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December 5, 2001

IN REPLY REFER TO

Ansley Watson, Jr.
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e-mail: aw@macfar.com

VIA FEDEX

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

011622-GU

DISTRIBUTION CENTER
01 DEC -6 AM 9:17

Re: Petition for determination that the rate structure of Withlacoochee River Electric Cooperative, Inc. is discriminatory, interferes with approved energy conservation programs, and is contrary to the legislative intent of the Florida Energy Efficiency and Conservation Act, by Peoples Gas System

Dear Ms. Bayo:

Enclosed for filing with the Commission on behalf of Peoples Gas System ("Peoples"), please find the original and 15 copies of Peoples' petition referenced above. A diskette containing the document is also enclosed.

We have provided a courtesy copy of the enclosed petition to Mr. Billy E. Brown, the General Manager of Withlacoochee River Electric Cooperative, Inc., together with a copy of this letter.

Please acknowledge your receipt and the date of filing of the enclosures, as well as the docket number assigned to the petition, on the duplicate copy of this letter and return the same to the undersigned in the enclosed preaddressed envelope.

DOCUMENT NUMBER-DATE

15245 DEC-6 0

FPSC-COMMISSION CLERK

Blanca S. Bayo, Director
December 5, 2001
Page 2

Thank you for your usual assistance.

Sincerely,

A handwritten signature in black ink that reads "Ansley Watson, Jr." in a cursive style.

ANSLEY WATSON, JR.

AWjr/a
Enclosures

cc: Mr. Billy R. Brown
General Manager
Withlacoochee River Electric Cooperative, Inc.
14651 21st Street
Dade City, Florida 33523

Ms. Angela Llewellyn

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for determination that the rate structure of Withlacoochee River Electric Cooperative, Inc. is discriminatory, interferes with approved energy conservation programs, and is contrary to the legislative intent of the Florida Energy Efficiency and Conservation Act, by Peoples Gas System.

Docket No. 011622-GU
Submitted for Filing:

PETITION OF PEOPLES GAS SYSTEM

Peoples Gas System ("Peoples" or the "Company"), by its undersigned attorneys, files its petition for a determination that the rate structure of Withlacoochee River Electric Cooperative, Inc. ("WREC"), as it relates to the differential contributions payable to WREC by residential subdivision developers for underground electric service facilities, is unduly discriminatory, interferes with Peoples' conservation programs approved by the Commission, and is contrary to the legislative intent of the Florida Energy Efficiency and Conservation Act. In support of its petition, Peoples says:

- 1. The name and mailing address of the petitioner are:

Peoples Gas System
702 North Franklin Street - 7th Floor
Tampa, Florida 33602

- 2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this petition are:

Ansley Watson, Jr., Esquire
Macfarlane Ferguson & McMullen
P. O. Box 1531
Tampa, Florida 33601-1531

DOCUMENT NUMBER - DATE

15245 DEC-66

FPSC-COMMISSION CLERK

and

Ms. Angela Llewellyn
Peoples Gas System
P. O. Box 2562
Tampa, Florida 33601-2562

GENERAL ALLEGATIONS

3. Peoples owns and operates a natural gas distribution system throughout most portions of the State of Florida, and is a public utility subject to the jurisdiction of the Commission pursuant to Chapter 366, *Florida Statutes*.

4. The geographic area within which Peoples provides natural gas service to the public includes portions of Pasco and Hernando Counties. Within those portions of its service area, Peoples is the only source of natural gas service for residential customers.

5. WREC is a non-profit electric distribution cooperative which owns and operates an electric distribution system and provides retail electric service to customers within Pasco, Hernando and Citrus Counties, Florida. WREC is an “electric utility” as defined in Section 366.02(2), *Florida Statutes*, and is subject to the rate structure jurisdiction of the Commission conferred by Section 366.04(2)(b), *Florida Statutes*.

6. WREC has an exclusive service area within all, or portions, of Pasco, Hernando and Citrus Counties. Within its service area, it is the only source of electric service for residential customers.

7. When a real estate developer decides to develop a particular property or properties for residential use, it must decide what amenities will be included in the

development. Among the choices it may make is to offer natural gas (or propane) as an alternative to electricity for those residential end-uses for which natural gas is suitable (*i.e.*, those uses for which gas is capable of being substituted for electricity).

