

Hopping Green & Sams

Attorneys and Counselors

ORIGINAL

Writer's Direct Dial Number
(850) 425-2313

February 6, 2003

RECEIVED-FPSU
COMMISSION CLERK
FEB -6 PM 2:47

BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

030134-GU

Re: Joint Petition for Approval of Territorial Agreement

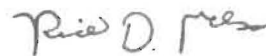
Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Public Utilities Company and City Gas Company of Florida (an operating division of NUI Utilities, Inc.) are the original and fifteen copies of their Joint Petition for Approval of Territorial Agreement.

By copy of this letter, this document has been furnished to the parties on the attached certificate of service.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2313.

Very truly yours,



Richard D. Melson

RDM/mee
Enclosures
cc: Certificate of Service
Norman H. Horton, Jr.
Gloria L. Lopez

RECEIVED & FILED


FPSU-BUREAU OF RECORD

Copies w/MAPS forwarded to BCL + ECR

DOCUMENT NUMBER-DATE

01275 FEB-6 8

FPSU-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement between Florida Public Utilities Company and City Gas Company of Florida

Docket No. 030134 -GU

Filed: February 6, 2003

JOINT PETITION FOR APPROVAL OF TERRITORIAL AGREEMENT

Petitioners Florida Public Utilities Company ("FPUC") and NUI Utilities, Inc. d/b/a/ City Gas Company of Florida ("CGCF") hereby jointly petition the Commission pursuant to Section 366.04(3)(a), Florida Statutes, and Rule 25-7.0471, Florida Administrative Code, for approval of the territorial agreement dated December 31, 2002 ("Agreement") attached hereto as Exhibit I.

In support thereof, Petitioners state:

1. Petitioners each own and operate natural gas distribution facilities in Palm Beach County, Florida, and each is a natural gas utility regulated by the Commission under Chapter 366, Florida Statutes. The names and mailing addresses of the Petitioners are:

Florida Public Utilities Company
401 S. Dixie Highway
P.O. Box 3395
West Palm Beach, FL 33402

NUI City Gas Company of Florida
955 East 25th Street
Hialeah, FL 33013

2. The names and addresses of the persons authorized to receive notices and communications with respect to this petition are:

As to FPUC: Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876

Marc L. Schneidermann
Florida Public Utilities Company
401 S. Dixie Highway
P.O. Box 3395
West Palm Beach, FL 33402

As to CGCF: Richard D. Melson
Hopping Green & Sams, PA
P.O. Box 6526
Tallahassee, FL 32314

Gloria L. Lopez
NUI City Gas Company of Florida
955 East 25th Street
Hialeah, FL 33013

DOCUMENT NUMBER DATE

01275 FEB-6 8

FPSC-COMMISSION CLERK

3. FPUC and CGCF are both natural gas distribution companies authorized by the Commission to serve customers in Palm Beach County, Florida. CGCF has constructed a natural gas distribution system which in part traverses territory currently identified as the service territory of FPUC.

4. In order to enable as many persons and businesses within Palm Beach County as possible to receive economical and reliable natural gas service, and to avoid any unnecessary duplication of facilities, Petitioners have entered into the Agreement to define the territorial service areas of each petitioner in Palm Beach County. A copy of the Agreement is attached as Exhibit I. All terms and conditions pertaining to implementation of the Agreement are included in the Agreement.

5. Petitioners seek the Commission's approval of the Agreement pursuant to Section 366.04(3)(a), Florida Statutes, and Rule 25-7.0471, Florida Administrative Code. Under Paragraph 12 of the Agreement, approval by the Commission is a condition precedent to the effectiveness of the Agreement. Under Paragraph 11 of the Agreement, any modification to the service areas must also be reviewed and/or approved by the Commission. Prior to the second anniversary of the Commission's approval of the Agreement, and no less frequent than every five years thereafter, the parties will meet to review the status of the Agreement and will provide a written status report to the Commission.

6. A written description of the agreed service territories and the boundary between those service areas is included in Paragraph 1 of the Agreement, depicted on Exhibit A of the Agreement, and described by metes and bounds on Exhibit B of the Agreement. Under the Agreement, FPUC's service area lies east of the boundary line and CGCF's service territory lies west of the boundary line. The boundary line circumscribes an area within which FPUC will

serve residential and commercial customers and CGCF will serve industrial customers, defined as those whose planned connected load exceeds 250,000 therms per year.

7. The Agreement does not provide for or involve the transfer of any customers or facilities.

8. FPUC and CGCF each represents that approval and implementation of the Agreement will not cause a decrease in the availability or reliability of natural gas service to FPUC or CGCF, or to the existing or future ratepayers of either company.

