

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-

RECEIVED FPSC
03 MAR 20 AM 9:40
COMMISSION CLERK

DATE: MARCH 20, 2003

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

FROM: OFFICE OF THE GENERAL COUNSEL (M. BROWN) *MCB*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MAKIN, *Makin*)
BULECZA-BANKS) *CRB*
DIVISION OF AUDITING & SAFETY (E. MILLS) *EM*

RE: DOCKET NO. 020670-GU - COMPLAINT BY TAMPA ELECTRIC COMPANY
D/B/A PEOPLES GAS SYSTEM AGAINST FLORIDA PUBLIC UTILITIES
COMPANY FOR VIOLATION OF TERRITORIAL AGREEMENT.

AGENDA: 4/1/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020670.RCM

CASE BACKGROUND

On July 9, 2002, Peoples Gas System (PGS) filed a complaint with the Commission asking the Commission to direct Florida Public Utilities (FPUC) to cease the extension of natural gas facilities in certain areas of Northern Palm Beach County. PGS asserts that the areas are reserved to PGS pursuant to a territorial agreement that the parties executed and the Commission approved in 1996. On July 19, 2002, FPUC responded to the complaint, stating that it did not breach the agreement because PGS abandoned the agreement first by extending its facilities into FPUC's approved service area.

On January 22, 2003, PGS and FPUC filed a joint petition for approval of an amended territorial agreement, which they assert resolves the issues that gave rise to PGS's complaint. This is

DOCUMENT NUMBER DATE

02682 MAR 20 3

FPSC-COMMISSION CLERK

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 by several provisions of Chapter 366 Florida Statutes, including 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 PGS for an amended territorial boundary agreement and dismiss PGS's complaint?

RECOMMENDATION: Yes. The Commission should approve the joint petition and dismiss PGS's complaint. The amended agreement should become effective the date of the Commission's order approving the agreement. (M. BROWN, MAKIN, BULECZA-BANKS, E. MILLS)

STAFF ANALYSIS: In order to resolve their current dispute, PGS and FPUC have entered into an amended territorial boundary agreement that redefines the service areas of PGS and FPUC prescribed by the prior agreement. The amended agreement resolves the current dispute and avoids future potential disputes between the parties in these areas.

The amended agreement would require the Commission's approval prior to any modification becoming effective. No transfer of customers from PGS or FPUC is contemplated by the amended agreement. The approval and implementation of the agreement will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of either PGS or FPUC, and it will avoid any unnecessary and uneconomic duplication of facilities.

Prior to the second anniversary of the effective date, and no more than every fifth anniversary thereafter, PGS and FPUC agree to meet to review the status of the agreement and shall submit a joint status report to the Commission for approval or modification.

The amended agreement is intended to resolve all disputes between PGS and FPUC with respect to the territory described in PGS's complaint to the Commission seeking enforcement of the prior agreement. The agreement should become effective the date of the Commission's order approving the agreement. With the Commission's approval, PGS's complaint should be dismissed. The agreement will supersede the prior agreement.

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

Staff recommends that the amended territorial agreement between PGS and FPUC is in the public interest and should be approved.

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 interests 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. (M. BROWN)

STAFF ANALYSIS: If a protest is filed by a person whose substantial interests 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. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

AMENDED AND RESTATED
TERRITORIAL BOUNDARY AGREEMENT

Section 0.1 THIS AMENDED AND RESTATED TERRITORIAL BOUNDARY AGREEMENT (this "Agreement") is made and entered into this 2nd day of JANUARY, 2003, by and between **Peoples Gas System, a division of Tampa Electric Company**, a Florida corporation ("PGS"), and **Florida Public Utilities Company**, a Florida corporation ("FPUC"). PGS and FPUC are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

WITNESSETH:

Section 0.2 WHEREAS, as pertinent to this Agreement, FPUC and PGS are presently providing natural gas service to customers in Palm Beach County; and

