

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.	DOCKET NO. 041385-GU ORDER NO. PSC-05-0163-PAA-GU ISSUED: February 10, 2005
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING FIRST AMENDMENT TO 1995 TERRITORIAL AGREEMENT
BETWEEN PEOPLES GAS SYSTEM AND CLEARWATER GAS SYSTEM

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

In 1994, Peoples Gas System (Peoples Gas) initiated a territorial dispute against Clearwater Gas System (Clearwater Gas) because both parties planned to expand their natural gas distribution facilities in Pasco County. The parties ultimately were able to resolve that territorial dispute through a comprehensive agreement defining the service areas of the parties within Pasco County.

We approved the Agreement in Order No. PSC-95-0620-AS-GU, issued May 22, 1995, in Docket No. 940660-GU, In re: Petition to Resolve Territorial Dispute with Clearwater Gas System, a Division of the City of Clearwater, by Peoples Gas System, Inc., finding that the 1995 territorial agreement is in the public interest, and adoption of the agreement will further our longstanding policy of avoiding unnecessary and uneconomic duplication of facilities.

On December 8, 2004, Peoples Gas and Clearwater Gas filed a Joint Petition requesting approval of the First Amendment to the 1995 Agreement. This Order addresses the proposed

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amendment. **Jurisdiction over this** matter is vested in the Commission by Sections 366.04, 366.05, and 366.06, Florida Statutes.

First Amendment to 1995 Territorial Agreement

Natural gas service has been requested by the developer of Connerton, a 4,800 acre planned community in Central Pasco County that neither Peoples Gas nor Clearwater Gas are currently serving. Per the 1995 Agreement, Peoples Gas was allocated this territory; however, the territory is also adjacent to territory allocated to Clearwater Gas. The parties agree that because of the way that Peoples Gas and Clearwater Gas have developed their gas systems, it would be more economical for Clearwater Gas to provide service to the area.

Peoples Gas and Clearwater Gas have agreed to amend the 1995 agreement to permit Clearwater Gas to provide natural gas service to the area. Peoples Gas and Clearwater Gas agree that approval and implementation of the First Amendment to the 1995 Agreement, which is contained in Attachment A to this Order, will not cause a decrease in the availability or reliability of natural gas service to existing or future rate payers of either company.

The First Amendment meets the requirements set forth in Rule 25-7.0471, Territorial Agreements for Natural Gas Utilities, Florida Administrative Code. Approval of the First Amendment will permit the parties to continue to avoid uneconomic duplication of facilities, and will permit the party best suited to providing service to the development to provide such service. There is also no reasonable likelihood that the First Amendment will cause a decrease in the reliability of gas service to existing or future ratepayers of Peoples Gas or Clearwater Gas. Therefore, we find that the First Amendment is in the public interest and is hereby approved. The amendment shall become effective 30 days from the issuance of the Consummating Order in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the First Amendment to the 1995 Territorial Agreement between Peoples Gas System and Clearwater Gas System is in the public interest and hereby approved. It is further

ORDERED that the First Amendment shall become effective 30 days from the issuance of the Consummating Order in this docket. It is further

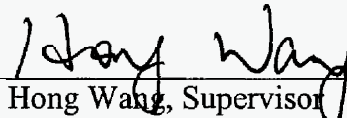
ORDERED that Attachment A is incorporated herein by reference. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of February, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 

Hong Wang, Supervisor
Case Management Review Section

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 3, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement (this "First Amendment") is made and entered into this 2nd day of December, 2004, by and between **Clearwater Gas System**, a department of the City of Clearwater, a Florida municipal corporation ("Clearwater"), and **Peoples Gas System**, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.), a Florida corporation ("PGS"), to amend certain provisions of the Agreement dated March 17, 1995, between Clearwater and PGS (the "Agreement"). Clearwater and PGS are sometimes referred to singularly as "Party" and collectively referred to as "Parties."

W I T N E S S E T H:

WHEREAS, Clearwater and PGS have heretofore entered into the Agreement, a copy of which is attached hereto, for the purpose of avoiding uneconomic duplication of facilities used to provide natural gas service to the public within Pasco County, Florida;

WHEREAS, the Agreement was approved by Order No. PSC-95-0620-AS-GU (Docket No. 940660-GU), issued by the Florida Public Service Commission (the "PSC") on May 22, 1995;

WHEREAS, because of the manner in which the Natural Gas facilities of the Parties have developed, it is desirable that Clearwater provide Natural Gas service to certain areas designated in the Agreement as PGS Territorial Area;

WHEREAS, 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 conditions herein set forth, hereby agree as follows:

Attachment A

1. Section 1.2 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.2 Clearwater Territorial Area As used herein, the term "Clearwater Territorial Area" shall mean the areas labeled Clearwater Gas System Pasco County Service Area on First Revised Exhibit "A" to this Agreement, which areas are more particularly described as follows:

The Original 1995 Clearwater Territory:

(a) Beginning at the Gulf of Mexico at the northwest corner of Section 30, Township 25 South, Range 16 East and then running easterly along the section lines approximately 0.5 mile north of Ridge Road to the westernmost property line of the frontage property along the western side of Little Road and then generally northerly along the westernmost property lines of the frontage properties along the western side of Little Road to the centerline of SR 52 and then generally easterly along the centerline of SR 52 to the easternmost boundary of the Serenova Development, intersecting at the centerline of SR 52. Then following the eastern and southern boundary lines of the Serenova Development (the legal description of such Development being attached hereto and made a part hereof as Exhibit "B") and then westerly along the southern boundary of the Serenova Development to the northeast corner of Section 2, Township 26 South, Range 17 East and then southerly along the east line of Section 2, 11, 14, 23, 26 and 35 of Township 26 South, Range 17 East to the Hillsborough/Pasco County line, then westerly along the Hillsborough/Pasco County line to the Gulf of Mexico.

