

ORIGINAL

MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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900 HIGHPOINT CENTER  
106 EAST COLLEGE AVENUE  
TALLAHASSEE, FLORIDA 32301  
(850) 681-7381 FAX (850) 681-0281

400 NORTH TAMPA STREET, SUITE 2300  
P.O. BOX 1531 (ZIP 33601)  
TAMPA, FLORIDA 33602  
(813) 273-4200 FAX (813) 273-4396

MAIL ROOM

625 COURT STREET  
P. O. BOX 1669 (ZIP 33757)  
CLEARWATER, FLORIDA 33756  
(813) 441-8966 FAX (813) 442-8470

December 22, 1999

IN REPLY REFER TO:

Ansley Watson, Jr.  
P.O. Box 1531  
Tampa, Florida 33601  
e-mail: aw@macfar.com

VIA FEDERAL EXPRESS

Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Docket No. 990935-GU -- Petition for approval of experimental Rider FTA-2 (Firm Transportation Aggregation Service 2), and modifications to imbalance cashout provisions of Rider FTA program, by Peoples Gas System**

Dear Ms. Bayo:

Enclosed for filing in the above docket, please find the original and 15 copies of the Peoples Gas System's Reply to Staff's Motion for Continuance of Hearing, and Request for Oral Argument.

Please acknowledge your receipt of the enclosures and the date of their filing on the duplicate copy of this letter enclosed for that purpose, and return the same to me in the preaddressed envelope also enclosed herewith.

Thank you for your usual assistance.

Sincerely,

ANSLEY WATSON, JR.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CEM \_\_\_\_\_
- CFR \_\_\_\_\_
- EAG** 1 *Waters*
- LEG 1
- MAS 3
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_ AWjr/a
- SEC 1 Enclosures
- VAW \_\_\_\_\_
- OTH \_\_\_\_\_

cc: Wm. Cochran Keating, IV, Esquire  
Ms. Angela Llewellyn

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

15712 DEC 23 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of experimental )  
Rider FTA-2 (Firm Transportation )  
Aggregation Service 2), and modifications )  
to imbalance cashout provisions of Rider )  
FTA program, by Peoples Gas System. )  
\_\_\_\_\_ )

Docket No. 990935-GU

Submitted for Filing:  
12-23-99

**PEOPLES GAS SYSTEM'S REPLY IN OPPOSITION  
TO STAFF'S MOTION FOR CONTINUANCE  
OF HEARING, AND REQUEST FOR ORAL ARGUMENT**

Peoples Gas System ("Peoples" or the "Company"), by its undersigned attorneys and pursuant to Rule 28-106.204, *F.A.C.*, submits this reply in opposition to the grant of Staff's Motion for Continuance of Hearing and says:

1. Staff's motion seeks a continuance of the hearing scheduled to be held in this docket on January 14, 2000 for a period of 45 to 60 days on the ground that "Staff does not have adequate time to develop" certain information "through the normal discovery process." Staff's Motion, ¶3. Peoples opposes the grant of the continuance sought by Staff's motion, or any continuance of the January 14, 2000 hearing, on the ground that Staff's motion fails to show good cause for the continuance requested.

2. The information Staff seeks additional time to develop is "additional allegations along the same lines as those that were cause for the Commission's concern," expressed in Order No. PSC-99-2122-PCO-GU. Those allegations were that Peoples' marketing affiliate, TECO Gas Services, had already effectively gained control of the market for transportation service by soliciting and reaching agreements with new gas customers along the route of Peoples' new pipeline expansion in southwest Florida, prior to the approval of the proposed Rider FTA-2. Staff's motion for

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FPSC-RECORDS/REPORTING

continuance says the Staff has recently received not only additional allegations along these same lines, but also "information that appears to support" such allegations.

3. Peoples submits that Staff's motion fails to demonstrate good cause for grant of the requested continuance, and must be denied, because:

- A. Since the allegations about which the Commission expressed concern in Order No. PSC-99-2122-PCO-GU are unfounded (and logically impossible) they cannot be substantiated;
- B. During the two-month period between October 5, 1999 (the date of the Agenda Conference at which the Commission voted to set this docket for a hearing) and December 6, 1999 (when Staff Counsel first advised Peoples' counsel of the Staff's desire to depose two Peoples employees), Staff made no effort to conduct the "normal discovery process" which Staff now claims provides "inadequate time" to develop information about which Staff has known since late September (and perhaps earlier);
- C. Staff filed no direct testimony on December 13, 1999, as provided by the CASR and by the Commission's order establishing procedure, and failed to identify or mention – in its Prehearing Statement – the allegations about which the Commission expressed concern in Order No. PSC-99-2122-PCO-GU; and
- D. Even if the allegations mentioned in Order No. PSC-99-2122-PCO-GU could be, and were, substantiated, such facts would be, as a matter of law, of no relevance or material effect on the issue of whether or not Peoples' tariff filings in this docket should be approved or permitted to remain in effect without approval.