Section 0.3 WHEREAS, FPUC and PGS are parties to a territorial boundary agreement dated 1991 and amended in 1996 (as amended, the "Prior Agreement") and approved by Florida Public Service Commission ("Commission") on March 20, 1991 and June 10, 1996, which agreement defines the parties' respective service areas in Palm Beach County; and

Section 0.4 WHEREAS, PGS has filed a complaint with the Commission seeking enforcement of the Prior Agreement, the allegations of which complaint have been disputed by FPUC; and

Section 0.5 WHEREAS, PGS and FPUC desire to resolve the 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 within which the parties hold themselves out as providing natural gas service are contiguous in certain areas with the result that duplication of service facilities is likely to 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 and investments 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 entered into this Agreement to delineate their respective service areas in the localities where such potential duplications are likely or may have occurred; and

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

Section 0.10 WHEREAS, this Agreement amends and restates the delineation of the territorial boundaries between the service areas of PGS and FPUC prescribed by the Prior Agreement, thereby avoiding future potential disputes; and

Section 0.11 WHEREAS, execution of this Agreement by the parties is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.12 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, hereby agree as follows:

ARTICLE I
TERM OF AGREEMENT

Section 1.1 After this Agreement becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction.

ARTICLE II
BOUNDARY PROVISIONS

Section 2.1 The map attached hereto and labeled Appendix A depicts the boundary line delineating, as between the parties, the natural gas service area reserved to each of the parties. Said boundary line is more specifically described as follows:

Beginning at a Western point where the centerlines of Northlake Boulevard (Lake Park Road West) and the Beeline Highway intersect; thence Easterly along the centerline of Northlake Boulevard to the intersection with the centerline of the Florida Turnpike; thence Southerly along the centerline of the Florida Turnpike to the intersection with the centerline of the Beeline Highway; thence Southeasterly along the centerline of the Beeline Highway to the South line of Section 23, Township 42 South, Range 42 East, Palm Beach County, Florida; thence easterly along the said South line of Sections 23 and 24, Township 42 South, Range 42 East and Sections 19 and 20, Township 42 South, Range 43 East, Palm Beach County, Florida to the intersection with the centerline of the Florida East Coast Railroad track line; thence Northerly along the said Railroad track line to the intersection with the centerline of Northlake Boulevard; thence Easterly along centerline of Northlake Boulevard to the intersection with the centerline of Old Dixie Highway; thence Northerly along centerline of Old Dixie Highway to the boundary line separating the Town of Palm Beach Gardens and the Village of North Palm Beach; thence

Northerly along the said boundary line to the intersection with the South right-of-way line of RCA Boulevard; thence Easterly along the said right-of-way line to the intersection with the West right-of-way line of Prosperity Farms Road; thence Northerly along the said right-of-way line a distance of 720 feet; thence Westerly a distance of 500 feet; thence Northerly a distance of 1400 feet; thence Easterly a distance of approximately 600 feet to the intersection with the Municipal boundary line of the Town of Palm Beach Gardens; thence Easterly along the said Municipal boundary line to the intersection with the centerline of the Intracoastal Waterway; thence Northerly along the centerline of the Intracoastal Waterway to the intersection with the centerline of PGA Boulevard; thence Westerly along the centerline of PGA Boulevard a distance of approximately 480 feet to the east line of a recorded twelve foot utility easement as recorded in Official Record Book 2639, Pages 190 through 193, of the Public Records of Palm Beach County, Florida; thence Northerly along the east line of said utility easement a distance of 280 feet; thence Easterly a distance of 466 feet; thence Northerly a distance of 231 feet; thence Westerly and Southerly a distance of 120 feet; thence continuing Westerly and Southerly a distance of 155 feet; thence Southerly a distance of 52 feet; thence Westerly and Northerly a distance of 181 feet; thence Southerly and Westerly a distance of 74 feet; thence Southerly a distance of 74 feet to the northern 12 foot radius of a recorded twelve foot utility easement as recorded in Official Record Book 2639, Pages 190 through 193, of the Public Records of Palm Beach County, Florida; thence continuing Southerly along the west line of said utility easement to the intersection with the centerline of PGA Boulevard; thence Westerly along the said centerline to the intersection with the West right-of-way lines of Prosperity Farms Road; thence Northerly along the said West right-of-way line to the Municipal boundary line of the Town of

