



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** JANUARY 20, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF ELECTRIC AND GAS (BROWN, BULECZA-BANKS, MAKIN)  
DIVISION OF LEGAL SERVICES (CROSSMAN)

**RE:** DOCKET NO. 991758-GU - JOINT PETITION FOR APPROVAL OF TERRITORIAL BOUNDARY AGREEMENT BY TAMPA ELECTRIC COMPANY D/B/A PEOPLES GAS SYSTEM AND CLEARWATER GAS SYSTEM, A DEPARTMENT OF THE CITY OF CLEARWATER IN PINELLAS COUNTY.

**AGENDA:** 02/01/2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\EAG\WP\991758.RCM

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission approve the joint petition by Tampa Electric Company d/b/a Peoples Gas System (Peoples), and Clearwater Gas System (Clearwater), for a territorial boundary agreement in Pinellas County?

**RECOMMENDATION:** Yes. The Commission should approve the joint petition of Peoples and Clearwater Gas for a territorial boundary agreement in Pinellas County. (BROWN, BULECZA-BANKS, MAKIN)

**STAFF ANALYSIS:** On November 24, 1999, Peoples and Clearwater filed a joint petition for a territorial boundary agreement in Pinellas County. Potential disputes have arisen between Peoples, an investor-owned utility, and Clearwater, a municipal utility, with respect to which of them should serve potential natural gas customers located outside Clearwater's corporate limits. To resolve these potential disputes, the petitioners have entered into

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an agreement that defines the territorial boundaries in portions of Pinellas County. All the terms and conditions pertaining to and implementation of, are set forth in the Agreement. A copy of the agreement is included in this recommendation as Attachment A.

Rule 25-7.0471(2), Florida Administrative Code, sets forth the standards for approval of territorial agreement. The standards are: (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; (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities; and (d) other relevant factors that may arise from the circumstances of a particular case.

As part of the agreement, Peoples will transfer to Clearwater the facilities within the territory bordering the south side of State Road 688 (Walsingham Road) from 146th Street North to the centerline of the Intracoastal Waterway. As addressed in the Agreement, the properties will be transferred at depreciated book value. Staff believes the purchase price of up to \$26,157.29, paid by Clearwater to Peoples for these properties, is reasonable. As a result of the transfer, eight commercial customers, currently served by Peoples, will now be served by Clearwater.

Clearwater will transfer to Peoples facilities within the territory bordering the north side of 142nd Avenue North from 66th Street North to Belcher Road. Clearwater will also transfer properties bordering the north side of Walsingham Road from 113th Street North to State Road 688 (Walsingham Road/Ulmerton Road). The properties will be transferred to Peoples at depreciated book value. Staff believes the purchase price of \$7,091.90, paid by Peoples to Clearwater for these facilities, is reasonable. As a result of the facility transfer, an apartment complex currently served by Clearwater, will now be served by Peoples.

As contemplated by Rule 25-7.043(d) Florida Administrative Code, each customer to be transferred from Peoples to Clearwater was contacted and informed. No negative reaction against the proposed transfer was received from the customers. The names of these customers are mentioned in Exhibit 2 of the petition. Clearwater has agreed to charge the small commercial customers transferred from Peoples, the equivalent rate of Peoples.

The only concern Staff had in this petition related to the reference of the transfer of PGS' Rider FTA customers. The proposal required customers to reply, in writing, of their desire to remain with PGS instead of being transferred to CGS, which does not offer transportation service. Because Peoples and Clearwater petitioned for approval of the Agreement, and not the customers, Staff believed the utility should be responsible for any administrative action.

Prior to the second anniversary of the Agreement, and no more than every fifth anniversary thereafter, Peoples and Clearwater will meet to review the status of this Agreement and shall submit a joint status report to the Commission. As part of this review, Staff recommends the utilities evaluate the feasibility of transferring these FTA customers to Clearwater, if Clearwater begins offering transportation service.

On January 10, 2000, Peoples submitted a letter to Staff stating that the company desires to minimize the effort and inconvenience incurred by customers. As a result, the company states that it will provide form letters to the two FTA customers, in which the customer will indicate their desire to remain with the company or transfer to Clearwater. This action alleviates staff concerns.

