

State of 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-

DATE: MARCH 20, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (VINING) *AEV* *max*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MAKIN, *MAKIN*)
BULECZA-BANKS) *CB*
DIVISION OF AUDITING & SAFETY (MILLS)

RE: DOCKET NO. 030134-GU - JOINT PETITION FOR APPROVAL OF
TERRITORIAL AGREEMENT BETWEEN FLORIDA PUBLIC UTILITIES
COMPANY AND CITY GAS COMPANY OF FLORIDA.

AGENDA: 04/01/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030134.RCM

CASE BACKGROUND

In 2001, City Gas Company of Florida (City Gas) began construction of its main line expansion from western Palm Beach County to Ft. Myers Shores, which is to be completed in three phases, pursuant to Order No. PSC-01-0316-PAA-GU, issued February 5, 2001, in Docket No. 000768-GU. At the time construction began in the western part of Palm Beach County, Florida Public Utilities Company (FPUC) indicated to City Gas that FPUC was not interested in expanding any further west in its territory in Palm Beach County. However, after City Gas started construction of its main line expansion, FPUC had second thoughts and decided to provide service in western Palm Beach County. City Gas agreed with FPUC that FPUC would provide service through FPUC's distribution system to all residential and commercial customers in western Palm Beach County by tapping into City Gas's main line. City Gas would

DOCUMENT NUMBER-DATE

02655 MAR 19 8

FPSC-COMMISSION CLERK

provide service to large use customers whose annual consumption exceeds 250,000 therms in western Palm Beach County.

By joint petition filed on February 6, 2003, FPUC and City Gas requested Commission approval of a territorial agreement. The agreement memorializes the understanding that City Gas and FPUC reached with regard to service in western Palm Beach County, which is summarized above. This is staff's recommendation to approve the territorial agreement, which is attached to this recommendation as attachment A.

Jurisdiction over this matter is vested in the Commission, pursuant to Sections 366.04 and 366.05, Florida Statutes, and Rule 25-7.0471, Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the joint petition of FPUC and City Gas, for a territorial agreement?

RECOMMENDATION: Yes. The Commission should approve the joint petition for a territorial agreement between FPUC and City Gas. The agreement should become effective the date that the Commission order approving the agreement becomes final. (VINING, MAKIN, MILLS, BULECZA-BANKS)

STAFF ANALYSIS: Under the agreement, FPUC's service area lies east of the boundary line and City Gas's service territory lies west of the boundary line in Palm Beach County. The boundary line circumscribes an area wherein City Gas will serve large use customers whose annual consumption exceeds 250,000 therms, and FPUC will serve residential and commercial customers through its distribution system taking service off of City Gas's main line.

The agreement does not provide for or involve the transfer of any customers or facilities.

FPUC and City Gas each represent that approval and implementation of the agreement will not cause a decrease in the

availability or reliability of natural gas service to the existing or future ratepayers of either company, and avoids any unnecessary and uneconomic duplication of facilities.

Both parties agree that prior to the second anniversary of the effective date of the Commission's approval of this agreement, and no less frequently 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 to consider approval or modification to this agreement.

Within sixty days following the effective date, FPUC and City Gas will file any revisions to their tariffs on file with the Commission which may be required as a result of the Commission's approval of the territorial agreement, and shall provide a copy of any tariff revision to the other party.

Accordingly, Staff recommends that the territorial agreement between FPUC and City Gas is in the public interest and should be approved, effective the date that the Commission order approving the agreement becomes final.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interest are affected within 21 days of the Commission Order approving this agreement, the agreement should remain in effect pending resolution of the protest and the docket should remain open (VINING)

STAFF ANALYSIS: If a protest is filed by a person whose substantial interest are affected within 21 days of the Commission Order approving this agreement, the agreement should remain in effect pending resolution of the protest. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

TERRITORIAL AGREEMENT

This Territorial Agreement ("Agreement") entered into on the 31st day of December 2002, by and between Florida Public Utilities Company (hereinafter also referred to as "FPUC" and "Party"), a Florida corporation and NUI Utilities, Inc. d/b/a City Gas Company of Florida (hereinafter also referred to as "CGCF" and "Party"), a New Jersey corporation, collectively hereinafter referred to as the "Parties."

