

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

May 9, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN) *MCR mad*
DIVISION OF ELECTRIC AND GAS (MAKIN, MILLS) *AMM JIM* *CBS* *JTS*

RE: DOCKET NO. 960363-GU - JOINT PETITION FOR APPROVAL OF
TERRITORIAL AGREEMENT BETWEEN FLORIDA PUBLIC UTILITIES
COMPANY AND PEOPLES GAS SYSTEM, INC.

AGENDA: MAY 21, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\EAG\WP\960363.RCM

CASE BACKGROUND

By letter dated February 29, 1996, Florida Public Utilities Company (FPUC) requested that the Commission approve a territorial agreement with Peoples' Gas System, Inc. (PGS) that modifies and supersedes its 1991 territorial agreement with Palm Beach County Utilities Corporation (PBCUC) that the Commission approved in 1991. This is staff's recommendation to approve the new territorial agreement, which is attached to this recommendation at attachment A.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the joint petition of Florida Public Utilities Company and Peoples Gas System, Inc. for a territorial agreement?

RECOMMENDATION: Yes. The Commission should approve the joint petition for territorial agreement between FPUC and PGS.

STAFF ANALYSIS: A territorial agreement between FPUC and Palm Beach County Utilities Corporation was approved by the Commission February 8, 1991. The agreement requires the utilities to submit the agreement to the Commission for review every five years.

DOCUMENT NUMBER-DATE

05237 MAY-96

FPSC-RECORDS/REPORTING

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PGS has since purchased PBCUC and the original agreement does not include a successor or assignees clause. Both parties have continued to honor the existing agreement. Since the execution of the original agreement, FPUC has expanded its system by crossing the intra-costal waterway (west to east), and installing gas mains north and south along U.S. Highway One east of the intra-costal waterway from Golfview Way on the south to the existing east/west territorial boundary line (the south municipal boundary of the town of Juno Beach) north of Pleasant Drive. The northern most section of the new main is presently under construction and, as a result of FPUC's construction activities, FPUC has received inquiries and requests to provide natural gas service to potential customers located north and west of the existing north boundary (outside of FPUC's territory). To date, no action has been taken on these requests.

FPUC and PGS both agree to relocate a portion of the north boundary line east on the inter-costal waterway. Redefining the northern boundary would permit FPUC to serve those customers requesting gas service outside FPUC's present service area and would prevent the future possibility of duplication of facilities along U.S. Highway One. Both parties have agreed to recognize and observe their respective existing service areas. No customers will be transferred as a result of this agreement, and no customer's rates will be affected.

Accordingly, Staff recommends that the territorial agreement between FPUC and PGS is in the public interest and should be approved.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no timely protest is filed within 21 days of the issuance of this Order.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interest are affected by the proposed agency action shall have 21 days after the issuance of the Order to file a protest. If no timely protest is filed, the docket should be closed.

ATTACHMENT A

FLORIDA
PUBLIC UTILITIES COMPANY

P.O. Box 3395
West Palm Beach
Florida 33402-3395

February 29, 1996

Florida Public Service Commission
Blanca S. Bayo, Director
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

960363-60

Dear Ms. Bayo:

A territorial agreement between Florida Public Utilities Company (FPUC) and Palm Beach County Utilities Corporation (PBCUC) was approved by the Florida Public Service Commission (FPSC) and became effective February 8, 1991.

A provision contained in the agreement requires the agreement be submitted to and reviewed by the FPSC every five (5) years. Please accept this letter as a request by FPUC and Peoples Gas System, Inc. to review this agreement and to consider incorporating the following changes:

- (1) change PBCUC to Peoples Gas System, Inc. (PGS) as a party to the agreement.
- (2) consider expanding FPUC's approved territory east of the intra-coastal waterway by relocating a portion of the boundary west and north.

