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| State of Florida  pscSEAL | | Public Service Commission  Capital Circle Office Center ● 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850  -M-E-M-O-R-A-N-D-U-M- | |
| DATE: | May 28, 2020 | | |
| TO: | Office of Commission Clerk (Teitzman) | | |
| FROM: | Division of Economics (Guffey)  Office of the General Counsel (Trierweiler) | | |
| RE: | Docket No. 20200085-GU – Joint Petition for approval of territorial agreement in Sumter County by Peoples Gas System, the City of Leesburg and South Sumter Gas Company. | | |
| AGENDA: | 06/09/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate | | |
| COMMISSIONERS ASSIGNED: | | | All Commissioners |
| PREHEARING OFFICER: | | | Polmann |
| CRITICAL DATES: | | | None |
| SPECIAL INSTRUCTIONS: | | | None |

Case Background

On March 11, 2020, Peoples Gas System (Peoples) and the City of Leesburg (Leesburg), collectively the joint petitioners, filed a petition seeking Commission approval of a Territorial Agreement delineating their respective service boundaries in Sumter County, Florida. Staff notes that South Sumter Gas Company, LLC, although listed in the title of the petition, is not a party to the proposed Territorial Agreement.[[1]](#footnote-1) The proposed Territorial Agreement and a map depicting the current service territories and proposed changes, and boundary areas to be served by Peoples and Leesburg are provided in Attachment A to this recommendation.

On February 23, 2018, Peoples filed a petition in Docket No. 20180055-GU,[[2]](#footnote-2) requesting that the Commission resolve a territorial dispute between Peoples and Leesburg and/or South Sumter Gas Company, LLC. The Petition alleged that Peoples and Leesburg and/or South Sumter Gas Company, LLC were in a dispute as to the rights of each to provide natural gas services to the customers in Sumter County, including The Villages. The area in dispute is characterized by residential areas of varying density, interspersed with commercial support areas, and is referred to as Bigham North, Bigham West, Bigham East (Bigham developments).

On August 21, 2018, the Commission referred the dispute to the Division of Administrative Hearings (DOAH). DOAH assigned an Administrative Law Judge (ALJ) for the purpose of conducting an administrative hearing and issuing a Recommended Order[[3]](#footnote-3) on the territorial dispute. The administrative hearing was held from June 24 to 27, 2019, and a Recommended Order was issued on September 30, 2019.[[4]](#footnote-4) In that Order, the ALJ awarded Peoples the disputed territory encompassing the Bigham North, Bigham East, and Bigham West developments in the Villages in Sumter County. The ALJ’s Order did not award any other territory to any of the parties. At the January 14, 2020 Commission Conference, the Commission adopted the ALJ’s Recommended Order without modification by final Order No. PSC-2020-0052-FOF-GU.[[5]](#footnote-5)

The proposed Territorial Agreement in the instant docket incorporates the Commission’s decision in Order No. PSC-2020-0052-FOF-GU, a separate Settlement Agreement between the parties addressing the transfer of infrastructure from Leesburg to Peoples, and establishes new service boundary lines between the joint petitioners for the remaining portions of the county. The referenced Settlement Agreement is not subject to Commission approval, and hence was provided to staff for informational purposes only upon request. The joint petitioners believe the Territorial Agreement will avoid future litigation and territorial disputes in Sumter County and enhance natural gas service for customers.

During the review of this joint petition, staff issued two data requests to the joint petitioners on March 20, 2020 and April 15, 2020, for which responses were received on April 3, 2020 and May 1, 2020, respectively. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue :

 Should the Commission approve the proposed Territorial Agreement between Peoples and Leesburg in Sumter County?

Recommendation:

  Yes, the Commission should approve the proposed Territorial Agreement between Peoples and Leesburg in Sumter County. The proposed Territorial Agreement is in the public interest and it will enable Peoples and Leesburg to avoid duplication of facilities and serve their customers in an efficient manner. (Guffey)

Staff Analysis:

 Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[[6]](#footnote-6)

Peoples and Leesburg Territorial Agreement

The proposed Territorial Agreement between Peoples and Leesburg was executed on March 9, 2020, and would continue to be in effect until modification by mutual agreement by the parties and approved by the Commission or until termination or modification mandated by court order, as stated in Section 1.1 of the territorial agreement.

The joint petitioners stated that as a result of Order No. PSC-2020-0052-FOF-GU, 3,625 (includes 3,615 residential and 10 commercial customers) Leesburg service customers in Bigham North, Bigham West, and Bigham East will be transferred to be served by Peoples, effective June 1, 2020.[[7]](#footnote-7) Pursuant to the proposed Territorial Agreement in the instant docket, the joint petitioners will also transfer three additional customers (fire station, a district building, and The Villages Grown–a hydroponic and aeroponic farm) located adjacent to Bailey West Development to Peoples. Section 2.1 of the proposed Territorial Agreement also includes additional areas in Sumter County to be served by Peoples in the future. The joint petitioners also stated that any new customers taking service within the areas contained in Article II – Boundary Provisions of the proposed Territorial Agreement will be served by either Peoples or Leesburg according to the future service areas identified in the map (Attachment A to this recommendation).[[8]](#footnote-8)

During the pendency of Docket No. 20180055-GU, Leesburg filed a territorial dispute petition in Docket No. 20180185-GU against Peoples regarding its natural gas service to Suwannee American Cement Company, LLC in Sumter County. This petition is still pending before the Commission. Pursuant to Section 2.1 of the proposed Territorial Agreement and pursuant to the Settlement Agreement, the Suwannee American Cement Company, LLC will continue to be served by Peoples. In response to staff’s first data request, the joint petitioners stated that the unresolved issues in Docket No. 20180185-GU will be resolved if the proposed Territorial Agreement is approved by the Commission and Leesburg will voluntarily dismiss its petition in Docket No. 20180185-GU.

Transfer of Assets

The joint petitioners, in paragraph 10 of the petition and in paragraph 9 of the Territorial Agreement, stated their intention to provide an orderly transfer of assets in the Bigham developments without the need for further litigation. Rule 25-7.0471(2)(a), F.A.C., requires the Commission to consider the reasonableness of the purchase price of any facilities being transferred.

