

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-**

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**DATE:** January 25, 2024

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Economics (Kaymak, Barrett, Guffey) **EJD**  
Office of the General Counsel (Dose) **JSC**

**RE:** Docket No. 20230125-GU – Joint petition for approval of amendment to territorial agreement in Pasco County, by Florida Public Utilities Company and Peoples Gas System, Inc.

**AGENDA:** 02/06/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On November 3, 2023, Florida Public Utilities Company (FPUC) and Peoples Gas System, Inc. (Peoples), collectively the joint petitioners, filed a petition seeking Commission approval of a first amendment (Amendment No. 1) to the Amended and Restated Territorial Agreement – Pasco County (Pasco Agreement). In November 2007, the Commission approved the Pasco Agreement, along with a Master Territorial Agreement (Master Agreement) and a gas transportation agreement between the Florida Division of Chesapeake Utilities Corporation<sup>1</sup> and

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<sup>1</sup> By Order No. PSC-2023-0103-FOF-GU, issued March 15, 2023, in Docket No. 20220067-GU, the Florida Division of Chesapeake Utilities Corporation, as well as FPUC's Indiantown Division and Fort Meade Division, were consolidated with Florida Public Utilities Corporation, under the name of Florida Public Utilities Company. FPUC has assumed the rights and responsibilities under all pertinent agreements entered into by its predecessor, the Florida Division of Chesapeake Utilities Corporation, also known as CFG.

Docket No. 20230125-GU

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Peoples.<sup>2</sup> This Master Agreement contains terms and conditions that govern all territorial agreements entered into by Peoples and Chesapeake.<sup>3</sup> The joint petitioners, through Amendment No. 1, seek the Commission's approval to adjust the utilities' shared service boundary.

Staff issued a data request to the joint petitioners on November 17, 2023, for which responses were received on December 13, 2023.

On January 10, 2024, the parties filed a corrected version of Amendment No. 1. The corrected version, initialed by counsel, contains the date that the amendment was entered into by the parties (October 31, 2023), which was inadvertently omitted in the original version submitted with the petition.<sup>4</sup> No other changes were made to the corrected version of Amendment No. 1. Amendment No. 1 is shown as Attachment A to this recommendation.

The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

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<sup>2</sup> Order No. PSC-2007-0944-PAA-GU, issued November 28, 2007, in Docket No. 20070399-GU, *In re: Joint Petition for approval of territorial agreement in Pasco County, master territorial agreement, and gas transportation agreement, by Peoples Gas System and the Florida Division of Chesapeake Utilities Corporation.*

<sup>3</sup> *Id.*

<sup>4</sup> See Document No. 00141-2024.

## Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Amendment No. 1 to the Pasco Agreement between FPUC and Peoples in Pasco County?

**Recommendation:** Yes, the Commission should approve the proposed Amendment No. 1, which transfers a portion of FPUC's service territory to Peoples. The proposed Amendment No. 1 would facilitate the provision of economical and reliable natural gas service by Peoples to prospective residential and business customers in the proposed transfer area identified as Service Area B in Amendment No. 1 – Exhibit A, thereby avoiding duplication of facilities and services. (Kaymak, Barrett, Guffey)

**Staff Analysis:** Pursuant to Section 366.04(3)(a), F.S., and Rule 25-7.0471, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between natural gas utilities. Unless the Commission determines that the proposed Amendment No. 1 will cause a detriment to the public interest, the proposed amendment should be approved.<sup>5</sup>

### Proposed Amendment to Territorial Agreement

FPUC and Peoples began territorial agreement discussions after a developer announced plans for a commercial complex in Service Area B. The previously undeveloped parcel of land in FPUC's service territory is located geographically a considerable distance from the company's existing natural gas facilities, but very close to existing facilities operated by Peoples. The proposed Amendment No. 1 will facilitate serving the new commercial development within the geographic area described in Amendment No. 1 – Exhibit A as Service Area B (Attachment A). Service Area B is about 12,212 acres in size, and the new commercial development is projected to include a grocery store and other retail outparcels totaling about 60,000 square feet. The joint petitioners assert that in the next 5 to 10 years, further development within the Service Area B could result in up to 1,000 new residential and commercial customers.<sup>6</sup>

FPUC determined that its nearest facilities to Service Area B are approximately 24 miles away in Plant City.<sup>7</sup> The utility asserted that construction of new facilities from its existing facilities in Plant City to Service Area B would cost several million dollars. Although a specific estimate was not developed, FPUC determined it was unable to extend service to the development economically, and thus pursued the territorial modifications set forth in this petition.