The need to change the parties to the agreement is obvious. Peoples Gas System, Inc. has since purchased Palm Beach County Utilities Corporation and the original agreement does not include a successor or assignees clause. This agreement effectively became void upon the purchase of PBCUC by Peoples as PBCUC ceased to exist. Both companies have continued to honor the existing approved agreement throughout this time period.

Since the execution of this agreement, FPUC has expanded its system by crossing the intra-coastal waterway (west to east) installing gas mains north and south along U.S. Highway One east of the intra-coastal waterway from Golfview Way on the south to the existing east/west territorial boundary line (the south municipal boundary of the town of Juno Beach) north of Pleasant Drive. The northern most section of this main is presently under construction and, as a result of FPUC's construction activities, FPUC has received inquiries and requests to provide natural gas service to potential customers located north and west of the existing north boundary (outside of FPUC's territory). To date, no action has been taken on these requests.

Florida Public Utilities Company and Peoples Gas System, Inc. both agree to relocating a portion of the north boundary line east of the intra-coastal waterway. Redefining the northern boundary as set forth in enclosed "Exhibit B" would permit FPUC to serve those customers requesting gas service outside of FPUC's present service area and prevent the future possibility of duplication of facilities along U.S. Highway One.

Enclosed for your convenience and review are:

1. Copy of original agreement between FPUC and PBCUC
2. Copy of area map showing existing territorial boundary
3. Copy of FPSC's original Order 24260 issued in Docket No. 900700-GM
4. Copy of proposed addendum to facilitate these changes
5. Copy of Exhibit "B" which describes the revised boundary
6. Copy of area map showing revised boundary.

DOCUMENT CONTROL - PA

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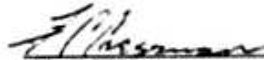
REGISTRATION REPORT

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Blanca S. Bayo, Director
February 29, 1996

Your prompt attention to this matter will be appreciated. Should you need additional information or require this information in a different format, please direct your request to F.C. Cressman at Florida Public Utilities company.

Sincerely,



F.C. Cressman, President
FLORIDA PUBLIC UTILITIES CO.



R. B. Buntney
PEOPLES GAS SYSTEM, INC.

FCC/mrw
Enclosure(s)

Pres.fcc 1995 / pbcuc.ltr

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TERRITORIAL AGREEMENT

THIS TERRITORIAL AGREEMENT is entered into between FLORIDA PUBLIC UTILITIES COMPANY (FPUC) and PALM BEACH COUNTY UTILITIES CORPORATION (PBCUC) and shall be effective upon approval of the Florida Public Service Commission (FPSC).

WHEREAS, FPUC and PBCUC are both natural gas distribution companies authorized by the FPSC to serve customers in Northeastern Palm Beach County and

WHEREAS, FPUC and PBCUC have gas distribution systems adjacent to each other along reasonably defined boundaries which serve to separate their service areas with the exception of one area, at which area the systems actually cross each other, and

WHEREAS, the FPSC has entered an Order in Docket No. 900700-GU and has scheduled a hearing to resolve the dispute between FPUC and PBCUC regarding which entity has the right to serve a certain area in Palm Beach County, which each has proposed to serve, and

WHEREAS, the unnecessary duplication of facilities (1) results in the wasteful expenditure of capital which is contrary to FPSC policies and is not in the best interest of the customers, and (2) would compromise the integrity of the systems and thus, public safety;

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

1. FPUC and PBCUC service areas will be separated by the boundary line described and defined on Attached Exhibit "A" which is hereby incorporated into this Agreement.
2. That except for those existing in the vicinity of Prosperity Farms Road and PGA Boulevard, both companies will refrain from installing distribution mains or services which will cross and duplicate other facilities or which would intrude into the other Company's service area.
3. They will not solicit potential or existing Natural Gas Customers within the other Company's service area.
4. Should a customer of one Company request service from the other Company, and that customer qualifies for service according to the terms and conditions of the Florida Public Service Commission's Rules and Regulations, the Company will not provide service to that customer unless ordered to do so by the FPSC or by a Court of Law.