In response to staff’s first data request, the joint petitioners stated that Peoples will be paying for the infrastructure for the approximately 3,625 Bigham development customers to be transferred to Peoples. South Sumter Gas Company, LLC, was retained by Leesburg to act as a construction company which constructed the infrastructure to serve the Bigham developments. Peoples will pay $5,000,000 to South Sumter Gas Company, LLC, with $500,000 to be to be retained by Peoples to pay for warranty claims. The balance will be paid to South Sumter Gas Company, LLC, in one year less claims for warranty issues related to the infrastructure being transferred. This payment amount would result in a per customer amount ranging between $1,241 to $1,379 depending on the reduction for warranty expenses. Through its adoption of the ALJ’s Recommended Order, the Commission concluded in Order No. PSC-2020-0052-FOF-GU that “the cost-per-home for Leesburg and SSGC to provide service in Bigham is $1,800. In addition, Leesburg will be installing automated meters at a cost of $72.80 per home. The preponderance of evidence indicates that PGS cost-per-home is $1,579.”[[9]](#footnote-9)

The per customer purchase price stated above is less than the cost determined by Order No. PSC-2020-0052-FOF-GU. The joint petitioners also stated that no purchase price has been affixed to Leesburg’s transfer of its Bigham development infrastructure, as Leesburg did not incur significant costs in installing infrastructure in the Bigham developments.[[10]](#footnote-10) Staff believes the negotiated infrastructure transfer cost is reasonable and approximates the cost established in Order No. PSC-2020-0052-FOF-GU.

Customer Deposits and Notification

Leesburg notified its affected natural gas customers via a letter dated April 1, 2020 (Attachment B to this recommendation), which stated that their customer deposit will be applied towards the final bill or outstanding balance, and any remaining deposit amount will be directly refunded to the customer by check within 30 to 45 days of the date of transfer (June 1, 2020). Of the 3,625 Leesburg customers to be transferred to Peoples, per Commission Order PSC-2020-0052-FOF-GU, 1,909 customers have a deposit on file with Leesburg.[[11]](#footnote-11) Leesburg’s customer deposit is $50.

Peoples is proposing a $50 deposit for Leesburg customers transferred to Peoples. After 12 months of service, Peoples will reassess the deposit amount in accordance with 366.05(1), F.S. According to Peoples’ customer notification (Attachment C), it will collect the deposit in its first bill in July 2020 and return the deposit with interest after 23 months of continuous service and no more than one late payment. Peoples’ tariff allows transferred customers to request a credit check to evaluate if the customer would qualify to have the deposit waived. Peoples included information in its customer notification (Attachment C) on how customers can request the credit check to determine if the deposit can be waived.

Pursuant to the proposed Territorial Agreement, three additional commercial customers will be transferred to Peoples. These three customers currently are being served by Leesburg and are located outside of the area ordered to be transferred to Peoples in Order No. PSC-2020-0052-FOF-GU. The parties have agreed to transfer these customers to Peoples in the proposed Territorial Agreement.[[12]](#footnote-12) In response to staff’s second data request, Peoples stated that it will contact the three additional customers individually to discuss the transfer and applicable billing rates.[[13]](#footnote-13)

Conclusion

Through the proposed Territorial Agreement, the joint petitioners will be able to serve customers within clearly defined service areas, comport with the requirements of Order No. PSC-2020-0052-FOF-GU, resolve the dispute in Docket No. 20180185-GU, avoid future litigation, eliminate any potential uneconomic duplication of facilities, and serve current and future customers without service disruption.

After review of the joint petition and the petitioners’ joint responses to Commission staff’s data requests, staff recommends that the proposed Territorial Agreement is in the public interest and will enable Peoples and Leesburg to serve their current and future customers efficiently. It appears that the proposed Territorial Agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in reliability of natural gas service. Pursuant to the joint petition and response No. 3 to Commission staff’s first data request, the petitioners stated that approval of this Territorial Agreement will establish definitive service boundaries and avoid future litigation. Additionally, as stated in the petition and in response to Commission staff’s first data request No. 6, Leesburg will withdraw its counter-petition in Docket No. 20180185-GU to resolve the territorial dispute related to the Suwannee American Cement, if the Commission approves the proposed Territorial Agreement. As such, Commission staff believes that the proposed Territorial Agreement between Peoples and Leesburg will not cause a detriment to the public interest and recommends Commission approval.

Issue :

