

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 18, 2013

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (M. Brown) *MCB*
Division of Economics (King) *J.W.D.*

RE: Docket No. 130166-GU – Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District.

AGENDA: 07/30/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\130166.RCM.DOC

Case Background

On June 17, 2013, Peoples Gas System (Peoples) and the Lake Apopka Natural Gas District (Lake Apopka) filed a joint petition for approval of a territorial agreement in Orange County. Peoples is a public utility regulated by the Florida Public Service Commission (Commission) pursuant to Chapter 366, Florida Statutes (F.S.), and provides natural gas to approximately 345,000 customers throughout the State of Florida, including customers in Orange County. Lake Apopka is an independent special district of the State of Florida created by the Legislature in 1959. It was created for the purposes of constructing and operating one or more natural gas transmission and distribution systems for its member municipalities of Apopka, Winter Garden, and Clermont, and for the benefit of nearby municipalities and unincorporated

areas and the public within the statutory area of service of the district. Lake Apopka is not a public utility as defined by Section 366.02(1), F.S., but is a natural gas utility subject to the Commission's jurisdiction under Section 366.04(3), F.S., for the purposes of resolving territorial disputes and approving territorial agreements. The Commission does not have jurisdiction over Lake Apopka's rates and charges. Lake Apopka provides natural gas service to approximately 15,000 customers in Orange and Lake Counties.

In the 1990s, the companies entered into transfer agreements which specified that Peoples would provide natural gas service to certain customers in Orange County, and that Lake Apopka would have an option to purchase the facilities when it was ready to provide such service. Upon Lake Apopka's purchase of the facilities, at their depreciated book value, the customers served by those facilities would be transferred to Lake Apopka. In July 2012, Peoples was notified that Lake Apopka wanted to acquire all the facilities installed by Peoples pursuant to the transfer agreements.

In order to complete the purchase and sale of the facilities, the companies have entered into an Asset Purchase and Sale Agreement which provides for, upon the closing of the transaction, the transfer of the facilities as well as approximately 144 accounts that may receive natural gas service through those facilities from Peoples to Lake Apopka. Peoples and Lake Apopka seek Commission approval of the Territorial Agreement (Attachment A), which will become effective only upon the closing of the purchase and sale as outlined in the Asset Purchase and Sale Agreement. The map attached to the Agreement and Attachment B show the area in which the facilities to be transferred are located. The Commission has jurisdiction over this matter pursuant to Section 366.04, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for approval of the territorial agreement in Orange County between Peoples and Lake Apopka?

Recommendation: Yes. The territorial agreement between Peoples and Lake Apopka will not cause a detriment to the public interest and should be approved. (M. Brown, King)

Staff Analysis: Pursuant to Section 366.04(3)(a), F.S., the Commission has the jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471(2), Florida Administrative Code, states that in approving territorial agreements, the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of gas service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

Based upon transfer agreements executed in the 1990s, the petitioners agreed that Peoples would provide natural gas service to certain customers in Orange County, and that Lake Apopka would have an option to purchase, at depreciated book value, the facilities installed to serve such customers when it was ready to provide such service. In July 2012, Lake Apopka notified Peoples that it was ready to purchase the facilities. The companies have now entered into an Asset Purchase and Sale Agreement which provides for, upon the closing of the transaction, the transfer from Peoples to Lake Apopka of the facilities as well as the approximately 144 accounts that receive natural gas service through those facilities.¹ If approved, the territorial agreement would become effective upon the closing of the purchase and sale called for by the Asset Purchase and Sale Agreement.

The approximately 144 accounts that would be transferred from Peoples to Lake Apopka have been provided notice of the possible transfer. The notice informed customers that Lake Apopka will apply the same rates as charged by Peoples through September 30, 2014. The notice also provided a telephone number for customers to call for additional information. Prior to the notices being sent and Lake Apopka agreeing to charge the same rates as Peoples, a handful of customers had expressed opposition to being transferred based on the difference in rates between the two utilities. Commission staff also spoke to one customer that expressed concern regarding the rate difference between the companies. However, since the notices have been sent, Lake Apopka and Commission staff have not received any calls or inquiries from customers. One residential customer contacted Peoples opposing the transfer.

