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CLERK

July 19, 2002

BY HAND DELIVERY

Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 020670-GU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Public Utilities Company are an original and fifteen copies of Florida Public Utilities Company's Response to Complaint in the above-referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,


Norman H. Horton, Jr.

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

NHH/amb
Enclosures
cc: Mr. Marc Sneidermann
Parties of Record

Hong
Done
7/29/02

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
07532 JUL 19 02
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Tampa Electric Company)
d/b/a Peoples Gas System against Florida Public) Docket No.: 020670-GU
Utilities Company for violation of territorial) Dated: July 19, 2002
agreement)
_____)

RESPONSE TO COMPLAINT

Comes now, Florida Public Utilities Company (“FPUC”) and files this Response to the Complaint filed by Tampa Electric Company d/b/a Peoples Gas System (“PGS”) and as its response would state:

1. The name and mailing address of the Respondent is:

Florida Public Utilities Company
401 South Dixie Highway
West Palm Beach, FL 33401

2. The names and addresses of persons authorized to receive notices and communications with respect to this docket are:

Norman H. Horton, Jr.
Messer, Caparello & Self, P. A.
Suite 701, First Florida Bank Building
Post Office Box 1876
Tallahassee, FL 32302-1876

Marc Schneidermann
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395

3. On or about July 10, 2002, PGS filed a complaint with the Commission requesting the Commission to direct FPUC to cease and desist extension of natural gas facilities into an area which PGS asserts is reserved to PGS pursuant to a Territorial Agreement between the parties. Although FPUC acknowledges that it began construction of an extension to serve Juno Beach, such action is not a breach of an Agreement because the Agreement was abandoned or terminated by

action of the parties and thus there is no basis for the complaint by PGS. Instead of issuing a cease and desist order as requested by PGS, the Commission should recognize that the Agreement has been abandoned or terminated and permit FPUC to provide the requested service.

4. On February 8, 1991, FPUC and Palm Beach County Utilities Company (“PBCUC”), subsequently purchased by PGS, entered into a territorial agreement regarding service areas of the respective companies in Palm Beach County. This Agreement was filed with the PSC and approved by Order No. 24260, issued March 20, 1991 in Docket No. 900700-GU. Thereafter on February 29, 1996, FPUC and PGS, which had purchased PBCUC, submitted the Agreement and changes to the Commission for review pursuant to the requirement of the original Agreement. In that submission, FPUC and PGS agreed to changes to the original boundaries and FPUC advised the Commission that it had received requests for service located north and west of the existing north boundary of the territory. The Agreement was reviewed and approved with the changes in Order No. PSC-96-0751-FOF-GU issued June 10, 1996 in Docket No. 960363-GU.

5. In the document, the parties included a clause requiring that “[t]his Agreement shall be submitted to and reviewed by the FPSC every five (5) years.” Since the initial review and approval was issued in 1991, the parties submitted a joint letter in 1996 seeking a review by the Commission and consideration to incorporating some changes to the original Agreement as agreed to by the parties. The Commission issued an order in 1996 approving the Agreement and the changes submitted by the parties. This was the last submission and it has been more than 5 years since a review was requested as required.

6. The requirement that the document be submitted for review does not require such submission only if there are changes, but clearly requires a submission every five (5) years. The parties intended that some review take place by the PSC every 5 years and it is a reasonable conclusion that absent such review the parties intended that the Agreement would terminate. Parties may enter into territorial agreements, but they must still be approved by the Commission as provided by section 366.04(2), Florida Statutes and absent approval by the Commission there is no agreement. In this instance, even though the Commission did review and approve the Agreement in 1991 and again in 1996 pursuant to the 5 year review requirement, there was no review subsequent to the 1996 review and when the 5 years passed, there was no Agreement.

7. The view and conclusion that the Agreement was abandoned or terminated by the parties is further supported by the fact that it was PGS that first “breached” the agreement and installed facilities in order to provide service within territory that had been identified as FPUC service area in the initial agreement. This combination of the lack of review and action by PGS demonstrates an abandonment of the Agreement and intent that it had been terminated.

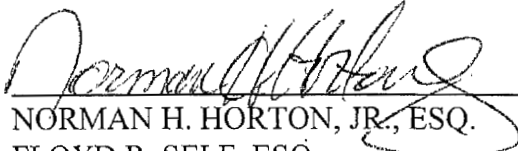
8. FPUC acknowledges that since the Agreement terminated, facilities were extended to provide service to customers in Juno Beach who had requested service from FPUC. These requests are reflected in signed Agreements which FPUC has from these customers. The extension does not duplicate any other existing facilities and is being installed consistent with the policies of FPUC. Portions of Juno Beach are currently served by FPUC and the construction extends existing facilities to serve additional areas of Juno Beach. On the other hand, PGS does not serve any portion of the Town nor were any of the customers who have requested service from FPUC contacted by

PGS. FPUC has received requests from and support of the Town in this extension and is both able to and willing to provide the requested service. However, even though FPUC believes that it has the authority to extend its facilities and provide the requested service, construction was halted when this complaint was raised and is currently on hold. Since the Agreement referenced by PGS in its Complaint had been terminated before the extension began, there is no impediment to FPUC serving the area and the Commission should permit FPUC to proceed so that those customers who have requested service from FPUC may receive it.

9. Under the circumstances, the Commission should recognize the termination of the Agreement and decline to take the action requested by PGS in their complaint.

Respectfully submitted,

MESSER, CAPARELLO & SELF, P.A.
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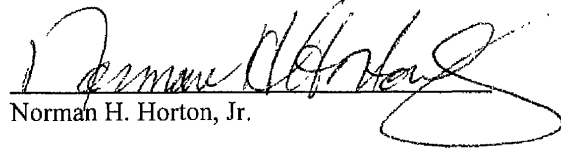

NORMAN H. HORTON, JR., ESQ.
FLOYD R. SELF, ESQ.

Attorneys for Florida Public Utilities Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U. S. Mail
this 19th day of July, 2002.

Ansley Watson, Jr.
Macfarlane Ferguson Law Firm
P.O. Box 1531
Tampa, FL 33601-1531


Norman H. Horton, Jr.