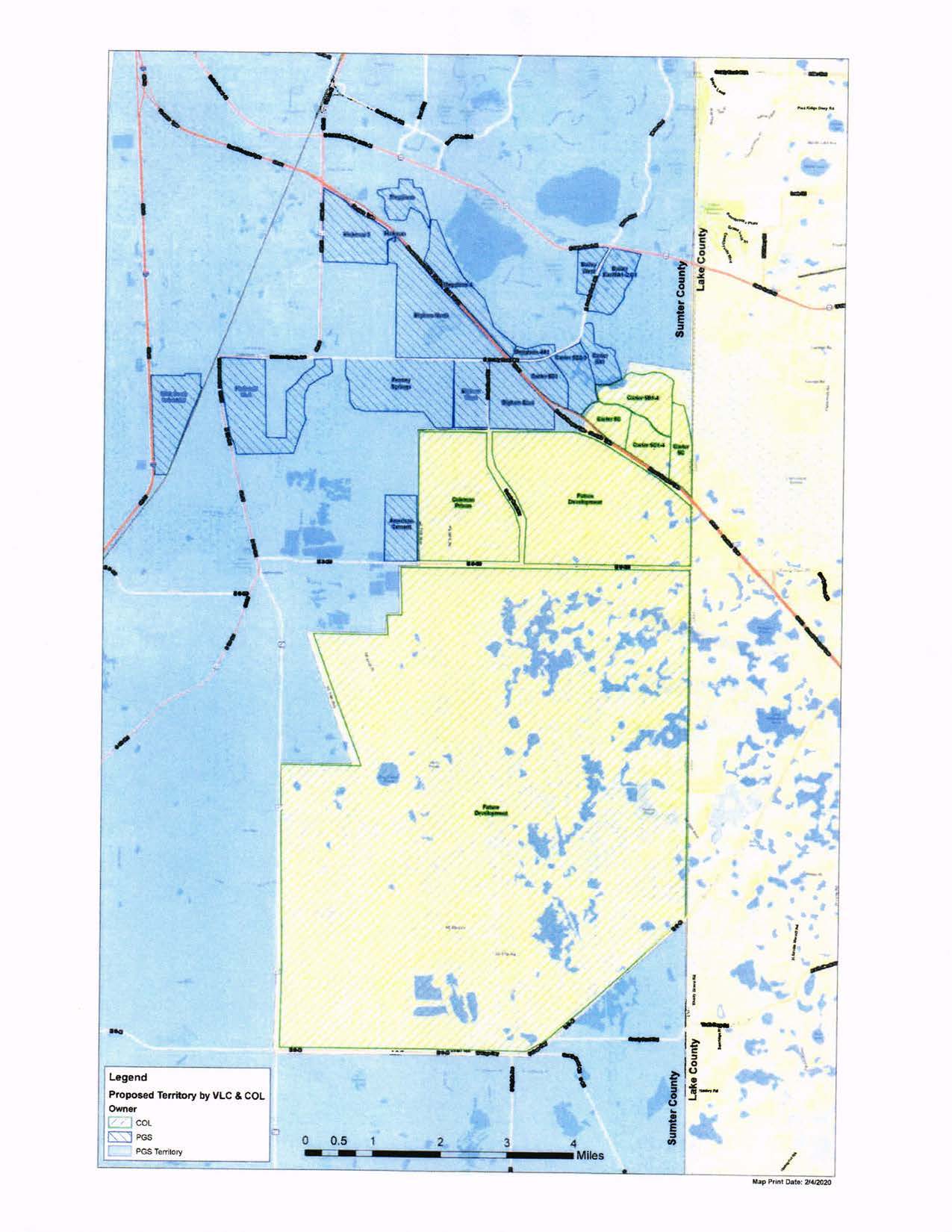
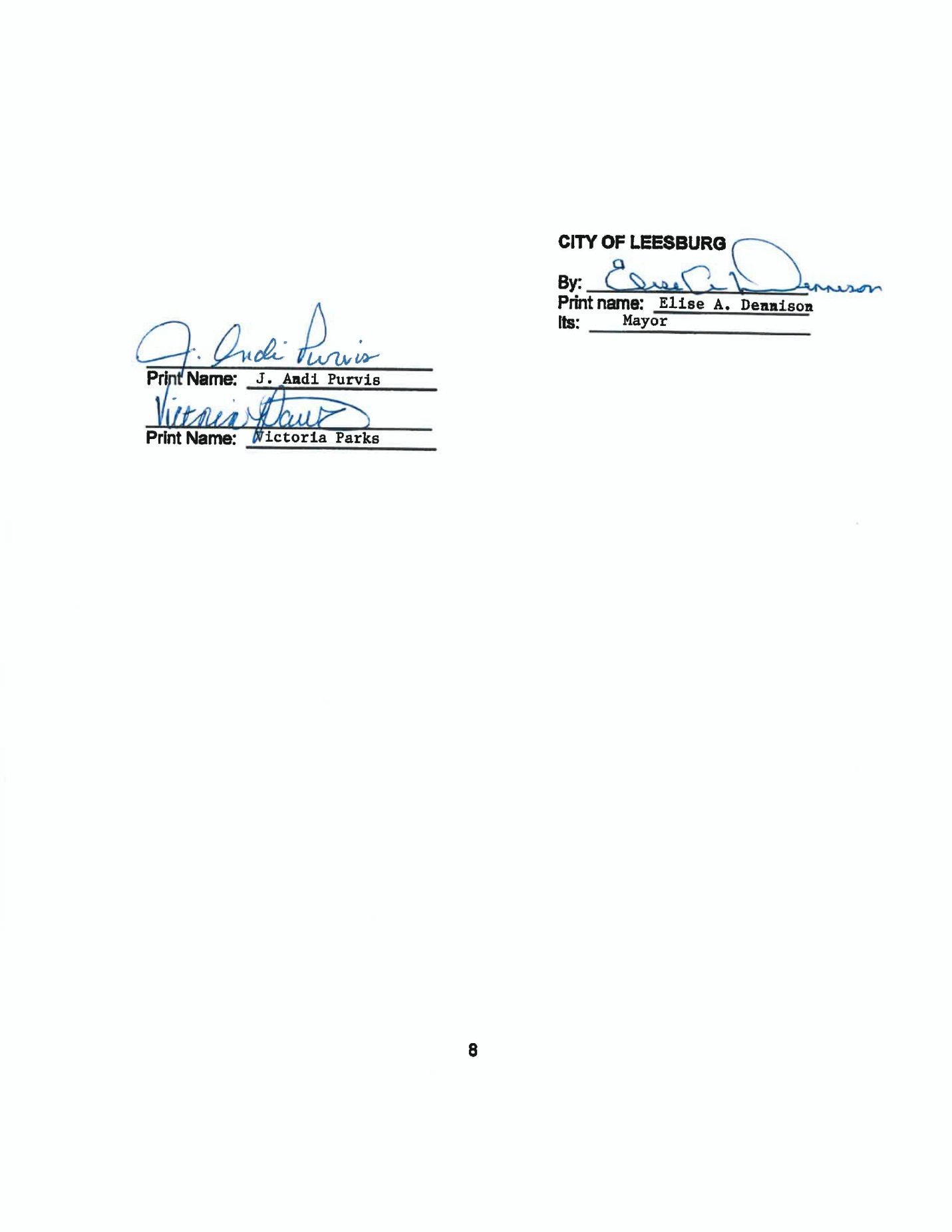