Approval of this Agreement will not result in customer discrimination or the decrease in the availability or reliability of natural gas service to existing or future ratepayers of either Clearwater or Peoples. Based on the above analysis, Staff recommends that the joint petition of Peoples and Clearwater be approved, effective the date the Commission issues the Consumating Order in this docket.

DOCKET NO. 991758-GJ  
DATE: January 20, 2000

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Because no further action will be required, this docket should be closed.  
(CROSSMAN)

**STAFF ANALYSIS:** If no person whose substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Because no further action will be required, this docket should be closed.

## AGREEMENT

Section 0.1 This AGREEMENT is made and entered into this 24<sup>th</sup> day of September, 1999, by and between the CLEARWATER GAS SYSTEM, a department of the CITY OF CLEARWATER, a municipal corporation organized and existing under the laws of the State of Florida ("Clearwater"), and PEOPLES GAS SYSTEM, a division of Tampa Electric Company, a corporation organized and existing under the laws of the State of Florida ("PGS"). Clearwater and PGS are hereinafter sometimes referred to singularly as "Party" and collectively referred to as "Parties."

### WITNESSETH:

Section 0.2 WHEREAS, Clearwater is presently providing natural gas service to private individuals, firms, corporations and governmental entities in portions of Pinellas County, both within and without the corporate limits of the City of Clearwater, and in portions of Pasco County; and

Section 0.3 WHEREAS, PGS is presently providing natural gas service to persons, firms, corporations and governmental entities throughout portions of the State of Florida, including portions of both Pinellas and Pasco Counties, Florida; and

Section 0.4 WHEREAS, a potential dispute has arisen between Clearwater and PGS regarding service to potential natural gas customers located in Pinellas County; and

Section 0.5 WHEREAS, Clearwater and PGS desire to resolve the potential dispute between them in order that present and future applicants for natural gas service may expeditiously obtain such service from one or the other of them; and

Section 0.6 WHEREAS, the respective areas of retail service of the Parties are contiguous in certain places with the result that duplication of service facilities may occur in the future unless

such duplication is precluded by virtue of this Agreement; and

Section 0.7 WHEREAS, the Parties recognize that any duplication of said service facilities may result in needless and wasteful expenditures that are detrimental to the public interest; and

Section 0.8 WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to the aforesaid potential duplications and toward that end have established a Territorial Boundary Line to delineate their respective retail territorial areas in Pinellas County; and

Section 0.9 WHEREAS, the Florida Public Service Commission ("PSC") is empowered by the legislature of the State of Florida, pursuant to section 366.04(3)(a), Florida Statutes, to approve and to supervise territorial agreements between natural gas utilities; and

Section 0.10 WHEREAS, there already exists a territorial agreement approved by the PSC for Pasco County, and this Agreement will complete the delineation of the territorial boundaries between Clearwater and PGS, avoiding future conflicts of this nature; and

Section 0.11 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 terms and conditions herein set forth, do hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.1 Natural Gas As used herein, the term "Natural Gas" shall mean: natural gas, manufactured gas, liquefied gas with air admixture, or a similar gaseous substance furnished to the public by pipeline.



Section 1.2 Clearwater Territorial Area As used herein, the term "Clearwater Territorial Area" shall mean the area labeled Clearwater Gas System Pinellas County Service Area on Exhibit "A" to this Agreement.

Section 1.3 PGS Territorial Area As used herein, the term "PGS Territorial Area" shall mean the area labeled Peoples Gas System Pinellas County Service Area on Exhibit "A" to this Agreement.

Section 1.4 Existing Customers As used herein, the term "Existing Customers" shall mean those natural gas customers of either Party taking service from that Party on the effective date of this Agreement.

Section 1.5 Point of Use As used herein, the term "Point of Use" shall mean the end-use natural gas facilities of a customer, as distinct from the point of connection or point of metering.

Section 1.6 New Customers As used herein, the term "New Customers" shall mean those consumers applying for natural gas service for a Point of Use in the Territorial Area of either Party during the term of this Agreement.

Section 1.7 Territorial Area As used herein, the term "Territorial Area" shall mean either or both, where appropriate, the Clearwater Territorial Area or the PGS Territorial Area.