Peoples, on the other hand, has natural gas facilities about 320 feet away from Service Area B on County Road 577 (Curley Road). To provide natural gas services to Service Area B, Peoples would need to construct 170 linear feet of main lines, 150 linear feet of service lines, and a distinct regulator station, which Peoples estimate would cost \$105,000.<sup>8</sup> Based on the

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<sup>5</sup> *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla.1985).

<sup>6</sup> Document No. 06579-2023, Staff's First Data Request, No. 5.

<sup>7</sup> Document No. 06579-2023, Staff's First Data Request, No. 1.

<sup>8</sup> *Id.*

comparative difference in the amount of required infrastructure, Peoples can more economically serve the commercial development than FPUC and is willing to do so.

Pursuant to Paragraphs 3.D. and 3.E. of the Master Agreement, the joint petitioners have entered into Amendment No. 1 which, if approved, would transfer Service Area B from FPUC to Peoples.<sup>9</sup> Pursuant to Paragraph 5 of Amendment No. 1, the terms and conditions of the Pasco Agreement would remain unchanged going forward. Prior to the second anniversary of the Commission's approval of Amendment No. 1, and no more frequently than every five years thereafter, Peoples and FPUC will confer regarding the status of the amendment.

The joint petitioners state that the approval and implementation of Amendment No. 1 will not cause a decrease in the availability or reliability of natural gas service provided by either entity, or to the existing or future ratepayers of either entity, consistent with the standards set forth in Section 366.04, F.S., and Rule 25-7.0471(2)(c), F.A.C..<sup>10</sup> As stated in paragraph 6 of the petition, approval of Amendment No. 1 will enable as many residential and business customers in Pasco County as possible to receive economical and reliable natural gas service and will not necessitate the transfer of any existing customers or facilities between the joint petitioners. Moreover, as stated in paragraph 6, absent the subject amendment, certain customers in Pasco County would be unable to obtain natural gas service; thus, the approval of Amendment No. 1 would be in the public interest.

### **Rule Considerations**

Rule 25-7.0471(2), F.A.C., addresses the standards the Commission should consider for approving territorial agreements for natural gas utilities. The Rule states:

- (2) Standards for Approval. In approving territorial agreements, the Commission shall consider:
  - (a) The reasonableness of the purchase price of any facilities being transferred;
  - (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of natural gas service to the existing or future ratepayers of any utility party to the agreement, and
  - (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.
  - (d) Other relevant factors that may arise from the circumstances of a particular case.

In its review, staff considered each component of Rule 25-7.0471(2), F.A.C. Regarding paragraph (2)(a), staff notes that FPUC agreed to transfer the pertinent area to Peoples without compensation, which staff believes is reasonable because no facilities are being transferred.<sup>11</sup> Regarding paragraph (2)(b), the joint petitioners' have confirmed that the availability and reliability of service to existing or future customers will not be decreased for either petitioner.

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<sup>9</sup> See Footnote 2, citing the Master Agreement approved by Order No. PSC-2007-0944-PAA-GU.

<sup>10</sup> Document No. 06579-2023, Staff's First Data Request, No. 4.

<sup>11</sup> Document No. 06579-2023, Staff's First Data Request, No. 3.

The joint petitioners verified that there are no natural gas facilities in Service Area B, and that construction would be necessary to service that geographic area.<sup>12</sup> Paragraph (2)(c) has been appropriately considered because, under the proposed territorial agreement, staff believes uneconomic duplication of facilities would not occur because Peoples facilities are better positioned to serve the area economically and efficiently.<sup>13</sup> Staff believe paragraph(2)(d) gives the Commission the flexibility to address any other relevant concerns that are case-specific. The joint petitioners assert that there are none.<sup>14</sup>

Under Rule 25-7.0471(1)(e), F.A.C., a proposed territorial agreement must provide information regarding the degree of acceptance by affected customers. Staff notes, however, that in the instant case, there are no current customers and under this proposed territorial agreement, no facility transfers are contemplated. In addition, representatives from FPUC and Peoples have notified staff that the developer is aware of, and has no objection to, the proposed territorial agreement.