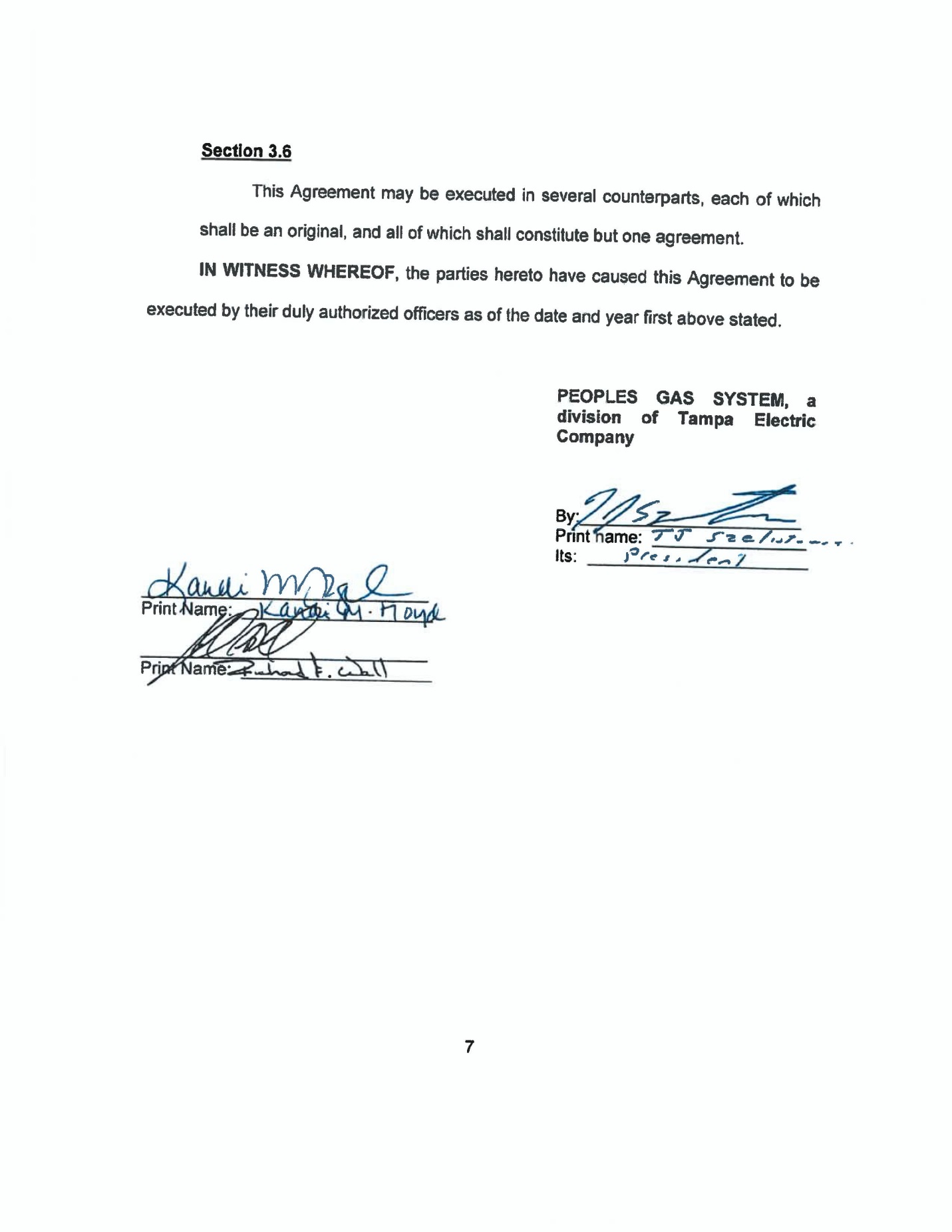
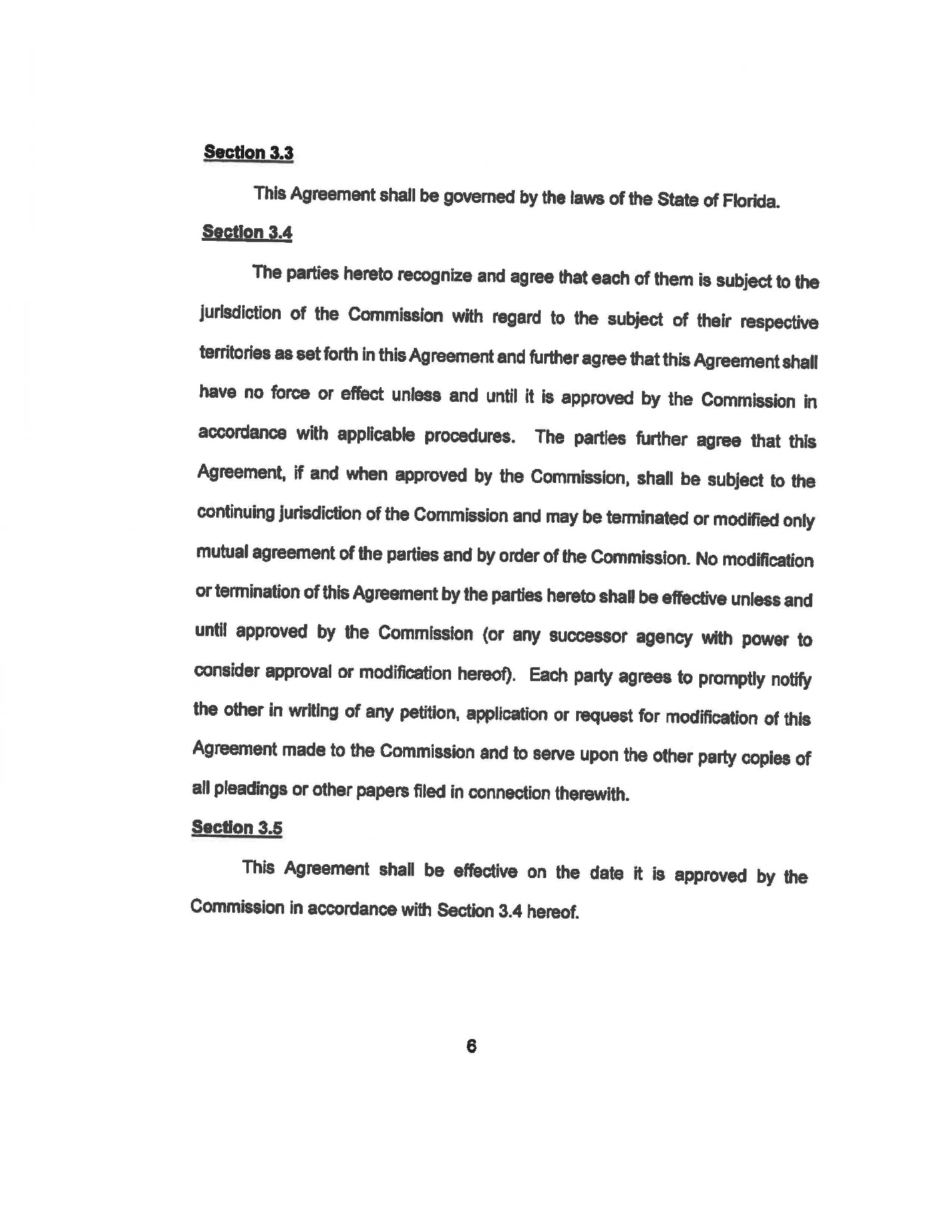
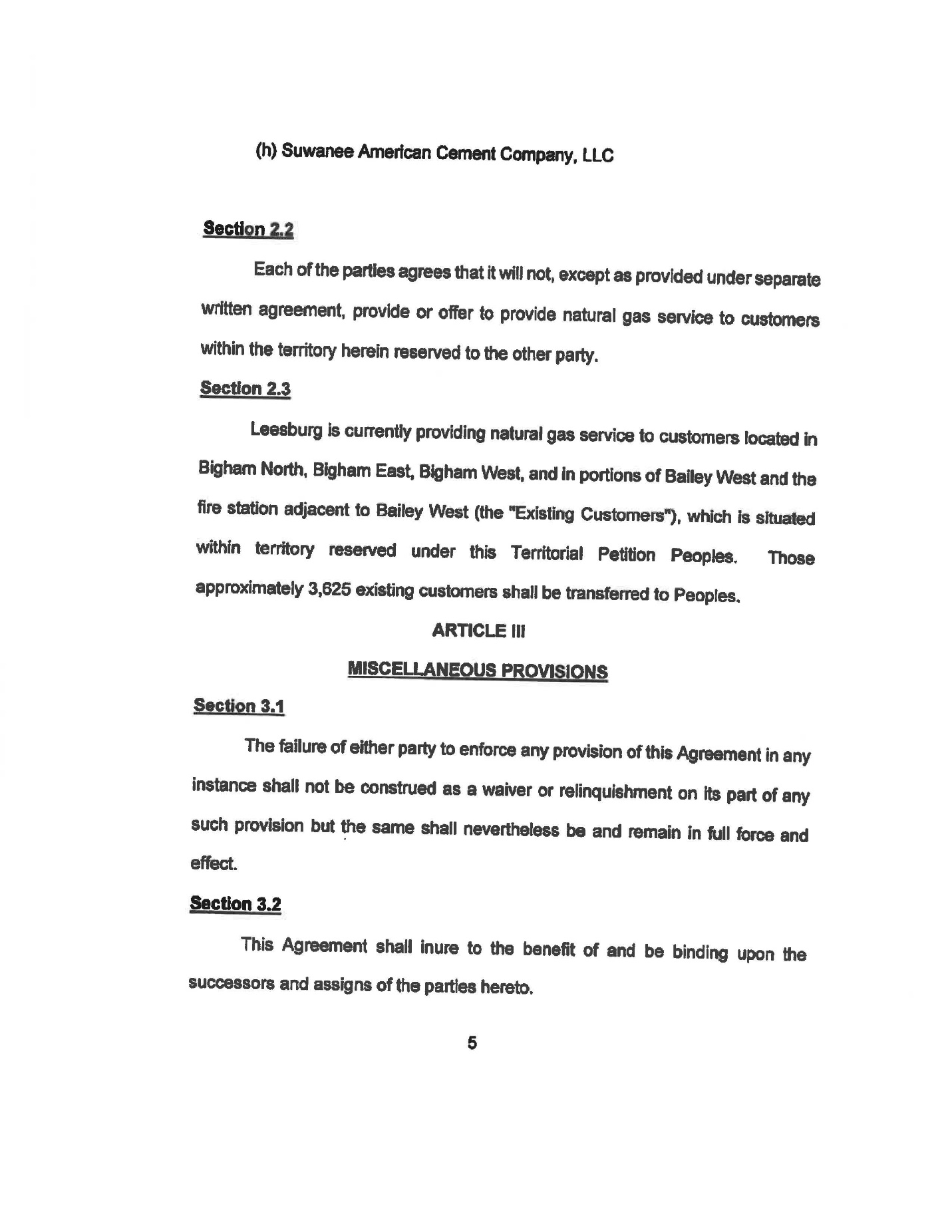