Peoples and Lake Apopka represent that approval and implementation of the territorial agreement will not cause a decrease in the availability or reliability of natural gas service from either company, or to the existing or future ratepayers. In addition, they assert that approval of the territorial agreement by the Commission will assist in avoiding future uneconomic

¹Of the 144 total accounts, 67 are residential and 77 are commercial. Not all of the 144 accounts are currently "active."

duplication of facilities by the parties, and will expedite the handling of applications for service by future potential natural gas customers; therefore, the agreement is in the public interest.

It appears that the proposed agreement eliminates the potential uneconomic duplication of facilities and will not cause a decrease in the reliability of gas service. In addition, the purchase price of the facilities (at their depreciated book value) appears reasonable. Therefore, based on the above, staff believes that the proposed territorial agreement will not cause a detriment to the public interest and recommends approval.

Docket No. 130166-GU

Date: July 18, 2013

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose interests are substantially affected timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order. (M. Brown)

Staff Analysis: If no person whose interests are substantially affected timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order.

EXHIBIT 1

TERRITORIAL AGREEMENT

THIS TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 17th day of June, 2013, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples"), and The Lake Apopka Natural Gas District, a public body corporate and Independent Special District of the State of Florida ("LANGD"). Peoples and LANGD are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

WITNESSETH:

WHEREAS, Peoples is a natural gas public utility subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 368, *Florida Statutes*; and

WHEREAS, LANGD is a natural gas utility subject to the Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 368.04(3), *Florida Statutes*; and

WHEREAS, as pertinent to this Agreement, both LANGD and Peoples are presently providing natural gas ("gas") service to customers in portions of Orange County, Florida; and

WHEREAS, the parties entered into agreements during the 1990s pursuant to which Peoples constructed gas distribution facilities (the "Transfer Facilities") in portions of Orange County to provide gas service to customers through such facilities, and LANGD was granted the option to purchase, at their depreciated book value, such Transfer Facilities when LANGD advised Peoples that LANGD was ready to provide such service itself; and

WHEREAS, LANGD exercised its option to purchase in October 2012, and the parties have entered into an Asset Purchase and Sale Agreement dated as of May 20, 2013 (the "PSA"), which provides for, upon the closing of the transaction, the transfer from Peoples to LANGD of the Transfer Facilities as well as the customers that receive gas service through the Transfer Facilities; and

WHEREAS, the parties desire to avoid future unnecessary and uneconomic duplication of gas distribution facilities in the locations where the Transfer Facilities are installed, which would be contrary to Commission policies and detrimental to the interests of their customers and the general public, and to expedite the handling of applications for service by future potential gas customers near such locations; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 368.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

Section 1.

(a) Upon the consummation of the purchase and sale of the Transfer Facilities, and the transfer of customers then served through such facilities from Peoples to LANGD, as contemplated by the PSA, the locations occupied by the Transfer Facilities and any extensions thereof shall, as between the parties, be deemed to be a service area of LANGD. Such locations are generally depicted on the map attached hereto and made a part hereof as Exhibit A, and the nature and location of such facilities are described in the narrative attached hereto and made a part hereof as Exhibit B.

(b) Except as specifically otherwise provided herein, Peoples agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to LANGD.

(c) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by Peoples to provide natural gas service to customers located in the service area reserved hereunder to LANGD.

(d) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

Section 2. Notwithstanding the provisions of Section 1, LANGD may request that Peoples provide natural gas service to potential customers within the service area reserved hereunder to LANGD. In the event of any such request, Peoples may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

Section 3. If LANGD determines, in a specific instance, that good engineering practices or economic constraints indicate that a small service area and/or future natural gas customer within LANGD's service area under Section 1 hereof should not be served by LANGD, LANGD shall notify Peoples and request that Peoples serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit Peoples to provide such service to such small service area and/or future natural gas customer.