Section 1.8 Territorial Boundary Line As used herein, the term "Territorial Boundary Line" shall mean the boundary line so labeled, designating the dividing line between the areas shown on Exhibit "A" of this Agreement, which dividing line is further described as follows:

From the Point of Beginning (P.O.B.) At the northeast corner of Section 2, Township 27 South, Range 17 East proceed generally south along the east line of Section 2, Township 27 South, Range 17 East to the point of intersect with the Hillsborough County boundary line, then generally west along the Pasco County/Hillsborough County boundary line to the point of intersect with the Pinellas County boundary line, then generally south along the Pinellas County/Hillsborough County boundary

line to the point of intersect with State Road 60 (Courtney Campbell Causeway), then generally west along the irregular southerly shoreline of State Road 60 (Courtney Campbell Causeway) to the point of intersect with the Bayside Bridge (County Road 593), then generally south along the Bayside Bridge (County Road 593) and continuing generally south along the centerline of 49th Street North (County Road 593) to the point of intersect with the centerline of State Road 686 (Roosevelt Boulevard), then generally west along the centerline of State Road 686 (Roosevelt Boulevard) to the point of intersect with the centerline of 58th Street North, then generally south along the centerline of 58th Street North to the point of intersect with the projection of 146th Avenue North, then generally west along the projection of 146th Avenue North to the point of intersect with the centerline of 62nd Street North and the centerline of 146th Avenue North, and continuing generally west along the centerline of 146th Avenue North to the point of intersect with the centerline of 66th Street North, then generally south along the centerline of 66th Street North to the point of intersect with the centerline of 142nd Avenue North, then generally west along the centerline of 142nd Avenue North to the point of intersect with the centerline of Belcher Road, then generally south along the centerline of Belcher Road to the point of intersect with the centerline of Ulmerton Road, then generally west along the centerline of Ulmerton Road to the point of intersect with the centerline of 113th Street North, then generally south along the centerline of 113th Street North to the point of intersect with the centerline of Walsingham Road, then generally west along the centerline of Walsingham Road to the point of intersect with State Road 688 (Walsingham Road/Ulmerton Road), then generally west along the centerline of State Road 688 (Walsingham Road) to the centerline of the intracoastal waterway then generally south along the center line of the intracoastal waterway to the point of intersect with the southernmost boundary of the Town of Redington Beach then generally southwesterly along the southernmost boundary of the Town of Redington Beach to the point of intersect with the shoreline of the Gulf of Mexico.

The following additional territory is hereby granted to Peoples Gas System:

- A. Those properties abutting the north side of 142nd Avenue North from 66th Street North to Belcher Road.
- B. Those properties abutting the north side of Walsingham Road from 113th Street North to State Road 688 (Walsingham Road/Ulmerton Road).

The following additional territory is hereby granted to Clearwater Gas System:

- C. Those properties abutting the south side of State Road 688 (Walsingham Road) from 146th Street North to the centerline of the Intracoastal Waterway.



**ARTICLE II  
RETAIL NATURAL GAS SERVICE**

Section 2.1    In General Except as otherwise specifically provided herein, Clearwater shall have the exclusive authority to furnish retail natural gas service to all New Customers within the Clearwater Territorial Area, and PGS shall have the exclusive authority to furnish retail natural gas service to all its Existing Customers and all New Customers in the PGS Territorial Area.

Section 2.2    Existing Customer Transfer The Parties are currently serving certain Existing Customers within the Territorial Area of the other Party. Within 90 days of the effective date of this Agreement, as provided for in Section 4.1, each Party shall convey to such other Party such Existing Customers, together with such lateral gas mains, service lines, and appurtenances thereto previously used by the Party in providing service in the territory of the Party which will provide service thereafter. Such facilities shall be transferred whether or not they are necessary for the provision of service by the acquiring Party. The acquiring Party shall pay to the transferring Party a price to be mutually agreed between the Parties. If the Parties are unable to agree upon a price, the price shall be replacement cost less depreciation. Notwithstanding the foregoing, existing customers within the Clearwater Territorial area currently being served by PGS under its Rider FTA may remain with PGS if they request, in writing, to do so. Any such customer will be allowed to remain with PGS as long as the customer maintains continuous service. If service to such a customer is terminated for any reason, including change of ownership/tenant, or if such a customer desires to be transferred to Clearwater at a future date, PGS and Clearwater will effect the transfer of such customer and such gas mains, service lines, and appurtenances thereto previously used by PGS in providing service to such customer according to the terms of Section 2.5.