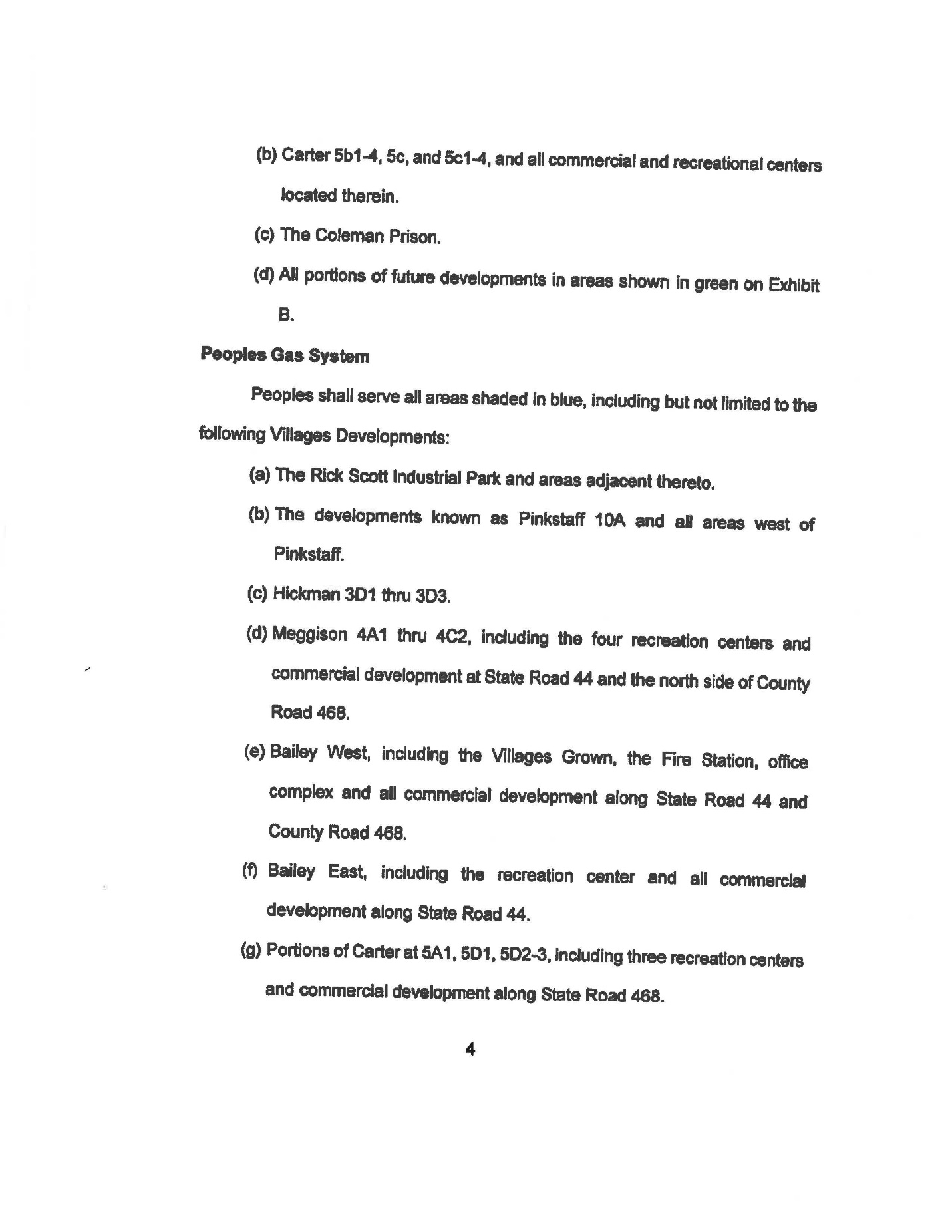
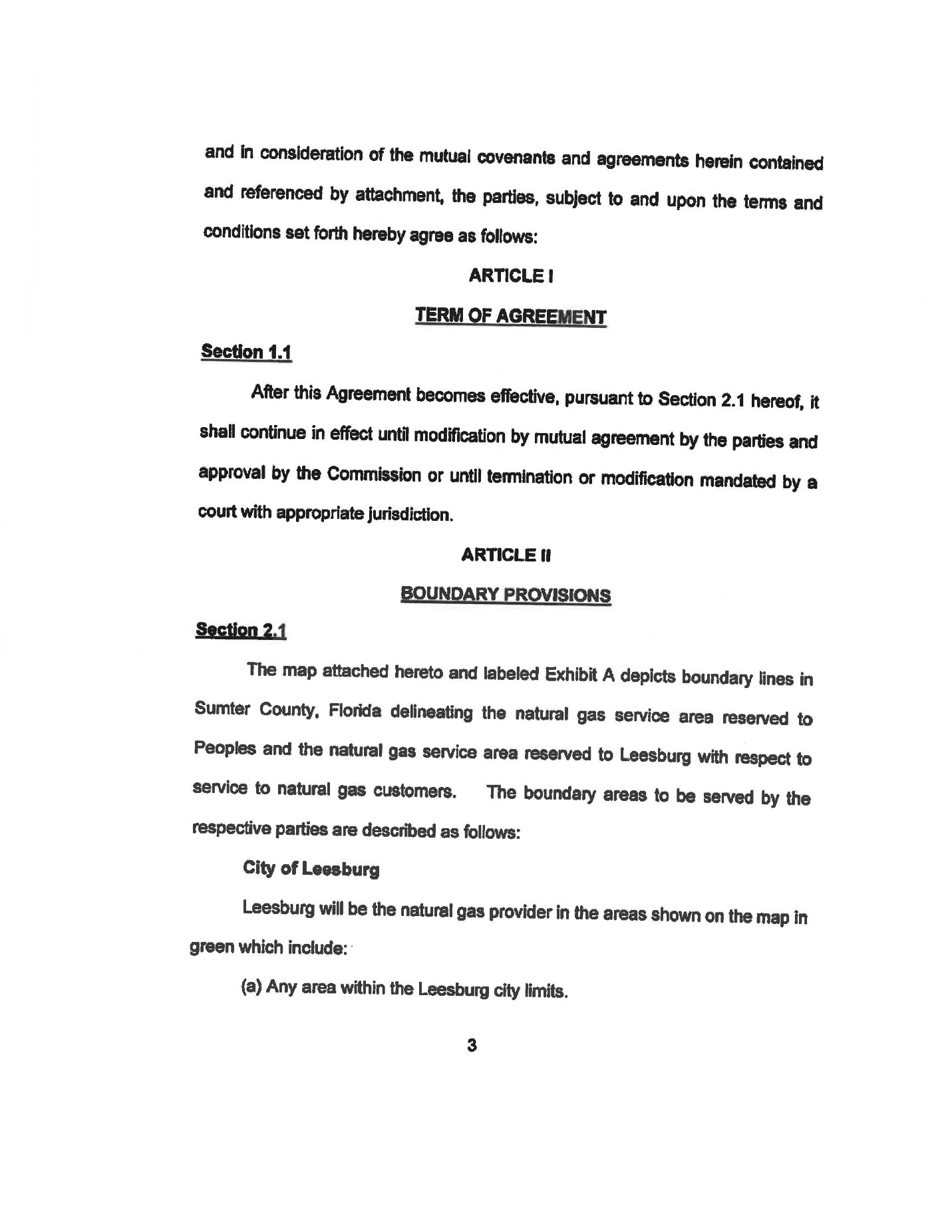