WITNESSETH: THAT

WHEREAS, the Parties are both natural gas distribution companies authorized by the Florida Public Service Commission ("FPSC") to serve customers in Palm Beach County, Florida; and

WHEREAS, CGCF has constructed a natural gas distribution system which in part traverses territory currently identified as the service territory of FPUC; and

WHEREAS, in order to enable as many persons and businesses within Palm Beach County as possible to receive economical and reliable natural gas service, the Parties have decided to enter into this Agreement to avoid any unnecessary and uneconomic duplication of facilities which would be contrary to FPSC policies and detrimental to the interests of their customers and the general public;

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

1. (a) The Parties' service areas in Palm Beach County will be designated as depicted on the attached Exhibit A, which is hereby incorporated into this Agreement and separated by the boundary line also depicted on Exhibit A and as more fully described on the attached Exhibit B, which is also hereby incorporated into this Agreement.
- (b) The service area reserved hereunder for CGCF shall include the area west of the shaded area within Palm Beach County, as depicted on Exhibit A. CGCF shall have the authority to serve all customers within said area.
- (c) The service area reserved hereunder for FPUC shall include all areas east of the shaded area within Palm Beach County, as depicted on Exhibit A. FPUC shall have the authority to serve all customers within said area, except as may be provided by any other territorial agreement(s) to which FPUC is a party.

(d) CGCF shall also have the authority to serve all industrial customers within the shaded area depicted on Exhibit A. For purposes of this Agreement, an industrial customer is defined as a customer whose planned connected load exceeds 250,000 therms per year. Except as otherwise set forth in this Agreement, CGCF shall not serve any residential or commercial customers within said shaded area without the express written consent of an authorized representative of FPUC and the approval of the FPSC. If the Parties reach agreement thereon or if service will be provided as a result of the application of the provisions of paragraph 5 of this Agreement, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect service by CGCF to residential or commercial customers within the shaded area.

(e) FPUC shall also have the authority to serve all residential and commercial customers within the shaded area depicted on Exhibit A. Except as otherwise set forth in this Agreement, FPUC shall not serve any industrial customers, as defined hereinabove, within said shaded area without the express written consent of an authorized representative of CGCF, and the approval of the FPSC. If the Parties reach agreement thereon or if service will be provided as a result of the application of the provisions of paragraph 5 of this Agreement, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect service by FPUC to industrial customer(s) within the shaded area.

2. Notwithstanding the terms of paragraph 1, either Party may request that the other Party provide natural gas service to potential customers within the first Party's service area. The Party receiving the request may elect to provide service to such potential customers in its sole discretion subject to the approval of the FPSC.
3. Neither of the Parties will solicit potential or existing natural gas customers within the other Party's service area under paragraph 1 hereof. Each Party agrees to refrain from installing distribution mains or services which would duplicate facilities of the other Party, or which would intrude into the other Party's service area under paragraph 1, except as specifically provided for in this Agreement.
4. Except as otherwise set forth in this Agreement, if an applicant for natural gas service which is located outside a Party's (the "First Party's") service area and outside the shaded area, and inside the other Party's (the "Second Party's") service area, requests service from the First Party, and if such applicant otherwise qualifies for service according to the terms and conditions of the First Party's tariff or the FPSC's Rules and Regulations, such First Party will not provide service to that applicant unless ordered to do so by the FPSC or by a Court of competent jurisdiction.
5. If an applicant for natural gas service is (a) located within the shaded area, and (b) is the within the class of customers that a Party (the "First Party") is not permitted to serve pursuant to paragraphs 1(c) or 1(d) of this Agreement, and if

such applicant requests service from the First Party and otherwise qualifies for service according to the terms and conditions of the First Party's tariff or the FPSC's Rules and Regulations, the First Party will not provide service to such applicant unless the other Party (the "Second Party") has declined or refused in writing to provide service to such applicant. If the Second Party fails to respond to the request of an applicant for service within thirty (30) days of the applicant's request or fails to decline or refuse to provide service to an applicant in writing within thirty (30) days of the applicant's request, the Second Party shall be deemed to have declined to provide service to the applicant.