5. 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.

6. Should either Company become a defendant in a legal action as a result of this Agreement, the other Company will participate in that suit and shall be liable to the defendant Company for fifty (50) percent of legal and other costs incurred by defendant Company as a result of the suit, less the other Company's cost of participation; provided, however, that the defendant Company shall provide the other Company with notice of said legal action within a reasonable time, but no later than thirty (30) days following its written receipt of notice of said legal action.

7. Should a project to be provided with gas service be located in such a manner that it would straddle, or be divided by this boundary line, the Company 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 Company.

8. This Agreement and boundary line set forth herein may be modified only upon prior review and approval of the FPSC.

9. This Agreement shall be executed by FPUC and PBCUC and submitted to the FPSC for approval and shall become effective on the date that approval is received, and shall remain in effect until modified or vacated by the FPSC.

10. This Agreement shall be submitted to and reviewed by the FPSC every five (5) years.

11. The fact of any party's participation in this Agreement shall not be considered to be an admission of any liability, and the parties entering into this Agreement specifically deny any liability and are participating solely to resolve a dispute without litigation pursuant to applicable FPSC policy.

12. The parties to this Agreement undertake the obligations stated herein 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 (1989), that expressly confers authority on the FPSC to approve territorial agreements between natural gas utilities. Upon approval by the FPSC, the Agreement will merge

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into and become part of the FPSC order that approved it. The Agreement thereafter will have no existence or effect apart from the FPSC order. The FPSC has the exclusive authority and regulatory responsibility to interpret, modify, or terminate the Agreement. Public Service Commission V. Fuller, 551 So.2d 1210 (Fla. 1989).

IN WITNESS WHEREOF, Florida Public Utilities Company and Palm Beach County Utilities Corporation have hereunto affixed their respective hands and seals.