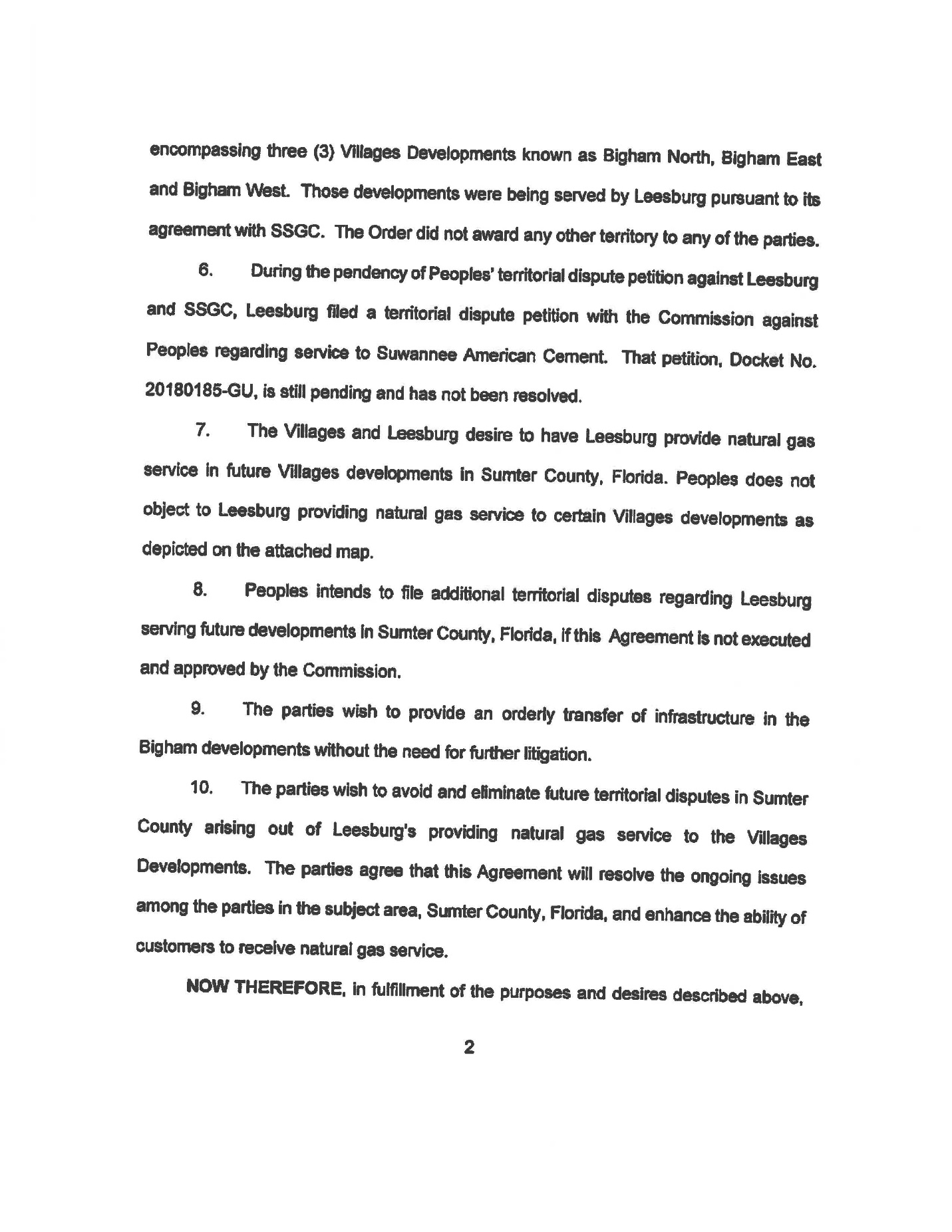
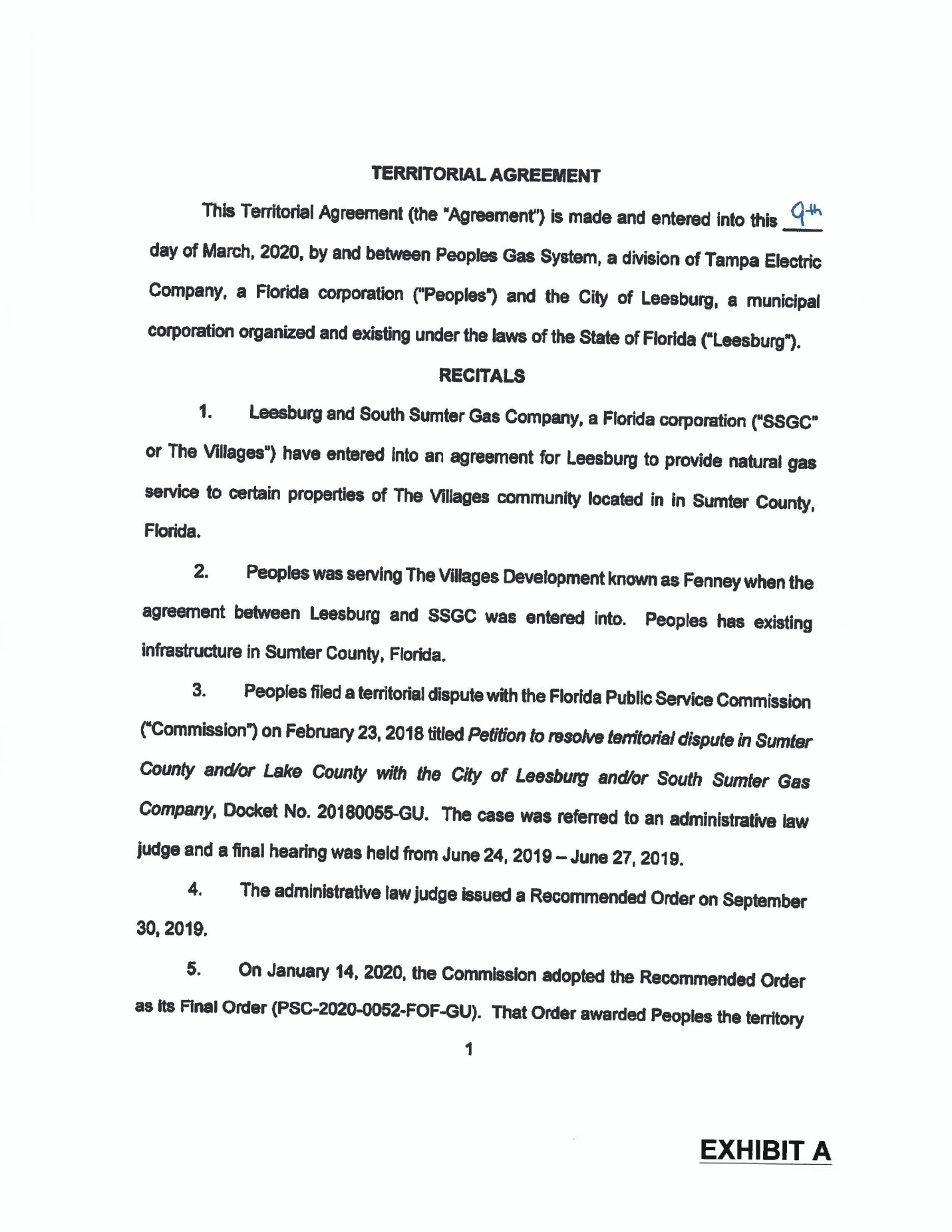
 Should this docket be closed?