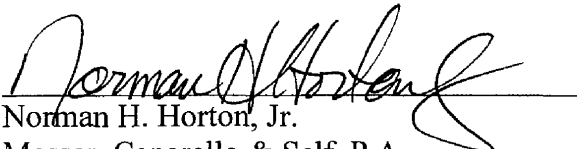
9. FPUC and CGCF believe that the Commission's approval of the Agreement would be consistent with the standards set forth in Section 366.04, Florida Statutes and Rule 25-7.0471, Florida Administrative Code.

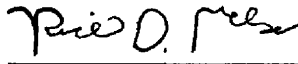
WHEREFORE, FPUC and CGCF request that the Commission enter its order approving the Agreement attached hereto as Exhibit I.

RESPECTFULLY SUBMITTED this 6th day of February, 2003.

FLORIDA PUBLIC UTILITIES COMPANY

CITY GAS COMPANY OF FLORIDA
an operating division of NUI Utilities, Inc.

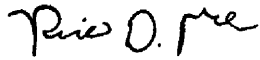

Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720


Richard D. Melson
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314
(850) 425-2313

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition was furnished by hand delivery this 6th day of February, 2003, to the following:

Mary Anne Helton
Attorney Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Attorney

TERRITORIAL AGREEMENT

This Territorial Agreement ("Agreement") entered into on the 31st day of December 2002, by and between Florida Public Utilities Company (hereinafter also referred to as "FPUC" and "Party"), a Florida corporation and NUI Utilities, Inc. d/b/a City Gas Company of Florida (hereinafter also referred to as "CGCF" and "Party"), a New Jersey corporation, collectively hereinafter referred to as the "Parties."

WITNESSETH: THAT

WHEREAS, the Parties are both natural gas distribution companies authorized by the Florida Public Service Commission ("FPSC") to serve customers in Palm Beach County, Florida; and

WHEREAS, CGCF has constructed a natural gas distribution system which in part traverses territory currently identified as the service territory of FPUC; and

WHEREAS, in order to enable as many persons and businesses within Palm Beach County as possible to receive economical and reliable natural gas service, the Parties have decided to enter into this Agreement to avoid any unnecessary and uneconomic duplication of facilities which would be contrary to FPSC policies and detrimental to the interests of their customers and the general public;

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. (a) The Parties' service areas in Palm Beach County will be designated as depicted on the attached Exhibit A, which is hereby incorporated into this Agreement and separated by the boundary line also depicted on Exhibit A and as more fully described on the attached Exhibit B, which is also hereby incorporated into this Agreement.

(b) The service area reserved hereunder for CGCF shall include the area west of the shaded area within Palm Beach County, as depicted on Exhibit A. CGCF shall have the authority to serve all customers within said area.

(c) The service area reserved hereunder for FPUC shall include all areas east of the shaded area within Palm Beach County, as depicted on Exhibit A. FPUC shall have the authority to serve all customers within said area, except as may be provided by any other territorial agreement(s) to which FPUC is a party.

Exhibit I

(d) CGCF shall also have the authority to serve all industrial customers within the shaded area depicted on Exhibit A. For purposes of this Agreement, an industrial customer is defined as a customer whose planned connected load exceeds 250,000 therms per year. Except as otherwise set forth in this Agreement, CGCF shall not serve any residential or commercial customers within said shaded area without the express written consent of an authorized representative of FPUC and the approval of the FPSC. If the Parties reach agreement thereon or if service will be provided as a result of the application of the provisions of paragraph 5 of this Agreement, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect service by CGCF to residential or commercial customers within the shaded area.

(e) FPUC shall also have the authority to serve all residential and commercial customers within the shaded area depicted on Exhibit A. Except as otherwise set forth in this Agreement, FPUC shall not serve any industrial customers, as defined hereinabove, within said shaded area without the express written consent of an authorized representative of CGCF, and the approval of the FPSC. If the Parties reach agreement thereon or if service will be provided as a result of the application of the provisions of paragraph 5 of this Agreement, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect service by FPUC to industrial customer(s) within the shaded area.

2. Notwithstanding the terms of paragraph 1, either Party may request that the other Party provide natural gas service to potential customers within the first Party's service area. The Party receiving the request may elect to provide service to such potential customers in its sole discretion subject to the approval of the FPSC.
3. Neither of the Parties will solicit potential or existing natural gas customers within the other Party's service area under paragraph 1 hereof. Each Party agrees to refrain from installing distribution mains or services which would duplicate facilities of the other Party, or which would intrude into the other Party's service area under paragraph 1, except as specifically provided for in this Agreement.
4. Except as otherwise set forth in this Agreement, if an applicant for natural gas service which is located outside a Party's (the "First Party's") service area and outside the shaded area, and inside the other Party's (the "Second Party's") service area, requests service from the First Party, and if such applicant otherwise qualifies for service according to the terms and conditions of the First Party's tariff or the FPSC's Rules and Regulations, such First Party will not provide service to that applicant unless ordered to do so by the FPSC or by a Court of competent jurisdiction.
5. If an applicant for natural gas service is (a) located within the shaded area, and (b) is within the class of customers that a Party (the "First Party") is not permitted to serve pursuant to paragraphs 1(c) or 1(d) of this Agreement, and if

