

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. 050877-GU  
ORDER NO. PSC-06-0052-PAA-GU  
ISSUED: January 20, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER, II  
KATRINA J. TEW

ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary 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.

Background

In 1994, Peoples Gas System (Peoples) initiated a territorial dispute against Clearwater Gas System (Clearwater) 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. This Commission approved the Agreement by 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 was in the public interest, and that adoption of the agreement would further our longstanding policy of avoiding unnecessary and uneconomic duplication of facilities.

In 2004, Peoples and Clearwater filed a Joint Petition requesting approval of the First Amendment to the 1995 Agreement. In the amendment, both parties agreed to permit Clearwater to provide natural gas service to the developer of Connerton, a 4,800 acre community that was under development, and that neither Peoples nor Clearwater was serving. This Commission approved the Amendment by Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, in Docket No. 041385-GU, In re: Joint Petition for approval of amendment in Pasco County, by

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FPSC-COMMISSION CLERK

Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater, finding that the First Amendment to the 1995 Territorial Agreement was in the public interest.

On November 16, 2005, Peoples and Clearwater filed a Joint Petition requesting approval of a Second Amendment to the 1995 Territorial Agreement (Territorial Agreement), which is attached to this Order as Attachment A. The Joint Petition requests that Clearwater be permitted to provide natural gas services to a new development, Lakeshore Ranch, as well as to the surrounding areas shown on the attached map (Attachment A).

We have jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

#### Joint Petition

Natural gas service has been requested by a developer for the proposed Lakeshore Ranch development located in Pasco County. Lakeshore Ranch is located between two existing developments, Serenova Development and Connerton. The existing Connerton development prompted the First Amendment to the Peoples and Clearwater Territorial Agreement. In the First Amendment, the parties agreed to permit Clearwater to provide natural gas service to the developer of Connerton, a 4,800 acre community that was under development, and that neither Peoples nor Clearwater was serving.

With respect to the current development, and those in the surrounding areas, both Peoples and Clearwater find that it is more economical for Clearwater to provide services to Lakeshore Ranch and future developments in this area. As a result, the companies have worked together to develop a Second Amendment to the Territorial Agreement. Under the Second Amendment, Clearwater will be permitted to provide services to Lakeshore Ranch and to surrounding areas as shown on the attached map. Both companies agree that implementation of the Second Amendment will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of either Peoples or Clearwater.

The Second Amendment meets the requirements set forth in Rule 25-7.0471, Florida Administrative Code, Territorial Agreements for Natural Gas Utilities. We find that approval of the Second 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. Further, the Second Amendment will not cause a decrease in the reliability of gas service to existing or future ratepayers of Peoples or Clearwater. Therefore, we find that the Second Amendment is in the public interest and it is hereby approved. The Second Amendment shall become effective upon the expiration of the appeal period following the issuance of the Consummating Order in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition requesting approval of a Second Amendment to the 1995 Territorial Agreement between Peoples Gas System and Clearwater Gas System is approved. It is further

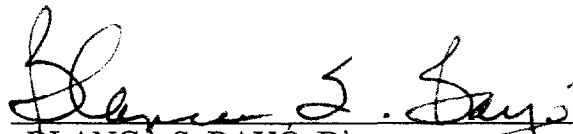
ORDERED that Attachment A, attached to this Order, is incorporated herein by reference. It is further

ORDERED that the Second Amendment to the 1995 Territorial Agreement between Peoples Gas System and Clearwater Gas System shall become effective upon the expiration of the appeal period following the issuance of the Consummating Order in this docket. 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 20th day of January, 2006.

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

( 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 February 10, 2006.

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.

Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement (this "Second Amendment") is made and entered into this 4th day of November, 2005, 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 (as heretofore amended, 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 developed, it became desirable that Clearwater provide Natural Gas service to certain areas designated in the Agreement as PGS Territorial Area, and the Parties entered into the First Amendment to Agreement dated December 2, 2004, which was approved by Order No. PSC-05-0163-PAA-GU, issued February 10, 2005; and

WHEREAS, the Parties have determined it is desirable that Clearwater provide Natural Gas service to additional areas designated in the Agreement as PGS Territorial Area.

Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

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 conditions herein set forth, hereby agree as follows:

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 Second 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. The 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.

Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

The Added 2004 and 2005 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 Hayes 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 easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at or near 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 southern boundary line of the Serenova Development (Exhibit "B"); then continuing north along the eastern boundary of the Serenova Development until intersecting the centerline of SR 52.

(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.

(e) When reference is made in paragraphs (a) and (c) above to the "centerline" of a boundary line road between the Clearwater and PGS Territorial Areas, it is intended that adjacent parcels on both sides of that road be included within the Clearwater Territorial Area provided that Clearwater has extended its main along the subject boundary line road; however, (i) if Clearwater has not extended main along a boundary line road and (ii) service is requested by a potential customer lying on the PGS side of such a road serving as a boundary line, and (iii) PGS's facilities for the provision of such service are more proximate to such customer than are those of Clearwater, then PGS shall have the right to serve such customer.

Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

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 Second 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 Second 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 Second 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 Second Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.



Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

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

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

Docket No. 050877-GU  
Date: December 21, 2005

Attachment A

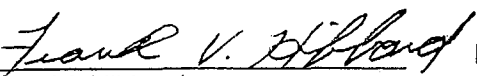
IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed by their respective duly authorized officers as of the date first written above.

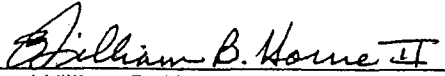
PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company

By:   
William N. Cantrell  
President

Countersigned:

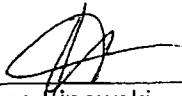
CITY OF CLEARWATER, FLORIDA

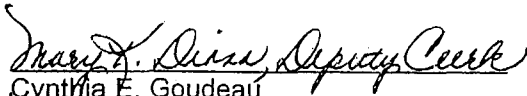
  
Frank V. Hibbard  
Mayor

By:   
William B. Horne II  
City Manager

Approved as to form:

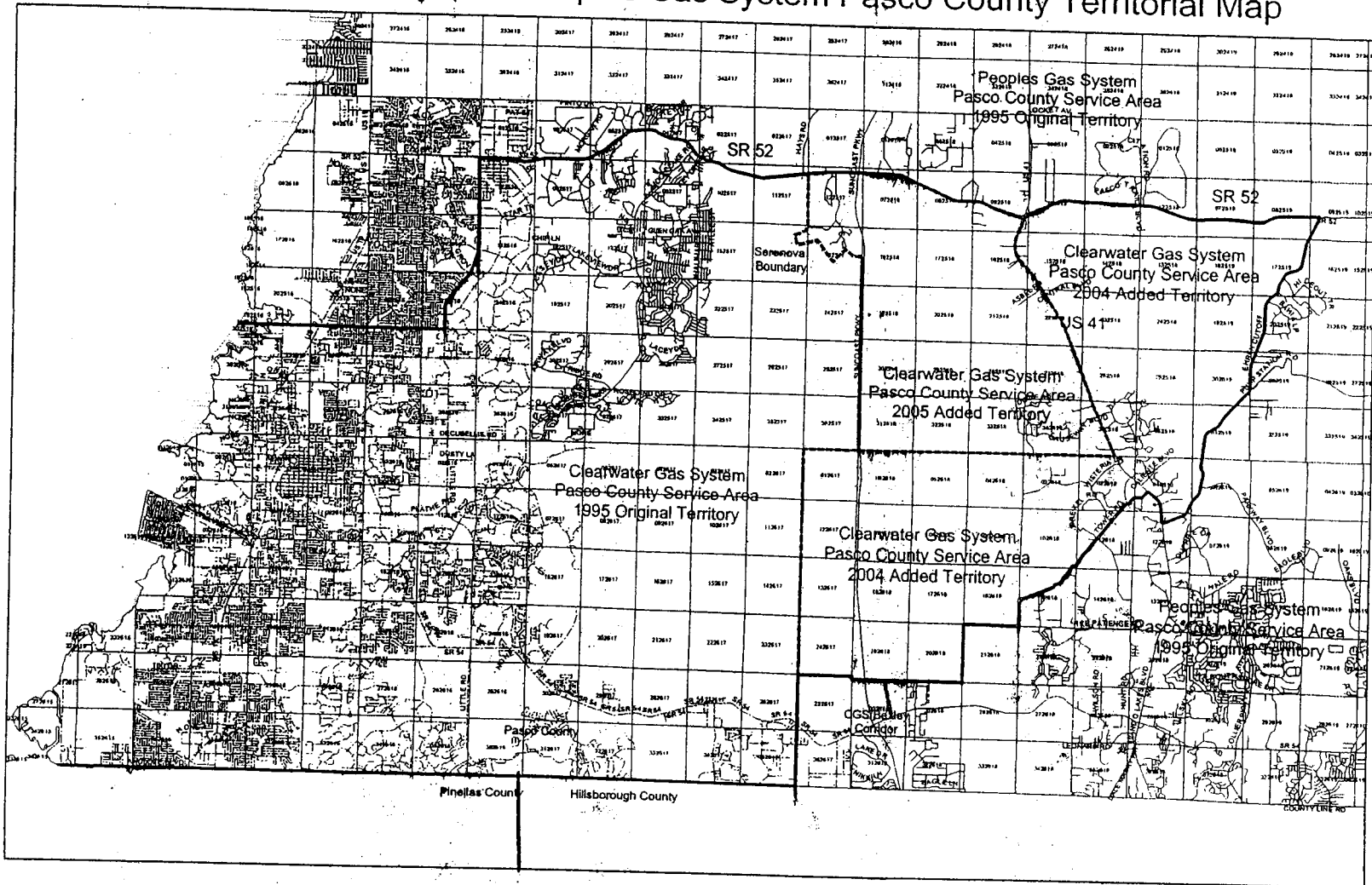
Attest:

  
Laura Lipowski  
Assistant City Attorney

  
for Cynthia E. Goudeau  
City Clerk

# Second Revised Exhibit "A"

## Clearwater Gas System/Peoples Gas System Pasco County Territorial Map



Docket No. U30677-GU  
 Date: December 21, 2005

Attachment A

ORDER NO. PSC-06-0052-PAA-GU  
 DOCKET NO. 050877-GU  
 PAGE 11

ATTACHMENT A