### **Conclusion**

Staff recommends that the Commission approve the proposed Amendment No. 1, which transfers a portion of FPUC's service territory to Peoples. The proposed Amendment No. 1 would facilitate the provision of economical and reliable natural gas service by Peoples to residential and business customers in the proposed transfer area identified as Service Area B in Amendment No. 1 – Exhibit A, thereby avoiding duplication of facilities and services.

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<sup>12</sup> Document No. 06579-2023, Staff's First Data Request, No. 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

**Issue 2:** 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. (Dose)

**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.

AMENDMENT NO. 1 TO TERRITORIAL AGREEMENT - PASCO COUNTY

AMENDMENT NO. 1  
TO  
AMENDED AND RESTATED TERRITORIAL AGREEMENT - PASCO COUNTY

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED TERRITORIAL AGREEMENT-PASCO COUNTY (this "Amendment No. 1") is made and entered into this 31<sup>st</sup> day of October, 2023, by and between Florida Public Utilities Company, a corporation of the State of Florida, hereinafter referred to as ("FPUC,"), and Peoples Gas System, Inc. ("PGS"), a corporation of the State of Florida, each being an investor-owned natural gas local distribution utility as defined in Section 366.02(1), Florida Statutes. FPUC and PGS are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties." - PREK  
- MWM

WITNESSETH:

WHEREAS, FPUC and PGS are natural gas utilities subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, as pertinent to this Amendment No. 1, PGS and the Florida Division of Chesapeake Utilities Corporation ("CFG"), FPUC's predecessor in interest, entered into the Amended and Restated Territorial Agreement-Pasco County in July 2007 ("Original Agreement"); and

WHEREAS, CFG and PGS submitted the Original Agreement to the Florida Public Service Commission for approval on July 6, 2007, consistent with Section 4(a) of the Master Territorial Agreement between the parties; and

WHEREAS, the Florida Public Service Commission approved the Original Agreement by Order No. PSC-07-0944-PAA-GU, issued November 28, 2007, in Docket No. 20070399-GU, and associated Consummating Order No. PSC-2007-1028-CO-GU; and

WHEREAS, the parties have conducted themselves in accordance with the Original Agreement since its approval by the Commission; and

WHEREAS, by Order No. PSC-2023-0103-POF-GU, issued March 15, 2023, in Docket No. 20220067-GU, CFG, along with the other natural gas utility holdings of Chesapeake Utilities Corporation in Florida, were consolidated into one regulated natural gas utility business unit under the name of Florida Public Utilities Company; and

WHEREAS, FPUC, as the legal successor and assign of CFG, has assumed and is bound by the terms of the Original Agreement, consistent with the terms of the Master Agreement between the parties; and

WHEREAS, FPUC is unable to economically meet a request for service from a new customer located in an area assigned to it under the Original Agreement; and

AMENDMENT NO. 1 TO TERRITORIAL AGREEMENT - PASCO COUNTY

WHEREAS, PGS is willing and able to economically serve the customer in question; and

WHEREAS, FPUC and PGS desire that this Amendment No. 1 supersede and replace the portions of the Original Agreement as specified herein; and

WHEREAS, in order to enable as many persons and businesses as possible within Pasco County to receive economical and reliable natural gas service, PGS and FPUC have entered into this Amendment No. 1 to more rapidly and economically expand the availability of natural gas service to potential customers in Pasco County; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities;

**NOW, THEREFORE**, in fulfillment of the purposes 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:

1. For purposes of clarity, all references to Chesapeake in the Original Agreement shall be deemed to include and incorporate like reference to FPUC.
2. Paragraph 3 of the Original Agreement shall be deleted and replaced with the following paragraph:

As between the Parties, Chesapeake's service area in Pasco County, Florida (the "Chesapeake Service Area") shall be as set forth on Exhibit A, which is incorporated herein by reference and made a part hereof. The Chesapeake Service Area is also depicted on the territory map attached hereto and made a part hereof as Exhibit C as those areas shaded and designated respectively as "Chesapeake Service Area A", which area is more fully described in the legal description set forth in Exhibit A.