**Section 2.3    Service to New Customers** The Parties agree that neither of them will serve or attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party, except as provided in Section 2.5.

If a New Customer or prospective New Customer requests or applies for service from either Party, but such Customer's Point of Use is located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer such New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the PSC.

**Section 2.4    Boundary Modifications** The Parties recognize that, in specific instances, good engineering practices or economic constraints on one of the Parties may from time-to-time indicate that small service areas and/or New Customers should not be served by the Party in whose territory such areas or Customers are then located under Section 2.1. In such instances, the Parties agree to jointly and expeditiously seek approval of the PSC for modification of this Agreement in order to permit the appropriate Party to provide service to such small service areas and/or New Customers.

**Section 2.5    Temporary Service** To help facilitate the provision of natural gas service to Customers and to minimize costs and delays in providing such service, a Party which has a gas main installed on its side of the Territorial Boundary Line may temporarily serve Customers located on the other side of such Territorial Boundary Line in territory herein reserved to the other Party only (a) if requested by such other Party or (b) if such other Party is unable to provide such service within a reasonable time; provided, however, that when such temporary service is contemplated by a Party, it shall give written notice, setting forth the details of such contemplated service, to the Party in whose territory the Customer is located under Section 2.1 of this Agreement, and to the PSC, before

installing any additional facilities needed for the provision of such temporary service. At such time as the Party in whose territory such Customers are located under Section 2.1 has a gas main available for providing, or is otherwise able to provide, natural gas service to such Customers, the Party providing temporary service pursuant to this section shall surrender any such Customers upon the request of the Party in whose territory such Customers are located, and shall convey to such other Party, at a price to be mutually agreed between the Parties, such gas mains, service lines, and appurtenances thereto previously used by the Party in providing temporary service, whether or not such facilities are necessary for the provision of service by the acquiring Party, and located in the territory of the Party which will provide service thereafter. If the Parties are unable to agree upon a price, the price shall be replacement cost less depreciation. Any Customer who receives temporary natural gas service under the provisions of this section shall be notified in advance that when service becomes available from the Party in whose territory such Customer is located, the Customer will be required to receive service from such Party at such Party's then-current rates, and that such temporary service is provided only as a temporary convenience to the Customer.

### **ARTICLE III OPERATION AND MAINTENANCE**

Section 3.1    Facilities to Remain Nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of either Party which are now or which may in the future be located in the service area of the other Party; provided, however, that each Party shall operate and maintain said lines and facilities in such manner as to minimize any interferences with the operations of the other Party. No such facilities shall be used by either Party to provide retail natural gas service to Customers located in the Territorial Area of the other Party except as may be necessary to implement the provisions of Section 2.4 or 2.5 hereof.

**ARTICLE IV  
PREREQUISITE APPROVAL**

Section 4.1    PSC Approval        The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the PSC, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of expiration of the appeal period following issuance of the Order granting PSC approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the PSC for approval. In addition, the Parties agree to jointly petition the PSC to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

Section 4.2    Liability in the Event of Disapproval    In the event approval pursuant to Section 4.1 is not obtained, neither Party will have any claim against the other arising under this Agreement.

**ARTICLE V  
DURATION**

Section 5.1    Review and Term of Agreement        Prior to the second anniversary of the effective date of this Agreement and no more than every fifth anniversary thereafter, the Parties shall meet to review the status of this Agreement and shall submit a joint status report to the Commission.

After this Agreement becomes effective pursuant to Section 4.1 hereof, it shall continue in effect until modification shall be mutually agreed upon and approved by the PSC, or until termination shall be mandated by a governmental entity or court having jurisdiction to mandate such termination or modification.

**ARTICLE VI  
MISCELLANEOUS**

Section 6.1    Negotiations    Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, signed by both Parties, and approved by the PSC.


Section 6.2    Successors and Assigns    Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person or entity, other than the Parties hereto, any right, remedy or claim under or by reason of this Agreement or any provision or condition hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of, and shall be binding only upon, the Parties hereto and their respective representatives, successors and assigns.