(b) All parcels of property adjacent to the western right of way of Little Road within the area described in paragraph (a) above.

The Added 2004 Clearwater Territory:

(c) Beginning at the easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at the centerline of SR 52 near Hays Road, then easterly along the centerline of SR 52 to the centerline of Ehren Cutoff Road (CR 583); then southerly along the centerline of Ehren Cutoff Road (CR 583) to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of Little Lake Thomas Road; then southwesterly

along the centerline of Little Lake Thomas Road to the centerline of Tower Road; then southwesterly along the centerline of Tower Road to the east section line of Section 16, Township 26 South, Range 18 East; then south to the southeast corner of Section 16, Township 26 South, Range 18 East; then west to the northeast corner of Section 20, Township 26 South, Range 18 East; then south to the southeast corner of Section 20, Township 26 South, Range 18 East; then west to the northwest corner of Section 30, Township 26 South, Range 18 East; then continuing west to the northwest corner of Section 25, Township 26 South, Range 17 East; then north along the west section lines of Sections 24, 13, 12 and 1, Township 26 South, Range 17 East to the northwest corner of Section 1, Township 26 South, Range 17 East; then east along the north section lines of Section 1, Township 26 South, Range 17 East and Sections 6, 5, 4, 3 and 2, Township 26 South, Range 18 East, to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of State Road 52. When reference is made to the centerline of a road, it is intended that adjacent parcels on both sides of the road be included within the Clearwater Territorial Area.

(d) A corridor in Section 30, Township 26 South, Range 18 East from the intersection of the centerline of SR 54 and the centerline of the future entrance road to the Bexley Ranch property, northerly along the centerline of the future entrance road to the Bexley Ranch property to the northern boundary of Section 30, Township 26 South, Range 18 East. Said corridor shall include all parcels on the easterly side of the future entrance road to the Bexley Ranch property and all parcels on the westerly side of said entrance road, but excluding all parcels adjacent to SR 54.

If there is a conflict between the boundaries of the Clearwater Territorial Area set forth in this Section 1.2 and the boundaries of the Clearwater Territorial Area as depicted on First Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.2 shall govern.

2. Section 1.3 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.3 PGS Territorial Area As used herein, the

term "PGS Territorial Area" shall mean the areas labeled Peoples Gas

System Pasco County Service Area on First Revised Exhibit "A" to this Agreement, such areas consisting of all areas within Pasco County which are not located within the Clearwater Territorial Area described in Section 1.2 of this Agreement. If there is a conflict between the boundaries of the PGS Territorial Area set forth in this Section 1.3 and the boundaries of the PGS Territorial Area as depicted on First Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.3 shall govern.

3. Section 1.8 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.8 Territorial Boundary Line As used herein, the term "Territorial Boundary Line" shall mean each of the boundary lines so labeled, designating the dividing line between the areas shown on First Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.

4. Exhibit "A" to the Agreement is hereby deleted, and First Revised Exhibit "A" attached hereto is hereby substituted therefor.

5. Except as modified by this First Amendment, the Agreement shall continue in full force and effect.

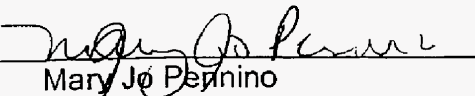
6. The provisions and the Parties' performance of the Agreement, as hereby amended, are subject to the regulatory authority of the PSC, whose approval of the Agreement, as hereby amended, shall be an absolute condition precedent to the validity, enforceability and applicability of this First Amendment and of the Agreement as hereby amended. This First Amendment shall have no force or effect whatsoever until such approval has been obtained, and the Parties hereby agree to jointly petition the PSC for

Attachment A

such approval. This First Amendment shall become effective on the date of expiration of the appeal period following the issuance by the PSC of an order approving this First Amendment and the Agreement as hereby amended. In the event the PSC declines to approve this First Amendment, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their respective duly authorized officers as of the date first written above.

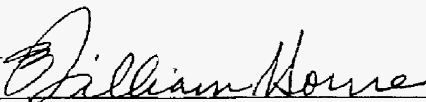
**PEOPLES GAS SYSTEM, a division
of Tampa Electric Company**

By: 
Mary Jo Perrino
Vice President – Energy Delivery

Countersigned:


CITY OF CLEARWATER, FLORIDA

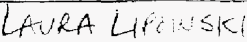

Brian J. Aungst
Mayor-Commissioner


By: 
William Horne
City Manager

Approved as to form and
Legal sufficiency:

Attest:


Pamela K. Akin
Asst. City Attorney


LAURA LIPOWSKI


Cynthia E. Goudeau
City Clerk

First Revised Exhibit "A" Clearwater Gas System/Peoples Gas System Pasco County Territorial Map