Section 4. This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

Section 5. As soon as practicable after the later to occur of the Effective Date and the date on which the purchase and sale contemplated by the PSA is consummated, Peoples agrees to file any revisions to its tariff on file with the Commission which may be required as a

result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to LANGD upon their filing with the Commission.

Section 6. The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 7. This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

Section 8. This Agreement shall be governed by the laws of the State of Florida.

Section 9. All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

To Peoples:

President
Peoples Gas System
702 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 228-4111
Facsimile: (813) 228-4811

To LANGD:

General Manager and CEO
The Lake Apopka Natural Gas District
1320 Winter Garden-Vineland Road
Winter Garden, Florida 34787, Florida 33402
Phone: (407) 656-2734
Facsimile: (407) 856-9731

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 shall 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, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding 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. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

Section 10. This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas. This Agreement shall not affect or bind affiliates of Peoples.


Section 11. This Agreement may be executed in one or more counterparts and by original and/or facsimile signatures, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

PEOPLES GAS SYSTEM, a division of
Tampa Electric Company

By: 
Bruce Narzissenfeld
Vice President - Fuels

THE LAKE APOPKA NATURAL GAS DISTRICT

By: 
Anne Dupee
President

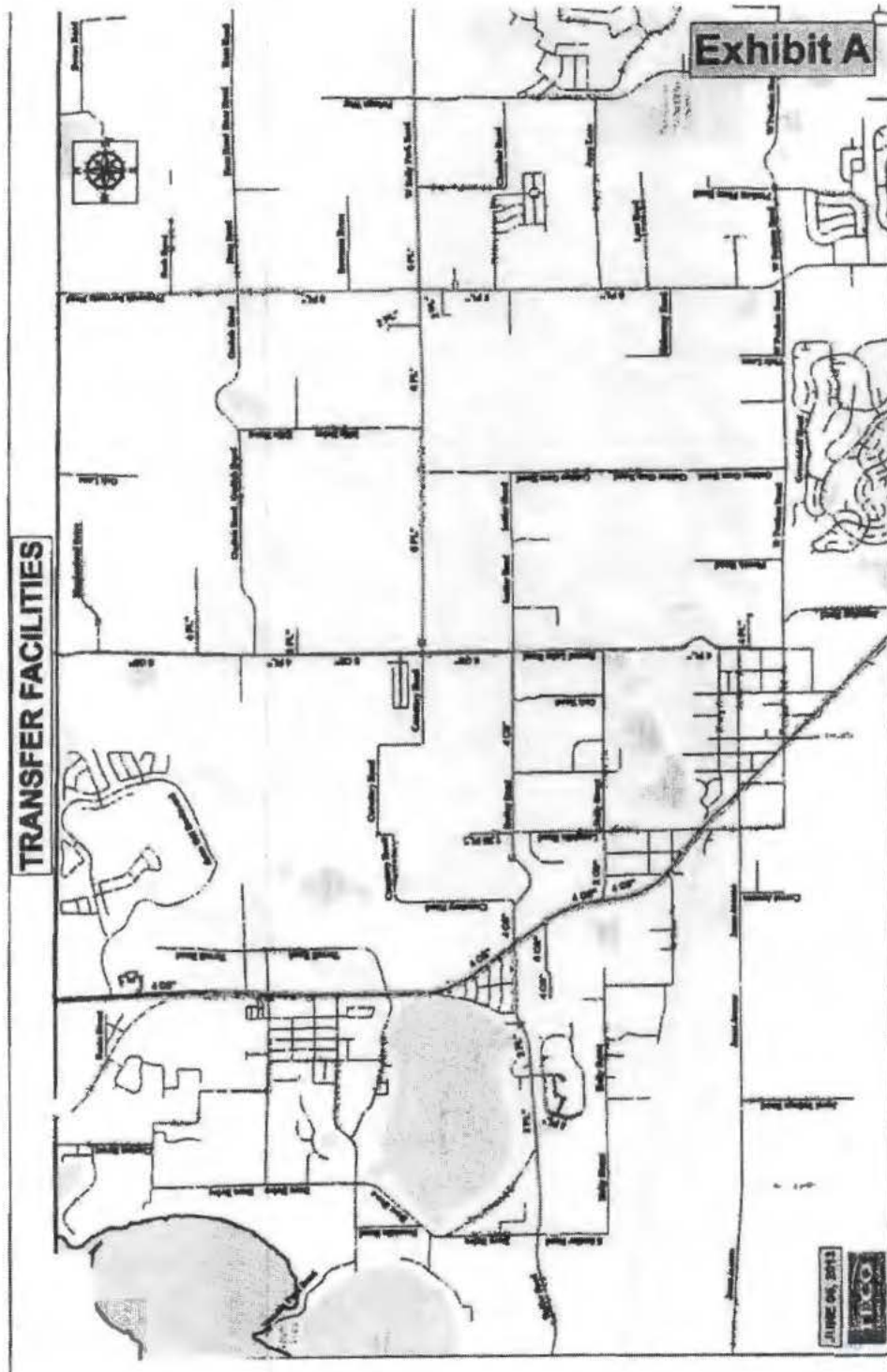


EXHIBIT B

Narrative Describing Transfer Facilities

- 1) Initial installation completed June 11, 1990 under AFE: 010579003301
 - 23,390 feet 4" steel
 - 2800 feet of 2" steel
 - 7500 feet of 2" plastic