Recommendation:

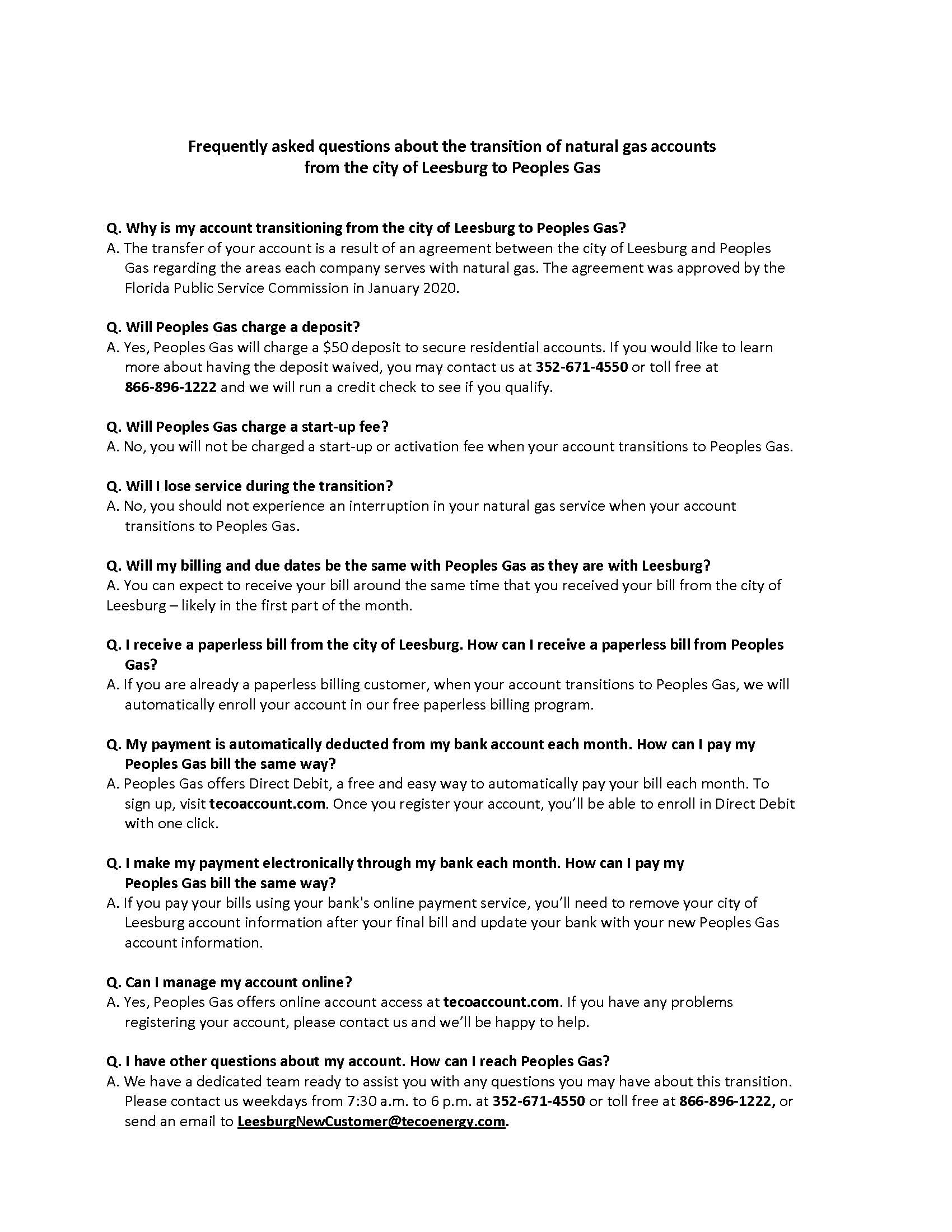
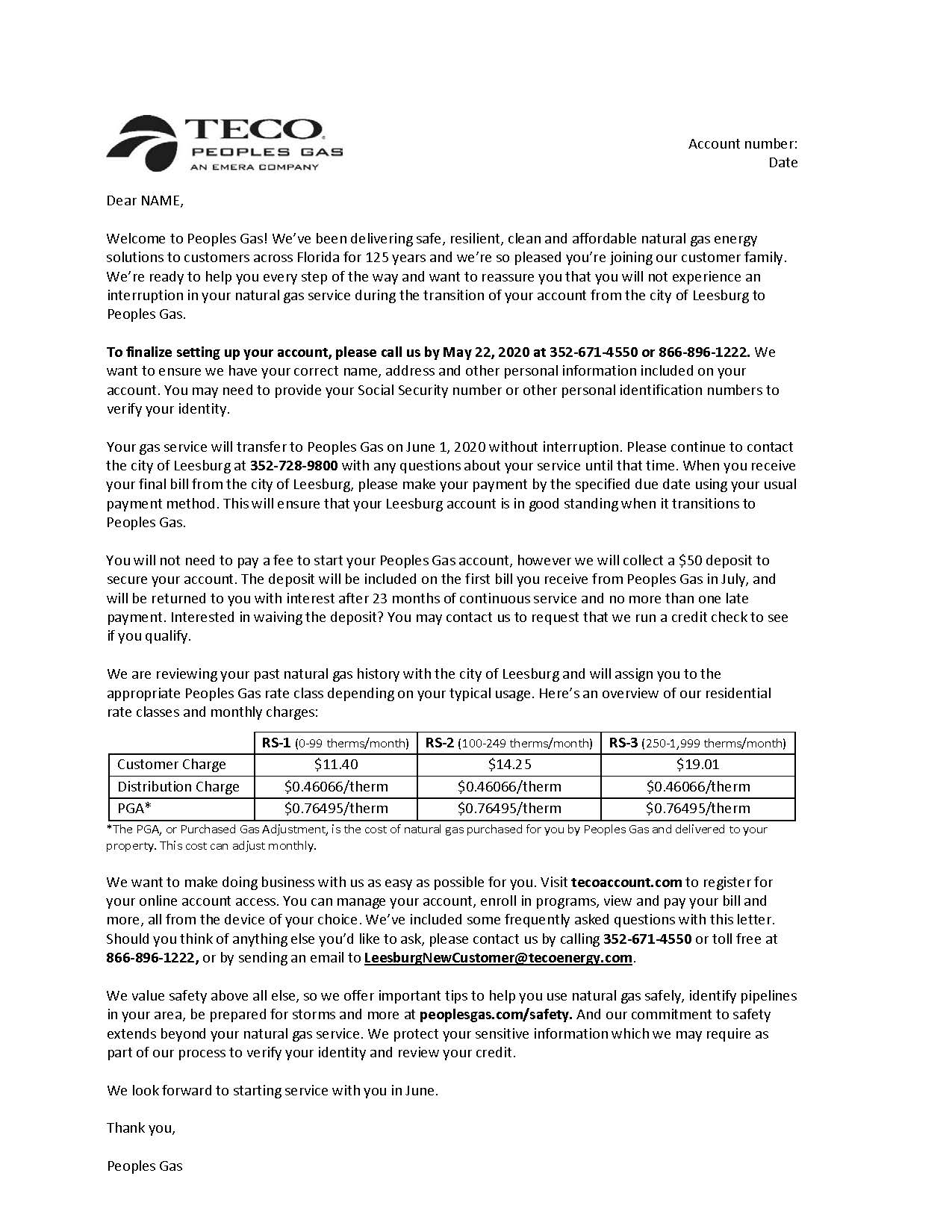
 If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Trierweiler)