4. A partial chronology of the events in this docket is as follows:

<u>Event</u>	<u>Date</u>
Peoples' petition filed	July 19, 1999
Peoples' petition amended	August 18, 1999
Staff Recommendation filed	September 23, 1999
Staff's Data Request received by Peoples	October 1, 1999
TECO Gas Services responds to Staff's Data Request	October 3, 1999
Agenda Conference	October 5, 1999
TECO Gas Services letter to Chairman Garcia	October 20, 1999
Order No. PSC-99-2122-PCO-GU issued	
(setting docket for hearing)	October 25, 1999
CASR revised to specify filing dates	October 27, 1999
Peoples' direct testimony and exhibits filed	November 22, 1999
Date for filing Staff testimony (none filed)	December 13, 1999
Staff Depositions of Peoples employees	December 20, 1999
Peoples' Prehearing Statement filed	December 20, 1999
Staff's Prehearing Statement filed	December 20, 1999

As indicated above, Staff knew -- at the latest -- of the "allegations" mentioned in Order No. PSC-99-2122-PCO-GU when it filed its recommendation on September 23, 1999. Those allegations were that TECO Gas Services had already effectively gained control of the market for transportation service by soliciting and reaching agreements with new gas customers along the route of Peoples' new pipeline extension in southwest Florida, prior to approval of Rider FTA-2. TECO Gas Services' October 3, 1999 response to Staff's data request advised the Commission Staff that it had entered into no contracts with customers under the FTA-2 program.

5. Although not mentioned in Staff's motion, TECO Gas Services, by letter from its President to Commission Chairman Garcia dated October 20, 1999, reiterated TECO Gas Services' response to the Staff's data request, stating that "TGS has not entered into any contracts to service customers under the Rider FTA-2." The letter also requested information in the possession of the Commission or its Staff with respect to the allegations relating to TECO Gas Services' activities

mentioned in the Staff Recommendation and in Order No. PSC-99-2122-PCO-GU – the same information Staff's motion now seeks a continuance of the hearing to "develop.". To date, TECO Gas Services has received no response to that request.

6. Staff knew as of October 5, 1999 -- the date of the Agenda Conference mentioned above -- that this docket would be set for hearing. Staff established the timeline for the discovery process when it established the schedule contained in the CASR issued October 27, 1999. From October 5, 1999 until December 6, 1999 – a period of two months – Staff served no interrogatories, no requests for production of documents, and no other discovery requests on Peoples. Until December 6, 1999, Staff made no effort to conduct the "normal discovery process" which Staff now claims provides "inadequate time" to develop information about which Staff has known since at least late September.

7. Staff – in preparing the revised CASR issued October 27, 1999 – established December 13, 1999 as the date by which Staff testimony and exhibits must be filed, and then filed neither. Further, in its Prehearing Statement filed on December 20, 1999, neither Staff's statement of basic position, the single issue identified, nor Staff's position on that issue even mentions the subject matter for which Staff's motion seeks a continuance of the hearing to more fully develop.

8. The alleged activities of TECO Gas Services mentioned in the Staff Recommendation, in Order No. PSC-99-2122-PCO-GU, and in the Staff's motion are not subject to regulation by the Commission. They do not violate any statute, rule or policy. The only mention of a gas marketer or supplier in Chapter 366, *Florida Statutes*, is in Section 366.02(1), which exempts from the Commission's regulatory jurisdiction under Chapter 366 "any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or

distribution facilities within the state." Neither Chapter 366 nor the Commission's rules contains any provision setting forth any requirement with which a gas marketer such as TECO Gas Services must comply, nor do the statutes or the rules prohibit a gas marketer from engaging in any activity whatsoever. Thus, even if TECO Gas Services solicited or reached agreements with new gas customers along the route of Peoples' new pipeline extension in southwest Florida (before or after the filing of Peoples' amended petition in this docket), and even if such activities resulted in TECO Gas Services' gaining control of the market for transportation service, or in a limited choice of marketers and suppliers for customers seeking transportation service under Rider FTA-2, such activities and results would be of no material effect, and irrelevant, on the issue of whether Peoples' filings in this docket should be approved by the Commission (or be permitted to remain in effect without approval). Thus, Staff's motion seeks a continuance of the hearing in this docket for the purpose of developing support for allegations which, even if proved, would be irrelevant and immaterial to the issue before the Commission in this docket.

