commission - FERC), and contracts between City Gas and Florida Gas Transmission - the supplier of gas to both Miller Gas and City Gas. (Tr. 34, 185, 186, 188; Ex. 203). Under the decisions of the Federal Power Commission, City Gas was specifically excluded from expanding into that area which is excluded from their service area. The tariff is not ambiguous; it is very clear. Even if it were ambiguous, the terms should be construed against City Gas so they would not benefit from their ambiguity. Reference to the evidence supports the determination that the Orr plant is not within the service area of City Gas, but is within that of Miller Gas.

Throughout this proceeding Miller Gas has taken the position that the PSC has the authority to resolve territorial disputes and to establish service areas of the companies. (R. 26, 87, 102, 117-121). In City Gas Company v. Peoples Gas System, Inc., 182 So.2d 429 (Fla. 1965), the Court noted that, "...in some measure the Commission does control the area served by the company by virtue of its prescribed powers...". In another case, the Court observed that the power to mandate an effective and efficient utility operation necessitates the correlative power to protect the utility against unnecessary, expensive, competitive practices. Storey v. Mayo, supra p. 17. These points were made to the PSC throughout this proceeding and, although the PSC appeared to agree with the argument presented by Miller Gas, they made

their decision based on the tariffs filed with the PSC and did not specifically rule on the petition filed by Miller Gas other than to determine it to be moot. (R. 143; Order 15268 p.6 at R. 152). The PSC disposed of this as a tariff matter, which it is, and did not address an interpretation of their powers and jurisdiction. Since the PSC did not dispose of this matter by reliance on any implied authority to resolve disputes but rather on their statutory authority to prescribe fair and reasonable rates, the Court need not review this either.

Also lacking merit is the argument that the PSC "ran roughshod" over Dade County and abused its authority. Dade County was an intervenor in the PSC proceeding and had the opportunity to participate fully. The record is devoid of any indication whatsoever that Dade County takes issue with the PSC's decisions. Certainly, if Dade County felt that they had been mistreated by the PSC, they had an opportunity to express their displeasure. They have not. Dade County has no organic, economic or political right to service by a particular utility merely because they deem it advantageous to themselves. Storey v. Mayo, supra p. 17. In this instance, regardless of the outcome, Dade County benefits. (Tr. 209-210). Dade County has not complained of any decision, and City Gas is merely attempting to raise an issue where there is none and where they have no right to raise it.

The decision of the PSC in this proceeding is the only decision which it could have reached given the evidence and testimony before it. Miller Gas demonstrated the propriety of its proposed rate from both a practical and cost of service

point, while City Gas could do little more than testify that their rate was intended to undercut Miller Gas'. Furthermore, Miller Gas demonstrated beyond doubt that its ratepayers and the Citizens of Dade County stood to benefit by approval of its tariff while City Gas could do neither. Most important though is that City Gas' own tariffs preclude the provision of service to the area in question.

In proceedings before this Court, orders of the PSC are clothed with a presumption of correctness and it is incumbent upon the petitioner to demonstrate that the order of the PSC is not based upon competent, substantial evidence, is contrary to the essential elements of law, or is arbitrary and capricious. United Telephone Company v. Florida Public Service Commission, ___ So.2d ___, 11 FLW 330 (Fla. 1986); Citizens v. Florida Public Service Commission, 403 So.2d 1332 (Fla. 1981); Florida Retail Federation, Inc. v. Mayo, 331 So.2d 308 (Fla. 1976); Shevin v. Yarborough, 274 So.2d 505 (Fla. 1973).

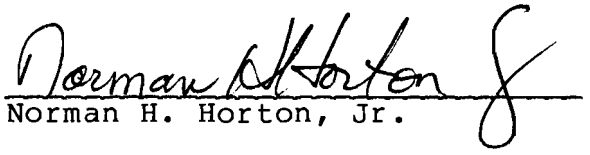
This Court will not reweigh the evidence, but will review the order to determine if there was competent, substantial evidence. Gulf Power Company v. Florida Public Service Commission, 453 So.2d 799 (Fla. 1984); United Telephone Company v. Mayo, 345 So.2d 648 (Fla. 1977); Jacksonville Suburban Utilities Corp. v. Hawkins, 380 So.2d 425 (Fla. 1980).

City Gas has not only failed to establish any error on the part of the PSC, but has demonstrated through its own testimony that the PSC's decision was the proper one here.

CONCLUSION

The orders of the PSC were based upon competent, substantial evidence and reflect a proper exercise of the PSC's ratemaking authority. City Gas has not shown that the PSC abused its discretion or that its proposed tariffs should have been approved. The record is devoid of any basis whatsoever for the proposed tariff, but adequately supports approval of the tariff filing by Miller Gas. The orders of the PSC should be affirmed in all respects.

Respectfully submitted,



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