ACCEPTED

FLORIDA PUBLIC UTILITIES COMPANY

BY *F. Weissman*
TITLE *President*
DATE *2-8-91*

ACCEPTED

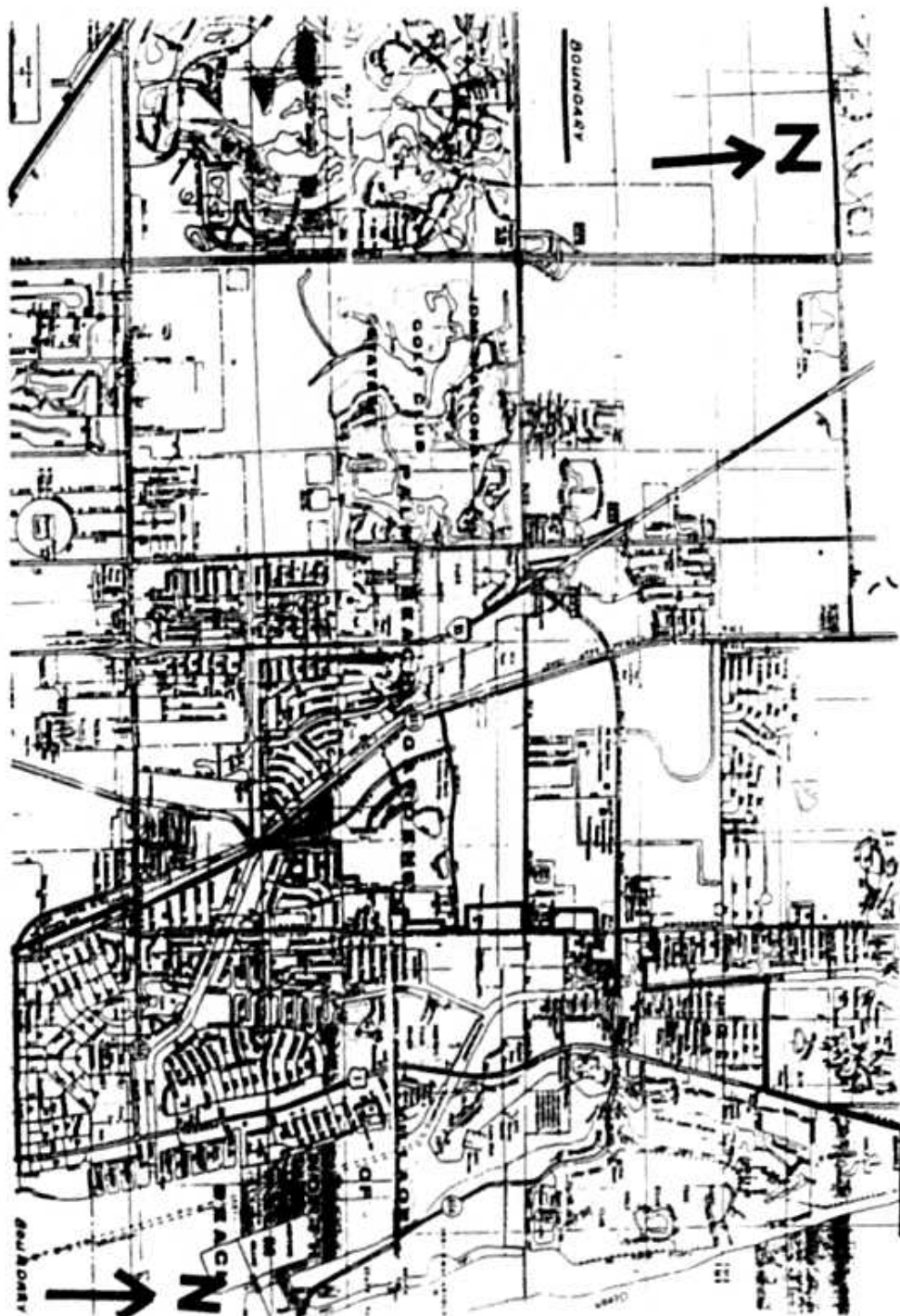
PALM BEACH COUNTY UTILITIES CORPORATION

BY *[Signature]*
TITLE *Executive Vice President*
DATE *2-8-91*

EXHIBIT "A"

Beginning at a Western point where the centerlines of Northlake Boulevard (Lake Park Road West) and The Beeline Highway intersect the said boundry shall run generally in a Southeasterly direction along the centerline of the Beeline Highway to a point of intersection with the South section line of Section 23 of Township 42 South, Range 42 East, thence east along South section line of Sections 23 and 24 of Township 42 South, Range 42 east and Sections 19 and 20 of Township 42 South, Range 43 east to the point of intersection with the centerline of the Florida East Coast Railroad track line thence generally Northward along the RR centerline to a point of intersection with the centerline of Northlake Boulevard thence East along centerline of Northlake Boulevard to a point of intersection with the centerline of Old Dixie Highway thence generally Northward along centerline of Old Dixie Highway to boundary line separating the Town of Palm Beach Gardens and The Village of North Palm Beach thence generally North along the boundary for the Town of Palm Beach Gardens to a point of intersection with South right-of-way line for RCA Boulevard thence East along said right-of-way to the point of intersection with the West right-of-way line of Prosperity Farms Road thence North along said right-of-way line a distance of 720 feet thence West a distance of 500 feet thence North a distance of 1400 feet thence East a distance of approximately 600 feet to the point of intersection with the Municipal boundary of the Town of Palm Beach Gardens thence generally Eastward along said boundary to the point of intersection with the centerline of the Intracoastal Waterway thence North along ICW centerline to the point of intersection with the centerline of PGA Boulevard thence West along centerline of PGA Boulevard to the West right-of-way line of Prosperity Farms Road thence North along the West right-of-way line to the Municipal boundary line of the Town of Palm Beach Gardens then East along boundary line (South of Idlewild Court) to the centerline of the Intracoastal Waterway thence North along centerline of ICW to a point where the westerly projection of the South Municipal boundary of the Town of Juno Beach North of Pleasant Drive would intersect thence East on said projection to the boundary line and thence East and North along the Municipal Limits of the Town of Juno to the Atlantic Ocean.