Palm Beach Gardens; thence Easterly along the said Municipal boundary line (South of Idlewild Court) to the intersection with the centerline of the Intracoastal Waterway; thence Northerly along the centerline of the Intracoastal Waterway to the intersection with the westerly projection of the South Municipal boundary of the Town of Juno Beach, north of Pleasant Drive would intersect; thence Easterly on the said projection to the intersection with the centerline of U.S. Highway One; thence Northerly along the centerline of U.S. Highway One, to the intersection with the Easterly projection of the North right-of-way line of Rolling Green Road; thence Westerly along the projection and the North right-of-way line to the West property line of Seminole Plaza; thence Northerly along the West property line to the North property line of Seminole Plaza; thence Easterly along the North property line to the intersection with the centerline of U.S. Highway One; thence Northerly along the centerline of U.S. Highway One to the intersection with the projection of the South property line of an existing Hampton Inn (425.55 feet South of the South right-of-way line of Park Street); thence Westerly along the projection and the South property line to the West property line of said Hampton Inn; thence Northerly along the West property line to the intersection with the South right-of-way line of Park Street (AKA Venus Drive, east of U.S. Highway One); thence Easterly along the South right-of-way line and its projection East to the shores of the Atlantic Ocean.

Section 2.2 In the event of any conflict between the boundary line as marked on Appendix A and the written description of such boundary line set forth in Section 2.1, said written description shall control; provided, however, that the service area reserved to each of the parties hereunder shall be as depicted on Appendix A. This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as

specifically provided herein.

Section 2.3 Each of the parties agrees that it will not provide or offer to provide natural gas service to future customers within the territory herein reserved to the other party.

Section 2.4 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 future natural gas 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 Commission for modification of this Agreement in order to permit the appropriate party to provide service to such small service areas and/or future natural gas customers.

Section 2.5 Nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area of the other party.

ARTICLE III **MISCELLANEOUS PROVISIONS**

Section 3.1 The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 This Agreement is intended to resolve all disputes between the parties with respect to the territory described in PGS's complaint to the Commission seeking enforcement of the Prior Agreement, specifically reserves as of the Effective Date the dispute which formed the basis for

the allegations of said complaint, and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This Agreement shall be governed by the laws of the State of Florida.

Section 3.4 The parties hereto recognize and agree that each of them is subject to the jurisdiction of the Commission and further agree that this Agreement shall have no force or effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. This Agreement shall become effective on the date of the Commission's order approving it (the "Effective Date") and, on and after the Effective Date shall supersede and terminate the Prior Agreement. The parties further agree that this Agreement, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by order of the Commission. No modification or termination of this Agreement by the parties hereto shall be effective unless and until approved by the Commission (or any successor agency with power to consider approval or modification hereof). Each party agrees to promptly notify the other in writing of any petition, application or request for modification of this Agreement made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 Prior to the second anniversary of the Effective Date 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 (or any successor agency with power to consider approval or modification hereof).

Section 3.6 This Agreement shall become effective on the date of the Commission's order approving it (the "Effective Date") and, on the Effective Date shall supersede and terminate the Prior

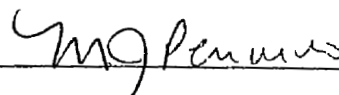
Agreement. As soon as practicable following the Effective Date, each party agrees to file any revisions to its tariffs on file with the Commission which may be required as a result of the Commission's approval hereof, and shall provide a copy of any such tariff revisions to the other party.