Staff Analysis:

 If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.







1. The joint petitioners confirmed this in response No.1 in staff’s first data request (Document No. 01761-2020). [↑](#footnote-ref-1)
2. *In re: Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System.* [↑](#footnote-ref-2)
3. "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof. [↑](#footnote-ref-3)
4. *Peoples Gas System vs. South Sumter Gas Company, LLC, and City of Leesburg*, DOAH Case No. 18-4422, Recommended Order issued on September 30, 2019. [↑](#footnote-ref-4)
5. Order No. PSC-2020-0052-FOF-GU, issued February 11, 2020, in Docket No. 20180055-GU, *In re: Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System*. [↑](#footnote-ref-5)
6. *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission,* 469 So. 2d 731 (Fla. 1985). [↑](#footnote-ref-6)
7. Responses No. 7 and No. 12 in staff’s first data request (Document No. 01761-2020). [↑](#footnote-ref-7)
8. Response No. 7 in staff’s first data request (Document No. 01761-2020). [↑](#footnote-ref-8)
9. Order No. PSC-2020-0052-FOF-GU at p. 92 (Conclusion of Law 160). [↑](#footnote-ref-9)
10. Response No. 8 in Commission staff’s first data request (Document No. 01761-2020). [↑](#footnote-ref-10)
11. Response No. 17 in Commission staff’s first data request (Document No. 01761-2020). [↑](#footnote-ref-11)
12. Response No. 1 in staff’s second data request (Document No. 02343-2020). [↑](#footnote-ref-12)
13. Response No. 2 in staff’s second data request (Document No. 02343-2020). [↑](#footnote-ref-13)