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ADDENDUM TO TERRITORIAL AGREEMENT

On February 8, 1991, a territorial agreement, as approved by the Florida Public Service Commission (FPSC), between Florida Public Utilities Company (FPUC) and Palm Beach County Utilities Company (PBCUC) became effective. Subsequent to the effective date, PBCUC was purchased by Peoples Gas System, Inc. (PGS). A condition of the agreement requires the agreement to be submitted to and reviewed by the FPSC every five years. Florida Public Utilities Company and Peoples Gas System, Inc. both agree that upon the initial 5-year review, the following changes were made to and became a part of the original agreement.

1. All references to Palm Beach County Utilities Company (PBCUC) be deleted and replaced with Peoples Gas System, Inc.
2. The boundary line separating the service areas as described and defined in attached Exhibit "A" which was incorporated into the agreement is hereby superseded by a boundary line described and defined in the attached "Exhibit B" which is hereby incorporated into the agreement.
3. All other terms conditions, requirements and covenants contained in the original agreement shall remain in full force and effect. This addendum shall become effective upon date of first approval by the Florida Public Service Commission and remain in effect until modified, changed or canceled by future action of said commission.

Accepted for: Florida Public Utilities Company

By: *[Signature]*
Signature
F. C. Crossman
Print or Type
Title: *President*
Date: *March 1, 1996*

Accepted for: Peoples Gas System, Inc.

By: *D. R. Pountney, Jr.*
Signature
D. R. Pountney
Print or Type
Title: *SR VP Regs*
Date: *3/18/96*

EXHIBIT 'B'

Beginning at a western point where the centerline of Northlake Boulevard (Lake Park Road West) and The Beeline Highway intersect the said boundary shall run generally in a southeasterly direction along the centerline of The Beeline Highway to a point of intersection with the South Section line of Section 23 of Township 42 South, Range 42 East, thence east along South Section line of Sections 23 and 24 of Township 42 South, Range 42 East and Sections 19 and 20 of Township 42 South, Range 43 East to the point of intersection with the centerline of the Florida East Coast Railroad track line thence generally northward along the RR centerline to a point of intersection with the centerline of Northlake Boulevard thence east along centerline of Northlake Boulevard to a point of intersection with the centerline of Old Dixie Highway thence generally northward along centerline of Old Dixie Highway to boundary line separating the Town of Palm Beach Gardens and The Village of North Palm Beach thence generally north along the boundary for the Town of Palm Beach Gardens to a point of intersection with south right-of-way line for RCA Boulevard thence east along said right-of-way to the point of intersection with the west right-of-way line of Prosperity Farms Road thence north along said right-of-way line a distance of 720 feet thence west a distance of 500 feet thence north a distance of 1400 feet thence east a distance of approximately 600 feet to the point of intersection with the municipal boundary of The Town of Palm Beach Gardens thence generally eastward along said boundary to the point of intersection with the centerline of the Intracoastal Waterway thence north along ICW centerline to the point of intersection with the centerline of PGA Boulevard thence west along centerline of PGA Boulevard to the west right-of-way line of Prosperity Farms Road thence north along the west right-of-way line to the municipal boundary line of the Town of Palm Beach Gardens then east along boundary line (South of Idlewild Court) to the centerline of the Intracoastal Waterway thence north along centerline of ICW to a point 100 feet south of the north boundary line of Section 32 Township 41 South Range 43 East, thence east along a line parallel to and 100 feet south of said north boundary line to a point of intersection with the east boundary line of Section 32 Township 41 South Range 43 East thence north along said boundary line to the point of intersection with the north boundary lines of Section 32 Township 41 South, Range 43 East and Section 33, Township 41 South, Range 43 East, thence east along north boundary of Section 33, Township 41 South, Range 43 east to the Atlantic Ocean.