6. CGCF shall provide Transportation Service to FPUC pursuant to the terms and conditions of the Transportation Service Agreement attached hereto and by reference incorporated as a part hereof.
7. This Agreement does not provide for the transfer of any customers or facilities.
8. Should either Party become a party in a legal action or administrative proceeding to which the other Party is not a party and which action relates to this Agreement, the party to such action shall notify the other party of such legal action, and provide such other party with copies of the then-existing pleadings filed in such action. Such notice with accompanying pleadings shall be provided no later than ten (10) days after initiating, formally seeking to intervene in, or being served with a pleading naming that party as a defendant in any such action.
9. Should a project to be provided with gas service be located in such a manner that it would straddle or be divided by the boundary line, the Party 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 Party subject to the approval of the FPSC. If the Parties reach agreement thereon, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement to reflect the modified boundary line.
10. 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.
11. This Agreement, the service areas, and the boundary line set forth herein may be modified only upon the agreement of the Parties and the review and/or the approval of the FPSC.
12. This Agreement shall be executed by the Parties and shall be submitted jointly by the Parties to the FPSC for approval and shall become effective on the date an FPSC order approving it becomes final and effective, and shall remain in effect (a) for an initial term of thirty (30) years and shall automatically renew for successive ten (10) year periods unless either Party gives written notice of intent to terminate at least one (1) year prior to the end of the initial term or any renewal

period, or (b) until modified or vacated by a final and non-appealable order of the FPSC or a Court of competent jurisdiction.

13. The Parties have entered into this Agreement 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 (2000), that expressly confers authority on the FPSC to approve territorial agreements between natural gas utilities. Upon approval by the FPSC, this Agreement will merge into and become part of the FPSC order that approved it.
14. FPUC agrees that it will not oppose any application by Florida Gas Transmission Company seeking approval of the Federal Energy Regulatory Commission to construct and operate a delivery point in western West Palm Beach for the purpose of providing service facilitating CGCF's provision of service to its service area established under this Agreement.
15. In the event that a Party determines, in specific instances, that good engineering practices or economic constraints on that Party indicate that any small service area and/or any future natural gas customer within that Party's service area under paragraph 1 hereof should not be served by that Party, such Party shall notify the other Party and request the other Party to serve such small service area and/or customer. If the Parties reach agreement thereon, the Parties shall jointly and expeditiously seek approval of the FPSC for modification of this Agreement in order to permit the appropriate Party to provide such service to such small service area and/or future natural gas customer.
16. This Agreement is only between FPUC and CGCF and only involves the retail distribution of natural gas and does not affect or bind other affiliates or subsidiaries of FPUC or CGCF.
17. Prior to the second anniversary of the effective date of FPSC approval of this Agreement, and no less frequent 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 FPSC or any successor agency with power to consider approval or modification hereof.
18. This Agreement shall be effective on the date an FPSC order approving it becomes final and effective, in accordance with paragraph 11 hereof. As soon as practicable following the effective date of this Agreement, each Party agrees to file any revisions to its tariffs on file with the FPSC which may be required as a result of the FPSC's approval thereof, and shall provide a copy of any such tariff revisions to the other Party upon their filing with the FPSC. VAF
19. All notices under this Agreement must be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand-delivered, to the Parties at the addresses and facsimile numbers set forth below:

MARCH 20, 2003

ATTACHMENT A

To CGCF:

James R. Van Horn, Esq.
General Counsel
NUI Corporation
550 Route 202-206
P.O. Box 760
Bedminster, NJ 07921
Phone: 908-719-4204
Facsimile: 908-781-0718

with a copies to:

Victor A. Fortkiewicz
Vice President, Distribution Services
NUI Corporation
One Elizabethtown Plaza
Union, NJ 07083
Phone: 908-289-5000 ext. 6500
Facsimile: 908-289-0978

Richard Wall
Director, Utility Operations
NUI City Gas Company of Florida
955 East 25th Street
Hialeah, FL 33013
Phone: 305-691-8710 ext. 5201
Facsimile: 305-835-6491

To FPUC:

C. L. Stein
Senior Vice President & C.O.O.
Florida Public Utilities Company
401 S. Dixie Hwy.
P.O. Box 3395
West Palm Beach, FL 33402
Phone: 561-838-1760
Facsimile: 561-833-8562

with a copy to:

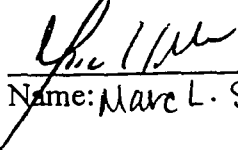
Marc L. Schneidermann
Director, South Florida
Florida Public Utilities Company
401 S. Dixie Hwy.
P.O. Box 3395
West Palm Beach, FL 33402
Phone: 561-838-1767
Facsimile: 561-833-8562

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission; if the day on which such facsimile is received is not a business day or is after five p.m. on a business day, then such facsimile shall be deemed to have been received on the next following business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving Party.

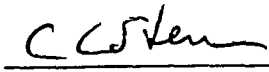

- 20. This Agreement is binding upon the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first stated above.

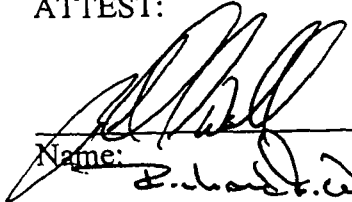
ATTEST:


Name: Marc L. Schneidermann


Florida Public Utilities Company

By:  
Title: Sr. Vice President, COO

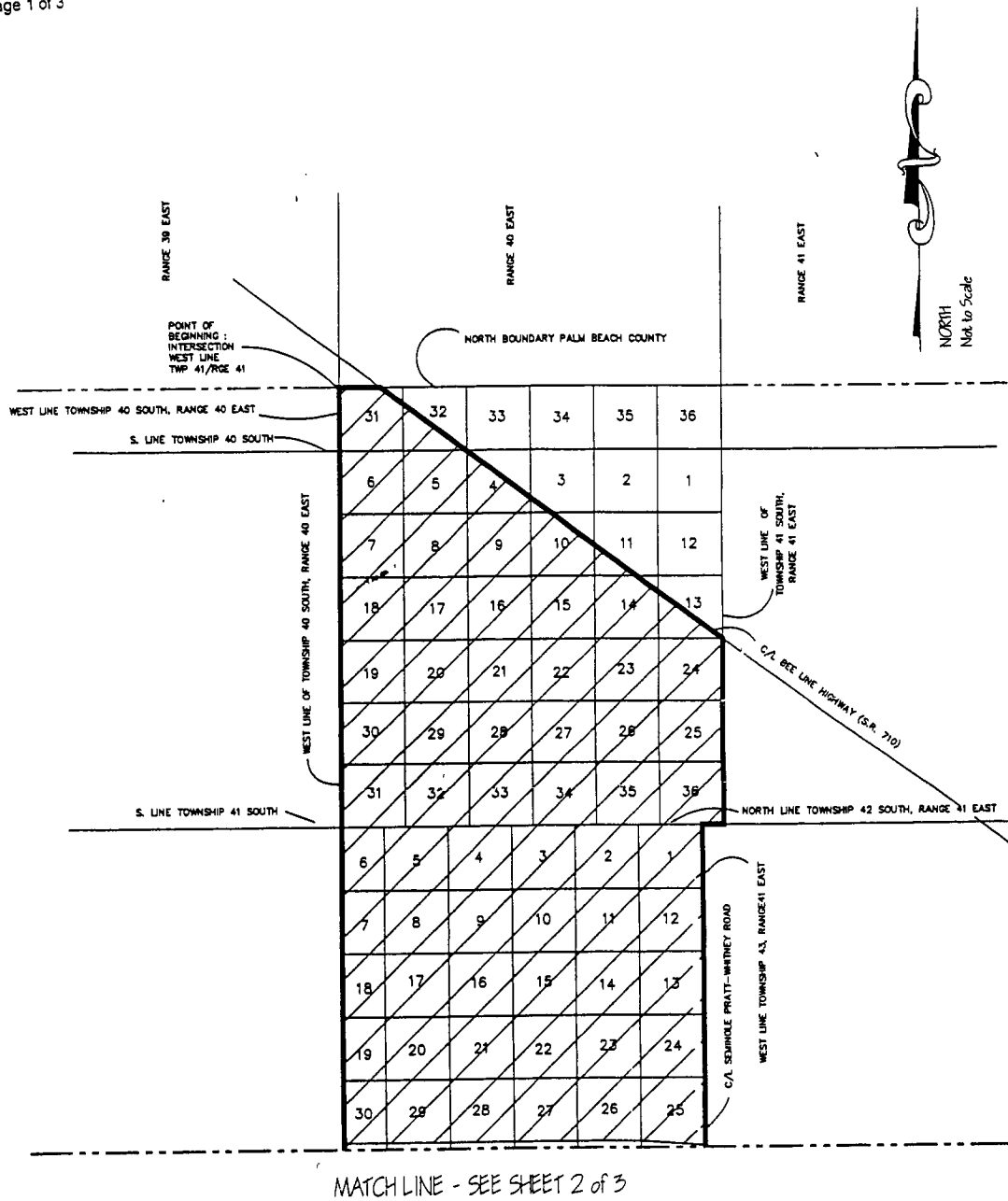
ATTEST:


Name: Richard S. Wall

NUI Utilities, Inc.
d/b/a City Gas Company of Florida

By: 
Title: President

Territorial agmt FPU 12-19-02
Exhibit A
Page 1 of 3

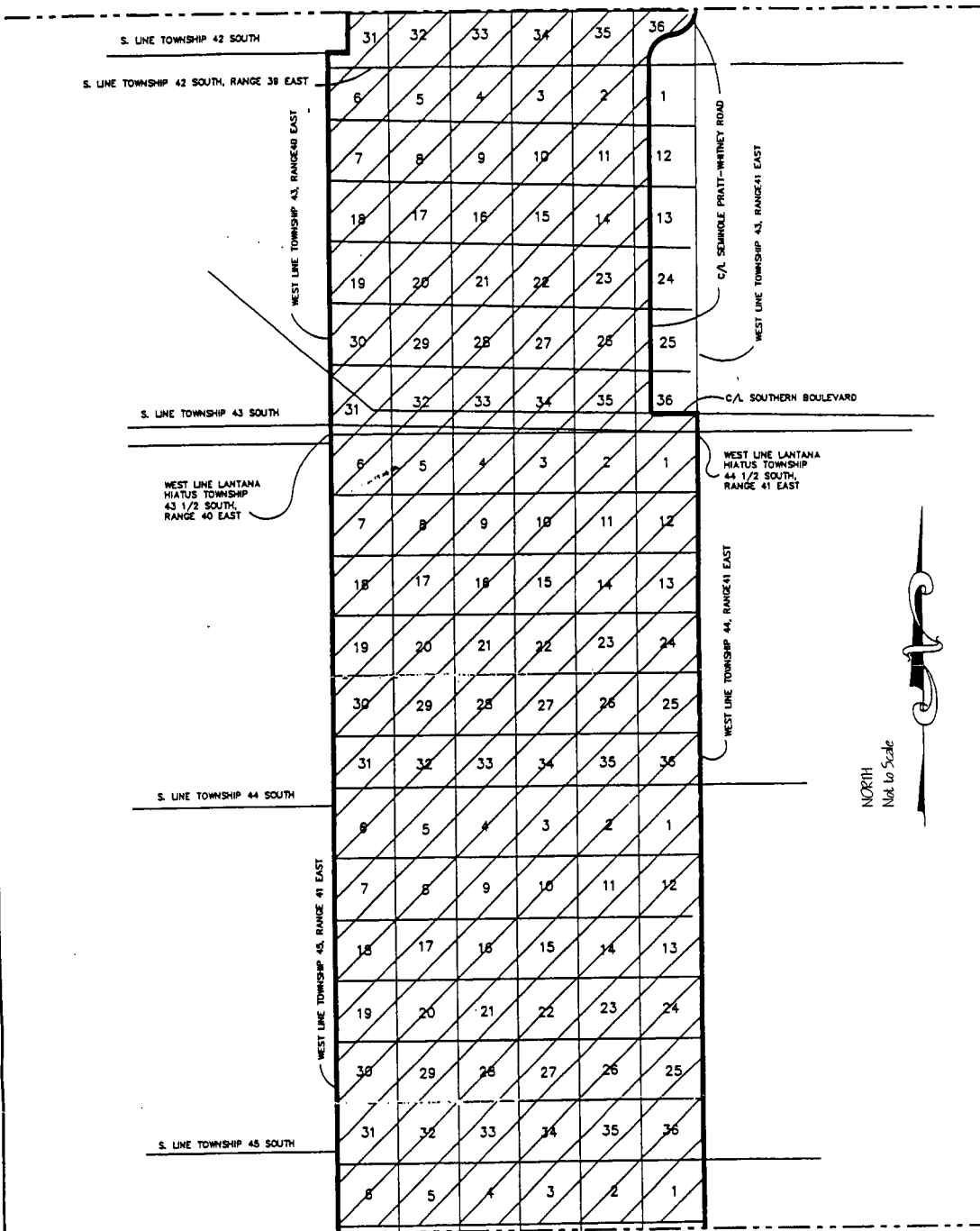


N.U.I. CITY GAS COMPANY of FLORIDA
Palm Beach County

SHEET 1 of 3

Territorial agmt FPU 12-19-02
Exhibit A
Page 2 of 3

MATCH LINE - SEE SHEET 1 of 3



MATCH LINE - SEE SHEET 3 of 3

N.U.I. CITY GAS COMPANY of FLORIDA
Palm Beach County

SHEET 2 of 3

Territorial agmt FPU 12-19-02
Exhibit A
Page 3 of 3

MATCH LINE - SEE SHEET 2 of 3

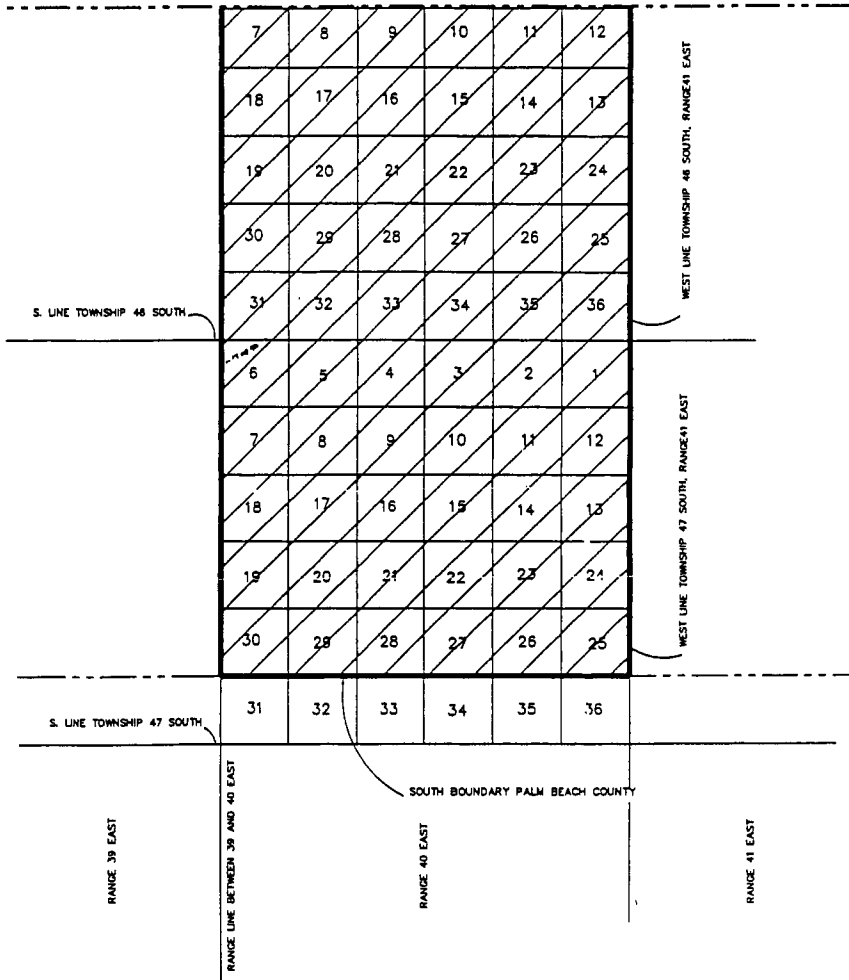


Exhibit B
Page 1 of 2

Metes and Bounds Description of Shaded Area

LEGAL DESCRIPTION:

A portion of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the intersection of the West line of Township 40 South, Range 40 East, Palm Beach County, Florida and the North line of Palm Beach County, Florida; thence Easterly along the North line of Palm Beach County, Florida, to the centerline of the Bee Line Highway (State Road 710); thence Southeasterly along the centerline of the Bee Line Highway (State Road 710) to the West line of Township 41 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 41 South, Range 41 East, Palm Beach County, Florida to the North line of Township 42 South, Range 41 East, Palm Beach County, Florida; thence Westerly along