3. Exhibit A to the Original Agreement shall be revised to delete the section entitled "Legal description of Chesapeake Service Area 'B'".
4. Exhibit C to the Original Agreement shall be deleted and replaced with the map attached hereto as Amendment Exhibit A.
5. Except as modified by this Amendment No. 1, the Original Agreement shall remain unchanged and continue in full force and effect. This Amendment No. 1 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.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to the

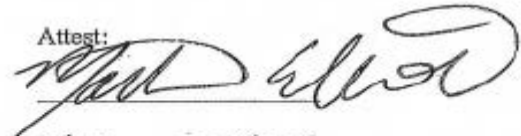


AMENDMENT NO. 1 TO TERRITORIAL AGREEMENT -- PASCO COUNTY

Amended and Restated Territorial Agreement to be executed by their duly authorized officers as of the date and year first above stated.

PEOPLES GAS SYSTEM, INC.

By: \_\_\_\_\_

Attest:  
  
Matthew Elliott  
Print Name 10/31/2023

AMENDMENT NO. 1 TO TERRITORIAL AGREEMENT - PASCO COUNTY

FLORIDA PUBLIC UTILITIES COMPANY

By: \_\_\_\_\_

Attest:



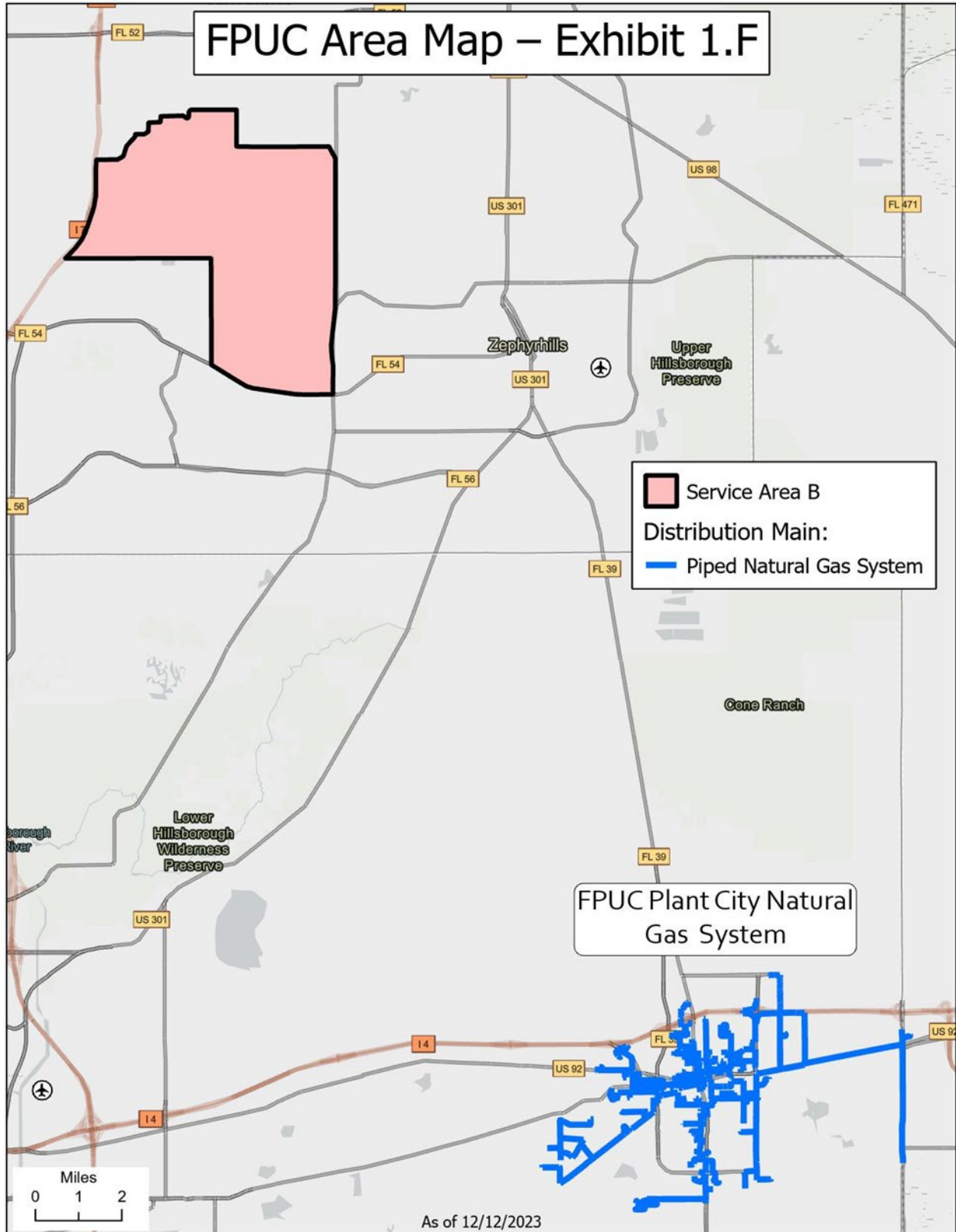
Christine Minton  
Print Name

AMENDMENT NO. 1 TO TERRITORIAL AGREEMENT - PASCO COUNTY

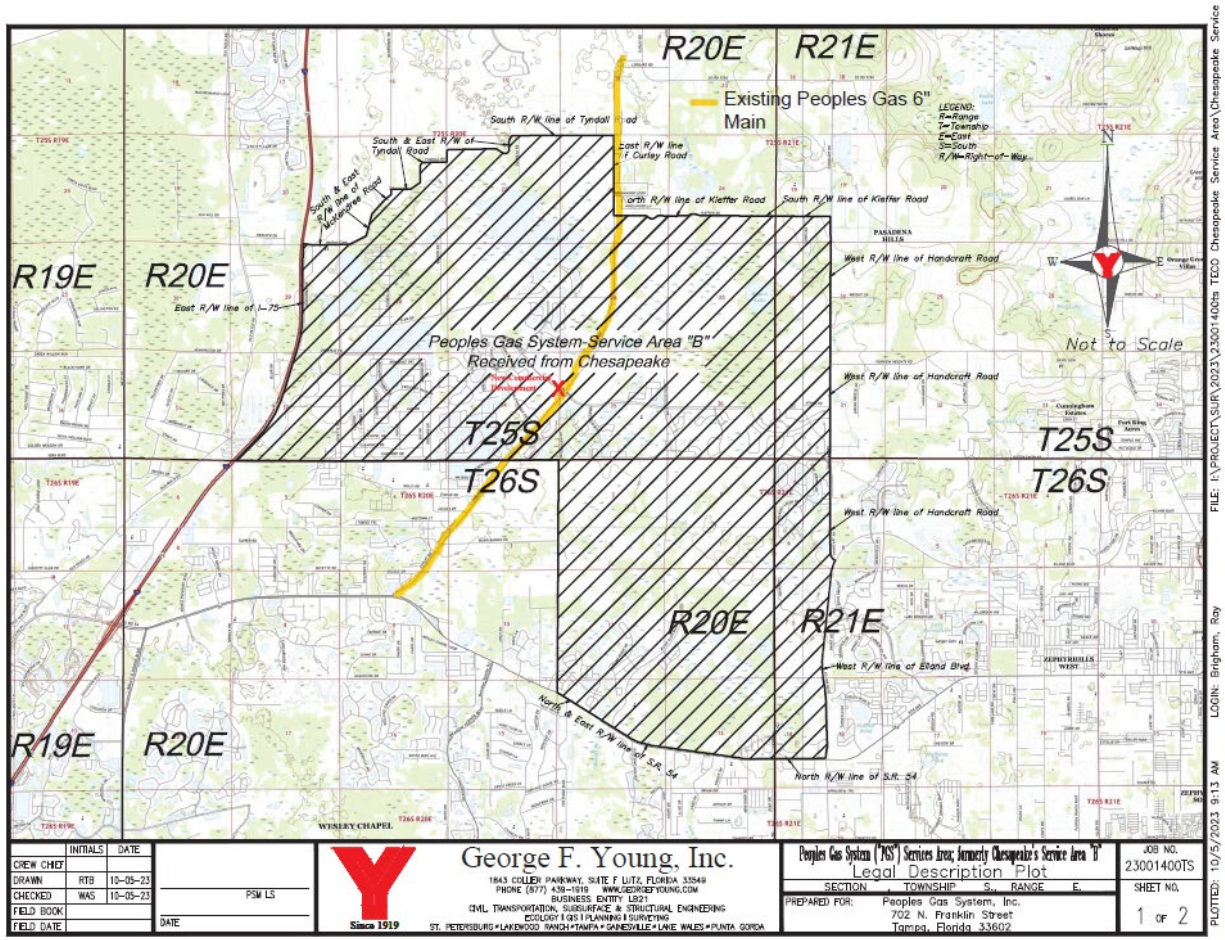
**AMENDMENT EXHIBIT A**

Chesapeake (FPUC) and Peoples Gas System, Inc.  
*Pasco County, Florida Service Area Map*