This included installing 4" steel beginning at SR 44 heading south along US Hwy 441 stopping just south of Sadler Rd. The 4" steel was also installed east along Sadler stopping at what is now called Monterey Mushrooms. 2" steel was installed off of the 4" steel going west on Sadler road to a new regulator station (01-05-790-060-01) installed on Sadler just west of Bigler Lane. 2" plastic was installed west of the station to serve what was then called Lake Ola Estates.

- 2) The next installation was completed November 29, 1990
 - 2392 feet of 4" steel
 - 600 feet of 2" plastic

This included attaching to the original 4" steel on US Hwy 441 just south of Sadler road. It was extended south to just south of Berg Dr. It was also installed west on Berg Dr to serve what was then called Hickerson Glowers (now Plowboys Inc.)

- 3) The next installation was completed July 15, 1992
 - 532 feet of 1.25" plastic

This was installed off of the regulator station installed on Sadler Road to Bigler Rd North of Sadler running to 5 residential customers.

- 4) The next installation was on Lake Ashley Dr. completed on Nov. 22, 1993
 - 914 feet of 2" plastic

- 5) The next installation was completed June 23, 1994.
 - 4823 feet 4" steel
 - 7529 feet of 4" plastic
 - Regulator station installed on Sadler road just west of Round Lake Rd

This included extending the 4" steel on Sadler road where it previously ended in front of Monterey Mushroom east to new regulator station just west of Round Lake Rd. 4" plastic was then installed north on round Lake Rd to serve Pecketta Nursery and south on Round Lake Rd to serve Agri Starts Nursery.

- 6) The next installation was completed September 20, 1994
 - 6516 feet of 4" plastic

This installation was installed on the north side of Kelly Park Rd. east from Round Lake Rd to serve crematorium

- 7) The next installation was completed December 4, 1996
 - 8000 feet of 4" steel

This installation tied the new 4" steel to the previously installed gas main on the east side of US Hwy 441. It was continued southward on US Hwy 441 to Laughlin Rd and then west of Jones Ave. to serve Drum Services.

- 8) The next installation was completed on December 6, 1998
- 10900 feet of 6" plastic

This installation tied new 4" plastic that was completed under #5 above. 6" plastic was installed east along W. Kelly Park Rd to serve Robinson Nursery located at 2136 W. Kelly Park Rd.