the North line of Township 42 South, Range 41 East, Palm Beach County, Florida to the centerline of Seminole Pratt Whitney Road; thence Southerly along the centerline of Seminole Pratt Whitney Road to the centerline of Southern Boulevard (State Road 80); thence Easterly along the centerline of Southern Boulevard (State Road 80) to the West line of Township 43 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 43 South, Range 41 East, Palm Beach County, Florida to the West line of Township 44 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 44 South, Range 41 East, Palm Beach County, Florida to the West line of Lantana Hiatus Township 44 ½ South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Lantana Hiatus Township 44 ½ South, Range 41 East, Palm Beach County, Florida to the West line Township 45 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line Township 45 South, Range 41 East, Palm Beach County, Florida to the West line Township 46 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line Township 46 South, Range 41 East, Palm Beach County, Florida to the West line of Township 47 South, Range 41 East, Palm Beach County, Florida; thence Southerly along the West line of Township 47 South, Range 41 East, Palm Beach County, Florida to the South line of Palm Beach County, Florida; thence Westerly along the South line of Palm Beach County, Florida to the Range Line between Range 39 East and Range 40 East, Palm Beach County, Florida; thence Northerly along the Range Line between Range 39 East and Range 40 East, Palm Beach County, Florida to the West line of the Hiatus Township 43 ½ South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of the Hiatus Township 43 ½ South, Range 40 East, Palm Beach County, Florida to the West Line of Township 43 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West Line of Township 43 South, Range 40 East, Palm Beach County, Florida to the South line of Township 42 South, Range 39 East, Palm Beach County, Florida; thence Easterly along the South line of Township 42 South, Range 39 East, Palm Beach County, Florida to the East line of Township 42 South, Range 39 East, Palm Beach County, Florida; thence Northerly along

Exhibit B
Page 2 of 2

the East line of Township 42 South, Range 39 East, Palm Beach County, Florida to the West line of Township 41 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of Township 41 South, Range 40 East, Palm Beach County, Florida to the West line of Township 40 South, Range 40 East, Palm Beach County, Florida; thence Northerly along the West line of Township 40 South, Range 40 East, Palm Beach County, Florida to the Point of Beginning.