9. Staff's motion claims that Peoples should not be prejudiced by the continuance sought by the motion because Rider FTA-2 and the other tariff provisions which are the subject of the hearing are already in effect. Peoples submits it will be prejudiced by the requested continuance in that it will prolong the Staff's fishing expedition -- conducted outside the scope of the "normal discovery process" -- designed to elicit anything which might even remotely support the allegations contained in the Staff Recommendation which prompted the Commission to set Peoples' tariff filings for hearing. If this matter is to be heard by the Commission at all, Peoples submits it is entitled to have it heard as scheduled. Otherwise, Peoples will be forced to continue to spend time and dollars in an attempt to keep those filings in effect. To date, Staff has offered no legally cognizable reason

why those filings should not be approved. Perhaps more importantly, marketer participation in the Rider FTA-2 program may be being dampered by the continued uncertainty regarding the ultimate outcome of this proceeding for the experimental program. Continued uncertainty may well reduce the benefits provided by the program for the Company and its customers.

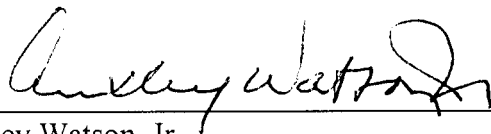
10. Peoples submits that Staff had no factual support for the allegations at the time they were mentioned in the Staff Recommendation, and has simply been unable to find support therefor during the intervening period of almost three months. Peoples further submits that Staff has been unable to find any such factual support for the allegations because none, in fact, exists. Staff filed no direct testimony as it was scheduled to do on December 13, 1999. While Staff may have legitimately believed it had some basis for the allegations regarding TECO Gas Services' alleged activities at the time it filed its Staff Recommendation on September 23, 1999, it cannot in good faith continue to believe that any factual support for those allegations exists. Logic suggests that TECO Gas Services could not have "gained control of the market for transportation service" since very few of the potential customers along the route of Peoples' southwest Florida pipeline extension are even taking gas service as of the date of this reply. Only the Staff knew the source of those allegations, and Staff has yet to divulge such source to Peoples or to TECO Gas Services. Had Staff continued to maintain a good faith belief that support might exist -- in spite of the two denials by TECO Gas Services -- it could have sought a continuance prior to the time its direct testimony in this docket was scheduled to be filed.

11. Staff's motion having failed to show good cause for a continuance of the hearing presently scheduled for January 14, 2000, Peoples submits that such motion should be denied.

REQUEST FOR ORAL ARGUMENT

Peoples respectfully requests oral argument on Staff's motion for continuance and the foregoing reply thereto, and requests that such oral argument be conducted before the Prehearing Officer at the Prehearing Conference currently scheduled in this docket on January 10, 2000. Oral argument would aid the Prehearing Officer not only in disposing of Staff's motion, but in determining the scope of the issues to be addressed in the hearing in this docket, whether the same is conducted on January 14, 2000, as presently scheduled, or at some later date. It would also provide the Commission Staff the opportunity to enlighten both the Prehearing Officer and Peoples regarding the nature of the "additional allegations along the same lines as those that were the cause" for the concern expressed by the Commission in ordering a hearing in this case, how it might be relevant to any issue involved in this proceeding, and the nature of any disputed issue of material fact Staff believes still warrants a hearing in this docket.

Respectfully submitted this 22nd day of December, 1999.



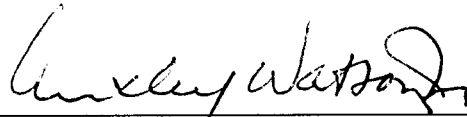
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Ansley Watson, Jr.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531, Tampa, Florida 33601-1531  
Telephone: (813) 273-4200 or -4321  
Facsimile: (813) 273-4396 or -4397  
Attorneys for Peoples Gas System



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing reply and request for oral argument has been furnished, via facsimile and regular U.S. Mail, to William C. Keating, IV, Esquire, Staff Counsel, Florida Public Service Commission, Capital Circle Office Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 22nd day of December, 1999.



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Ansley Watson, Jr.