CREW CHIEF	INITIALS	DATE
DRAWN	RTB	12-05-23
CHECKED	WAS	12-05-23
FIELD BOOK		
FIELD DATE		

	PSM LS
DATE	

**Y**  
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Peoples Gas System (T26S) Service Area, formerly Chesapeake's Service Area "B"		
Legal Description Plot		
SECTION	TOWNSHIP	RANGE
	S	E
PREPARED FOR: Peoples Gas System, Inc. 702 N. Franklin Street Tampa, Florida 33602		

JOB NO.	23001400TS
SHEET NO.	1 of 2

FILE: \\PROJECT\SI\A\23001400ts\_TECO Chesapeake Service Area\Chesapeake Service  
 LOGIN: Bingham, Roy  
 PLOTTED: 10/5/2023 9:13 AM

*Legal Description of Peoples Gas System Service Area "B" (formerly Chesapeake's Service Area);*

*A parcel of land located in Pasco County, Florida being more particularly described as follows:*

*In Township 25 South, Range 20 East, Pasco County, Florida:  
 That Part of Section 21 lying South and East of the right-of-way for Tyndall Road and lying South and East of the right-of-way for McKendree Road;  
 That Part of Section 22 lying Southerly of the right-of-way for Tyndall Road;  
 Section 23 LESS any part thereof lying Northerly of the right-of-way for Tyndall Road, lying Northerly of Kiefer Road and lying Easterly of the right-of-way for Curley road  
 That Part of Section 24 lying Southerly of the right-of-way for Kiefer Road; ALL of Section 25;  
 ALL of Section 26; ALL of Section 27;  
 That Part of Section 28 lying Southerly of the right-of-way for McKendree Road;  
 That Part of Section 29 lying Easterly of the right-of-way for U.S. Interstate Highway 75, LESS any part thereof lying Northerly of the right-of-way for McKendree Road as it runs East and West near the North boundary of Section 29;  
 That Part of Section 32 lying Easterly of the right-of-way for U.S. Interstate Highway 75; ALL of Section 33;  
 ALL of Section 34; ALL of Section 35; ALL of Section 36;*

*In Township 25 South, Range 21 East, Pasco County, Florida:*


*That Part of Section 19 lying Southerly of the right-of-way for Kiefer Road and lying Westerly of the right-of-way for Handcart Road;  
 That Part of Section 30 lying Westerly of the right-of-way for Handcart Road; That Part of Section 31 lying Westerly of the right-of-way for Handcart Road;*

*In Township 26 South, Range 20 East, Pasco County, Florida:*

*ALL of Section 1; ALL of Section 2; ALL of Section 11; ALL of Section 12.  
 That Part of Section 13 lying Northerly and Easterly of the right-of-way for State Road 54; That Part of Section 14 lying Northerly and Easterly of the right-of-way for State Road 54;*

*In Township 26 South, Range 21 East, Pasco County, Florida:*

*That Part of Section 6 lying Westerly of the right-of-way for Handcart Road, and lying Westerly of the right-of-way for Elland Boulevard;  
 That part of Section 7 lying Westerly of the right-of-way for Elland Boulevard;  
 That part of Section 18 lying Northerly of the right-of-way for State Road 54, and Westerly of the right-of-way for Elland Boulevard;*

CREW CHIEF	INITIALS	DATE	 <p>1843 COLLIER PARKWAY, SUITE F LUTZ, FLORIDA 33549                  PHONE (877) 439-1919 WWW.GEORGEYOUNG.COM                  BUSINESS ENTITY 1921                  CIVIL, TRANSPORTATION, SUBSURFACE &amp; STRUCTURAL ENGINEERING                  ECOLOGY &amp; GIS PLANNING &amp; SURVEYING                  ST. PETERSBURG • LAKELAND • BRANCO • TAMPA • GAINESVILLE • LAKE WALKER • PUNTA GORDA</p>	Peoples Gas System (PGS) Service Area, formerly Chesapeake's Service Area "B" Legal Description Plot		JOB NO. 23001400TS			
DRAWN				SECTION	TOWNSHIP	S.	RANGE	E.	SHEET NO.
CHECKED				PREPARED FOR:		Peoples Gas System, Inc.			2
FIELD BOOK						702 N. Franklin Street			2
FIELD DATE						Tampa, Florida 33602			2

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