Section 6.3    Notices    Notices given hereunder shall be deemed to have been given to Clearwater if mailed by certified mail to: Managing Director, Clearwater Gas System, 400 N. Myrtle Avenue, Clearwater, Florida 33755, and to PGS if mailed by certified mail to: Manager of Regulatory Coordination, Peoples Gas System, P.O. Box 2562, Tampa, Florida 33601-2562. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner herein provided.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly


authorized officers on the day and year first written above.

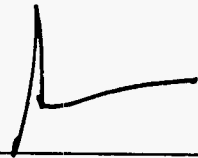
PEOPLES GAS SYSTEM  
a division of Tampa Electric Company

By:   
Bruce Christmas  
Vice President-Operations

Countersigned:

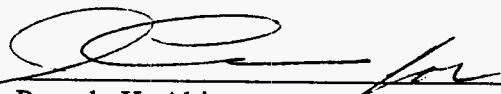
CITY OF CLEARWATER, FLORIDA

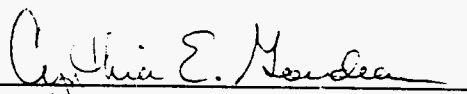
  
Brian J. Aungst  
Mayor-Commissioner

By:   
Michael J. Roberto  
City Manager

Approved as to form and  
legal sufficiency:

Attest:

  
Pamela K. Akin  
City Attorney

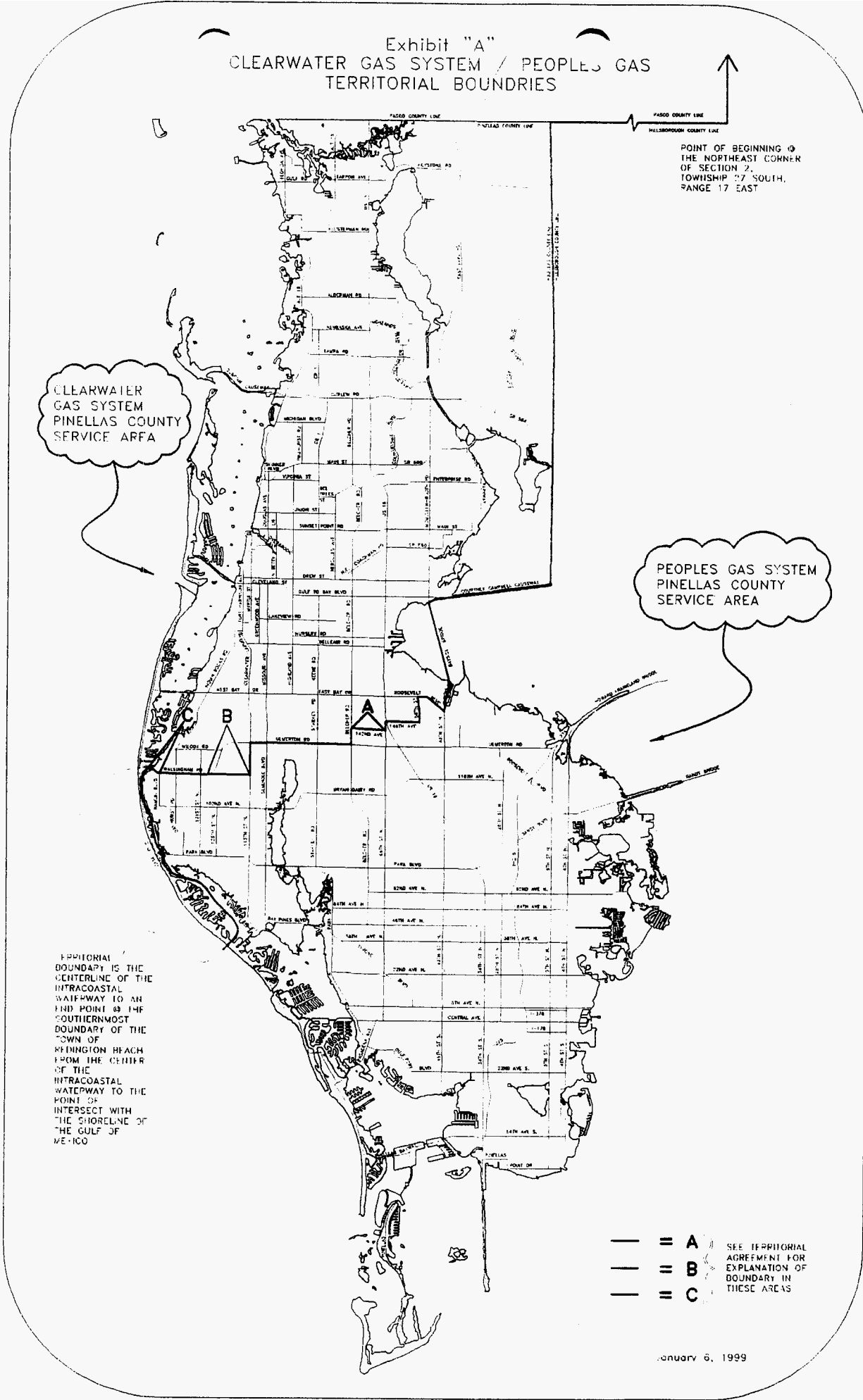
  
Cynthia E. Goudeau  
City Clerk

I hereby certify that this is a true and  
correct copy of the original as it  
appears in the files of the City of  
Clearwater. Witness my hand and  
official seal of the City of Clearwater.  
This 7<sup>th</sup> day of October, 1999

  
Deputy City Clerk



# Exhibit "A" CLEARWATER GAS SYSTEM / PEOPLES GAS TERRITORIAL BOUNDRIES



POINT OF BEGINNING @  
THE NORTHEAST CORNER  
OF SECTION 27,  
TOWNSHIP 27 SOUTH,  
RANGE 17 EAST

CLEARWATER  
GAS SYSTEM  
PINELLAS COUNTY  
SERVICE AREA

PEOPLES GAS SYSTEM  
PINELLAS COUNTY  
SERVICE AREA

TERRITORIAL  
BOUNDARY IS THE  
CENTERLINE OF THE  
INTRACOASTAL  
WATERWAY TO AN  
END POINT @ THE  
SOUTHERNMOST  
BOUNDARY OF THE  
TOWN OF  
REDINGTON BEACH  
FROM THE CENTER  
OF THE  
INTRACOASTAL  
WATERWAY TO THE  
POINT OF  
INTERSECT WITH  
THE SHORELINE OF  
THE GULF OF  
MEXICO

— = A  
— = B  
— = C

SEE TERRITORIAL  
AGREEMENT FOR  
EXPLANATION OF  
BOUNDARY IN  
THESE AREAS

January 6, 1999

**EXHIBIT 2**

<b>Customers moving from Peoples to Clearwater</b>				
<i>Name</i>	<i>Service Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Long John Silver's	12881 Walsingham Rd.	Largo	FL	33774
Maria's Kitchen Two, Inc	12931 Walsingham Rd.	Largo	FL	34644
Denny's	12933 Walsingham Rd.	Seminole	FL	33774
Village Inn	13105 Walsingham Rd.	Largo	FL	33774
KFC National Management Co.	13677 Walsingham Rd.	Largo	FL	34644
Angelino's	13883 Walsingham Rd.	Largo	FL	33774
Miami Subs	8651 Ulmerton Rd.	Clearwater	FL	34622
Taco Bell	8671 Ulmerton Rd.	Largo	FL	33771

<b>Customers moving from Clearwater to Peoples</b>				
<i>Name</i>	<i>Service Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Castillian Lake Club Apartments	11444 137th St. N.	Largo	FL	33774

<b>Customers who may remain with Peoples as FTA Participants</b>				
<i>Name</i>	<i>Service Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Hanson Cleaners	12963 Walsingham Rd. #206	Largo	FL	34664
Albertsons	13031 Walsingham Rd.	St. Petersburg	FL	34664

<b>Customers remaining with Peoples until availability of Clearwater service</b>				
<i>Name</i>	<i>Service Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Word of Faith Church	1550 Belcher Rd. S.	Largo.	FL	33771
Vacant	2300 Belcher Rd. S.	Largo	FL	33771