such applicant requests service from the First Party and otherwise qualifies for service according to the terms and conditions of the First Party's tariff or the FPSC's Rules and Regulations, the First Party will not provide service to such applicant unless the other Party (the "Second Party") has declined or refused in writing to provide service to such applicant. If the Second Party fails to respond to the request of an applicant for service within thirty (30) days of the applicant's request or fails to decline or refuse to provide service to an applicant in writing within thirty (30) days of the applicant's request, the Second Party shall be deemed to have declined to provide service to the applicant.

6. CGCF shall provide Transportation Service to FPUC pursuant to the terms and conditions of the Transportation Service Agreement attached hereto and by reference incorporated as a part hereof.
7. This Agreement does not provide for the transfer of any customers or facilities.
8. Should either Party become a party in a legal action or administrative proceeding to which the other Party is not a party and which action relates to this Agreement, the party to such action shall notify the other party of such legal action, and provide such other party with copies of the then-existing pleadings filed in such action. Such notice with accompanying pleadings shall be provided no later than ten (10) days after initiating, formally seeking to intervene in, or being served with a pleading naming that party as a defendant in any such action.
9. Should a project to be provided with gas service be located in such a manner that it would straddle or be divided by the boundary line, the Party with the initial contract to provide service to the project shall service the entire project and the boundary line shall be modified to include the entire area of the project within the service area of that Party subject to the approval of the FPSC. If the Parties reach agreement thereon, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect the modified boundary line.
10. This Agreement will become void and unenforceable should the FPSC's jurisdiction in service territorial matters be ruled invalid by a Court of final appellate jurisdiction.
11. This Agreement, the service areas, and the boundary line set forth herein may be modified only upon the agreement of the Parties and the review and/or the approval of the FPSC.
12. This Agreement shall be executed by the Parties and shall be submitted jointly by the Parties to the FPSC for approval and shall become effective on the date an FPSC order approving it becomes final and effective, and shall remain in effect (a) for an initial term of thirty (30) years and shall automatically renew for successive ten (10) year periods unless either Party gives written notice of intent to terminate at least one (1) year prior to the end of the initial term or any renewal

period, or (b) until modified or vacated by a final and non-appealable order of the FPSC or a Court of competent jurisdiction.

13. The Parties have entered into this Agreement solely for the purpose of adhering to state policy favoring territorial agreements between public utilities. This Agreement is governed by Section 366.04(3), Florida Statutes (2000), that expressly confers authority on the FPSC to approve territorial agreements between natural gas utilities. Upon approval by the FPSC, this Agreement will merge into and become part of the FPSC order that approved it.
14. FPUC agrees that it will not oppose any application by Florida Gas Transmission Company seeking approval of the Federal Energy Regulatory Commission to construct and operate a delivery point in western West Palm Beach for the purpose of providing service facilitating CGCF's provision of service to its service area established under this Agreement.
15. In the event that a Party determines, in specific instances, that good engineering practices or economic constraints on that Party indicate that any small service area and/or any future natural gas customer within that Party's service area under paragraph 1 hereof should not be served by that Party, such Party shall notify the other Party and request the other Party to serve such small service area and/or customer. If the Parties reach agreement thereon, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement in order to permit the appropriate Party to provide such service to such small service area and/or future natural gas customer.
16. This Agreement is only between FPUC and CGCF and only involves the retail distribution of natural gas and does not affect or bind other affiliates or subsidiaries of FPUC or CGCF.
17. Prior to the second anniversary of the effective date of FPSC approval of this Agreement, and no less frequent than every fifth anniversary thereafter, the Parties shall meet to review the status of this Agreement and shall submit a joint status report to the FPSC or any successor agency with power to consider approval or modification hereof.
18. This Agreement shall be effective on the date an FPSC order approving it becomes final and effective, in accordance with paragraph 11 hereof. As soon as practicable following the effective date of this Agreement, each Party agrees to file any revisions to its tariffs on file with the FPSC which may be required as a result of the FPSC's approval thereof, and shall provide a copy of any such tariff revisions to the other Party upon their filing with the FPSC. VAF
19. All notices under this Agreement must be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand-delivered, to the Parties at the addresses and facsimile numbers set forth below:

period, or (b) until modified or vacated by a final and non-appealable order of the FPSC or a Court of competent jurisdiction.