8. There are certain uses of electricity in a residence for which there is no practically available substitute form of energy, such as interior lighting and small electric appliances such as televisions, computers, toasters, hair dryers and the like. Thus, every home in a residential development will require electricity, and the developer must make arrangements for its supply to each home which will eventually be constructed within the development.

9. Most, if not all, new residential real estate developments in Florida elect to use underground electric distribution systems, and the installation of these distribution systems is generally coordinated with the construction of the development's infrastructure (streets, roads, water and sewer lines, street lighting, common areas such as parks, playgrounds, community pools, tennis courts or other recreation areas, etc.).

10. Because gas distribution facilities are required to be installed underground, if a developer decides to make gas available as an alternative to future home buyers within its development, Peoples must also coordinate the installation of its gas distribution system with the construction of the development's infrastructure. The cost to install a distribution system in a development after its infrastructure has been completed is generally increased substantially because previously constructed infrastructure components must be disturbed and/or relocated and the routes along which gas lines are installed must be restored to their previously existing conditions.

Thus, unless a developer elects to install a gas distribution system at the outset of a development's construction, future home owners in the development will not be afforded a choice between natural gas and electricity.

11. Because, within WREC's service territory, WREC is the only provider of electric service, WREC will be the provider of electricity to all residences eventually constructed in any residential real estate development lying within that service territory.

12. In the case of a development which desires underground installation of electric distribution facilities, which is generally more expensive than overhead installation of the same facilities, WREC's "tariff" (referred to in the Commission's rules as "electric documentation") requires that the developer make a contribution-in-aid-of-construction (hereinafter, a "CIAC payment"). According to WREC's tariff, the amount of this payment is the estimated cost differential between overhead and underground construction for the underground electric service facilities requested by the developer to be installed, and is to be based on the most recent schedule of cost differentials as determined and supported by engineering studies. WREC's tariff provides that these studies will be performed from time to time as deemed necessary but in no event less than annually.

13. The similar CIAC payments required by Florida's investor-owned electric utilities for the installation of underground systems average approximately \$275 per lot in a development, and do not vary based on the types or numbers of appliances to be installed in the homes in the development.

14. Upon information and belief, WREC implements the CIAC payment

provisions of its tariff, as described in paragraph 12 above, by requiring a developer to pay \$985 per development lot for the installation of an underground system in a residential development. However, WREC will provide a credit to the developer of \$710 for each home in which the developer (or builder) installs an energy efficient electric water heater, and an energy efficient electric heat pump. Thus, if these two appliances are installed in a residence in the development, the CIAC payment for that lot is reduced to \$275. If a developer has agreed at the outset to install the required appliances, his CIAC payment to WREC is only \$275 per lot. However, if he subsequently fails to install the required appliances in the home built on a lot, he must pay to WREC an additional \$710. WREC's tariff makes no provision for this differential in the amount of the CIAC payment based on the appliances to be installed in a residence.

15. Because a gas furnace and a gas water heater are the two appliances which consume the greatest amount of natural gas in a typical home, their installation in lieu of comparable electric equipment offers the greatest benefits – for both electric and natural gas ratepayers – in terms of achieving the conservation goals of FEECA.

16. If a developer in Pasco or Hernando Counties elects to make gas available as an alternative to electricity for certain appliances, he is currently entitled to be paid allowances by Peoples totaling \$670 for each home in which he installs a gas furnace and gas water heater, and piping and venting for a gas clothes dryer and gas range. These allowances are available to the developer (and have been since 1981) pursuant to Peoples' energy conservation programs approved by the Commission

pursuant to the Florida Energy Efficiency and Conservation Act ("FEECA"), Section 366.80 *et seq.*, *Florida Statutes*. The purpose of the allowances is to offset a portion of the higher cost a developer incurs for piping and venting a residence which will use natural gas, as well as the often higher cost of gas appliances (as opposed to electric ones).

17. FEECA provides, in part, as follows:

Legislative findings and intent.-- The Legislature finds and declares that it is critical to utilize the most efficient and cost-effective energy conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens. Reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance. The Legislature further finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the conservation of electric energy and natural gas usage. The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation within its service area, subject to the approval of the commission. . . . The Legislature further finds and declares that . . . [FEECA is] to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use . . . ; and conserving expensive resources, particularly petroleum fuels. (emphasis supplied)

Section 366.81, *Florida Statutes*.