- 9) The next installation was also completed on December 6 1998
- 4500 feet of 4" plastic

This installation tied onto the 4" plastic on Round Lake Rd ran to Pecketts Nursery in #4 above. It ran north along Round Lake Rd. and then east of Oak Hill St to serve Milestone Nursery.

- 10) The next installation was completed on October 6, 1997
- 10550 feet 6" plastic

This installation initiated on Hwy 46 in Orange County and was installed south on Plymouth Sorrento Rd tying into the 6" plastic that was installed on Kelly Park Rd installed under #7 above. It was installed to get numerous services on Plymouth Sorrento as well as enhance the existing system to meet the near & future demands in the area.

- 11) The next installation was completed on April 27, 1998
- 6144 feet 4" plastic.

This installation tied onto the existing 4" plastic installed under #4 above that had stopped at Agri Starts nursery. It was installed south along Round Lake Rd to serve three nurseries.

- 12) The next installation was completed on February 7, 2000.
- 13260 feet of 6" steel starting at the Orange County South

This installation was a 6" steel gas main began on SR 46 in Orange County south along Round Lake Rd tying into the existing 4" steel installed on Sadler Rd just west of the regulator station referred to in #4 above. This installation was needed to meet the demand of the new Egg Crate Plant that was being built on Jones Ave. where our existing 4" steel was installed referred to in #8 above. The system we had would not accommodate the proposed load of the Egg Crate necessitating the 6" steel installation.

- 13) The next installation was completed on July 31, 2000
- 366 feet of 2" steel

This installation was installed along Holly St. east from the 4" steel on US Hwy 441 referenced above in #8 above. This served the Anthony House.

- 14) The next installation was completed on September 18, 2001
- 480 feet of 6" plastic

This installation was installed extending the 6" plastic on Kelly Park Rd east tying into the main installed referenced on #7 above.

15) The next installation was completed on February 15, 2002

- 685 feet of 6" plastic
- 970 feet of 2" plastic

This 6" plastic was installed south ward on Plymouth Sorrento to serve 4720 Plymouth Sorrento Rd tying onto the 6" plastic on Kelly Park Rd referred in #7 above.

16) The next installation was completed March 4, 2005

- 299 feet of 2" plastic

Installed to pet crematorium on Effie Rd Tying onto 4" plastic referred to #5 above.

17) The next installation was completed on November 7, 2007.

- 4816 feet of 2" plastic

This installation tied onto the 2" plastic installed on Sadler Rd referred to above in #1. It served a new nursery at 8258 Sadler Rd.

18) The next installation was completed June 9, 2009

- 1412 feet of 2" plastic and 493 feet of 1.25" plastic

This installation tied onto the 4" steel referred to in #1 above. It included a regulator station installed and the plastic ran into a new Publix Plaza on US Hwy 441.

19) The next installation was completed November 16, 2011

- 1043 feet of 2" plastic

This was tied into the existing 6" plastic installed under #7 above. It tied into the 6" on Kelly Park rd to serve new services at 3119 W. Kelly Park Rd.

20) The next installation was completed on August 18, 2011

- 1441 feet of 2" steel

This was 2" steel tying into the existing 2" steel on Holly St referred to in #12 above to serve new service at 6029 Holly St.

21) Installed gas main south on Plymouth Sorrento south from Kelly Park Rd. and east on Lent Rd. Completed and made active 11-2-2012

- Installed 7100 feet of 6" plastic and 2000 feet of 4" plastic D0021218

This included four services that have been installed and activated:

- 1) 4309 Plymouth Sorrento Rd
- 2) 3748 Plymouth Sorrento Rd
- 3) 4322 Plymouth Sorrento Rd
- 4) 2490 Lent Rd.

Google

Address **Sadler Rd**
Apopka, FL 32712

Get Google Maps on your phone
Text the word "GMAPS" to 466453