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17. Prior to the second anniversary of the effective date of FPSC approval of this Agreement, and no less frequent than every fifth anniversary thereafter, the Parties shall meet to review the status of this Agreement and shall submit a joint status report to the FPSC or any successor agency with power to consider approval or modification hereof.
18. This Agreement shall be effective on the date an FPSC order approving it becomes final and effective, in accordance with paragraph 11¹² hereof. As soon as practicable following the effective date of this Agreement, each Party agrees to file any revisions to its tariffs on file with the FPSC which may be required as a result of the FPSC's approval thereof, and shall provide a copy of any such tariff revisions to the other Party upon their filing with the FPSC. ✓/AF
19. All notices under this Agreement must be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand-delivered, to the Parties at the addresses and facsimile numbers set forth below:

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission; if the day on which such facsimile is received is not a business day or is after five p.m. on a business day, then such facsimile shall be deemed to have been received on the next following business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving Party.

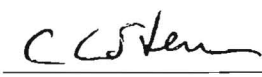

20. This Agreement is binding upon the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first stated above.

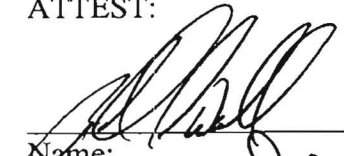
ATTEST:


Name: Marc L. Schneidermann

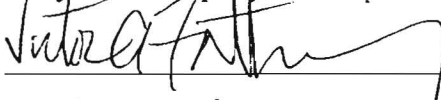
Florida Public Utilities Company

By:  
Title: Sr. Vice President, COO

ATTEST:


Name: Richard B. Edell

NUI Utilities, Inc.
d/b/a City Gas Company of Florida

By: 
Title: President

Metes and Bounds Description of Shaded Area

LEGAL DESCRIPTION:

A portion of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the intersection of the West line of Township 40 South, Range 40 East, Palm Beach County, Florida and the North line of Palm Beach County, Florida; thence Easterly along the North line of Palm Beach County, Florida, to the centerline of the Bee Line Highway (State Road 710); thence Southeasterly along the centerline of the Bee Line Highway (State Road 710) to the West line of Township 41 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 41 South, Range 41 East, Palm Beach County, Florida to the North line of Township 42 South, Range 41 East, Palm Beach County, Florida; thence Westerly along the North line of Township 42 South, Range 41 East, Palm Beach County, Florida to the centerline of Seminole Pratt Whitney Road; thence Southerly along the centerline of Seminole Pratt Whitney Road to the centerline of Southern Boulevard (State Road 80); thence Easterly along the centerline of Southern Boulevard (State Road 80) to the West line of Township 43 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 43 South, Range 41 East, Palm Beach County, Florida to the West line of Township 44 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 44 South, Range 41 East, Palm Beach County, Florida to the West line of Lantana Hiatus Township 44 ½ South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Lantana Hiatus Township 44 ½ South, Range 41 East, Palm Beach County, Florida to the West line Township 45 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line Township 45 South, Range 41 East, Palm Beach County, Florida to the West line Township 46 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line Township 46 South, Range 41 East, Palm Beach County, Florida to the West line of Township 47 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 47 South, Range 41 East, Palm Beach County, Florida to the South line of Palm Beach County, Florida; thence Westerly along the South line of Palm Beach County, Florida to the Range Line between Range 39 East and Range 40 East, Palm Beach County, Florida; thence Northerly along the Range Line between Range 39 East and Range 40 East, Palm Beach County, Florida to the West line of the Hiatus Township 43 ½ South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of the Hiatus Township 43 ½ South, Range 40 East, Palm Beach County, Florida to the West Line of Township 43 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West Line of Township 43 South, Range 40 East, Palm Beach County, Florida to the South line of Township 42 South, Range 39 East, Palm Beach County, Florida; thence Easterly along the South line of Township 42 South, Range 39 East, Palm Beach County, Florida to the East line of Township 42 South, Range 39 East, Palm Beach County, Florida; thence Northerly along

the East line of Township 42 South, Range 39 East, Palm Beach County, Florida to the West line of Township 41 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of Township 41 South, Range 40 East, Palm Beach County, Florida to the West line of Township 40 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of Township 40 South, Range 40 East, Palm Beach County, Florida to the Point of Beginning.

STATE OF FLORIDA



DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR

Public Service Commission

MAPS/DIAGRAMS

DOCKET NO.: 030134 – GU

DOCUMENT NO.: 01275-03

DOCUMENT DESCRIPTION: *(Example: page 5 of pdf file.)*
Territorial agmt FPU Exhibit A 3 pages. [CLK
Note: Map forwarded to Staff.]