UNDULY DISCRIMINATORY SURCHARGE

18. Because of WREC's implementation of the CIAC payment provisions of its tariff, if a developer elects to make natural gas available as an alternative to electricity within its development, his CIAC payment to WREC is \$985 per development lot, because he (or builders in the development) will install a gas furnace and gas water heater (in lieu of an electric heat pump and electric water heater) in homes in the development. Although WREC's implementation of the CIAC payment provisions of its

tariff may be uniform throughout its service territory, only developers who elect to offer the availability of natural gas within their developments are required to pay \$985 per development lot. The CIAC payment for all other developers is \$275 per development lot – \$710 less.

19. WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraph 14 above, results in the imposition of a surcharge on developers who elect to install natural gas in homes in a development. Whether or not to pay this surcharge is an issue only for developers in those portions of WREC's service territory where gas is available. Thus, the effect of WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraph 14 above, is to prevent – by virtue of the increased cost attributable to the surcharge – developers from offering natural gas as an option to future homeowners in areas where gas is otherwise available. Upon information and belief, WREC intended its implementation of the CIAC payment provisions of its tariff to have this effect.

20. The surcharge described above unduly discriminates against natural gas, against developers who desire to offer natural gas as an alternative to electricity for certain appliances, and against home buyers, who are denied the option to choose natural gas for such uses, and violates the Commission's policy that a rate structure not be unduly discriminatory, in that it cannot be justified on a cost of service basis or on the basis of a classification of developments as "all-electric" or "partially electric."

INTERFERENCE WITH PEOPLES' ENERGY CONSERVATION PROGRAM

21. Pursuant to FEECA, Peoples has been required to develop and operate,

and has developed and operates, energy conservation programs. Those programs are designed to reduce the growth rates of electric consumption and of weather-sensitive peak electric demand by offering incentives to the installation of natural gas appliances in lieu of certain electric appliances, and have been approved by the Commission since 1981. Peoples incurs substantial costs in implementing, advertising and operating these programs, which expenditures are recovered by the Company from its ratepayers.

22. The surcharge resulting from WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraph 14 above, interferes with the effectiveness of Peoples' Commission-approved energy conservation programs by creating a financial impediment to a developer's installation of gas distribution facilities within his development. To the extent WREC's surcharge prevents Peoples' programs from increasing the use of natural gas for residential uses, it increases the cost of such programs for Peoples' existing ratepayers, from which the costs of such programs are recovered.

CONTRARY TO FEECA

23. FEECA states that the policy of the State of Florida is to utilize the most efficient and cost-effective energy conservation systems in order to protect the health, prosperity and general welfare of the state and its citizens, and singles out reduction in the growth rates of electric consumption and of weather-sensitive peak demand as being of particular importance. WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraph 14 above, to the extent it denies the availability of natural gas to developers within WREC's service area, and interferes with

the effectiveness of Peoples' Commission-approved energy conservation programs, is contrary to the legislative intent of FEECA, as expressed in Section 366.81, *Florida Statutes*, in that it will result in an increase in both electric consumption and winter peak demand, and may result in an increase in summer peak demand.

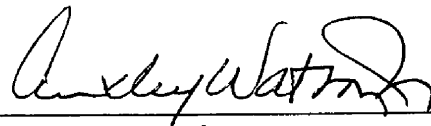
24. Peoples' substantial interests are affected by WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraphs 18 through 23 above.

WHEREFORE, Peoples respectfully requests that the Commission will grant this petition and enter its order:

- A. determining that WREC's rate structure, to the extent of WREC's implementation of the CIAC payment provisions of its tariff, as described in paragraph 14 above, (i) unduly discriminates against natural gas, against developers who desire to make natural gas available as an alternative to electricity for certain appliances, and against future home buyers within WREC's service area who desire to use natural gas as an alternative to electricity, (ii) unjustifiably interferes with Peoples' approved energy conservation programs contrary to FEECA, and (iii) is contrary to FEECA in that it will result in an increase in both electric consumption and weather-sensitive peak demand within WREC's service area; and
- B. ordering WREC to implement the CIAC payment provisions of its tariff in a manner that is not unduly discriminatory, that does not interfere with the

effectiveness of Peoples' approved energy conservation programs, and that is not contrary to the legislative intent of FEECA as expressed in Section 366.81, *Florida Statutes*.

Dated this 5th day of December, 2001.



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Attorneys for Peoples Gas System