Section 3.7 This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

ATTEST:

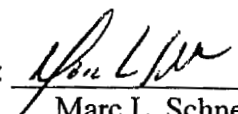
PEOPLES GAS SYSTEM, a division of
Tampa Electric Company

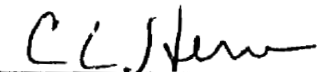

By: 

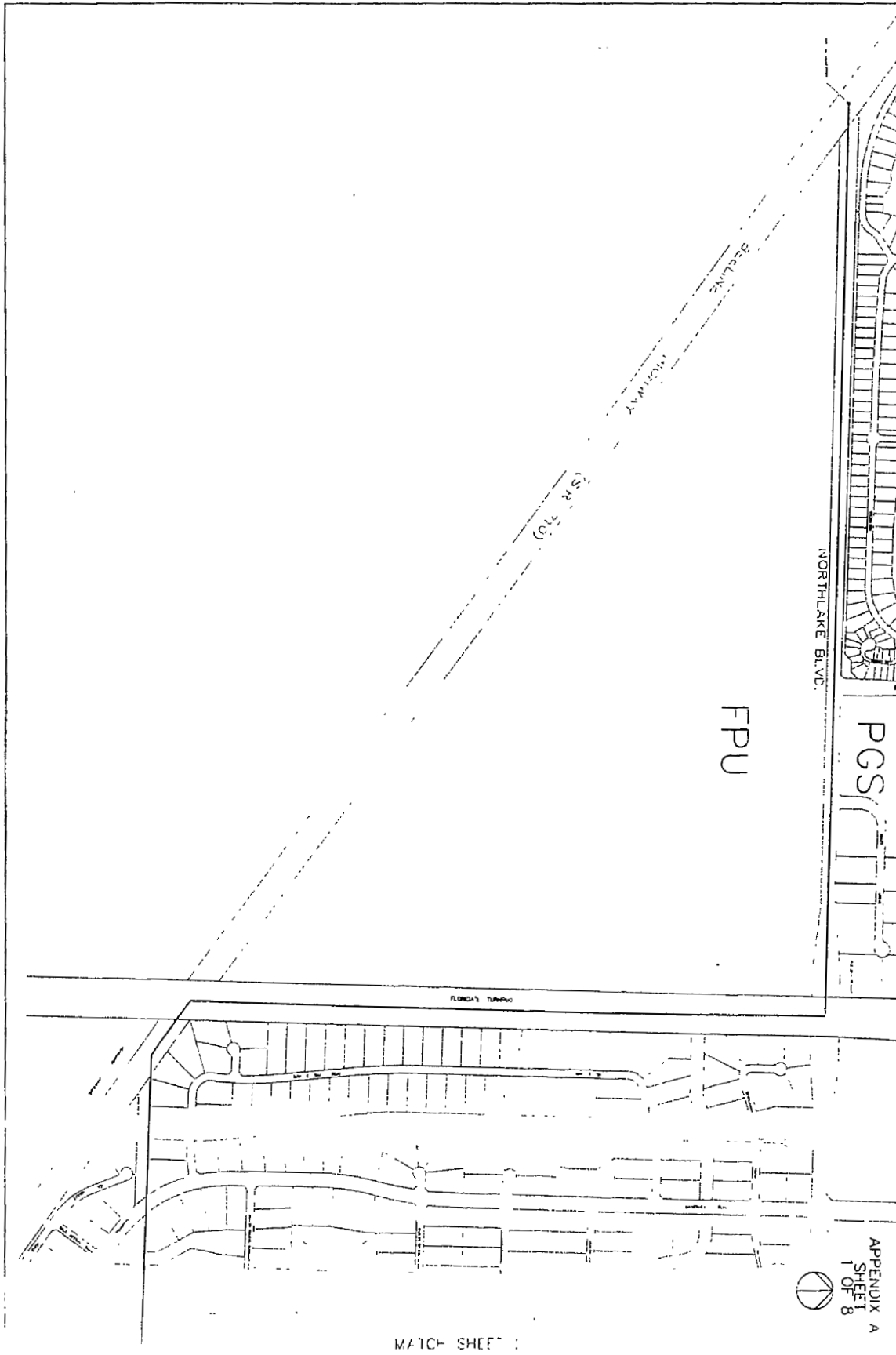
By: 

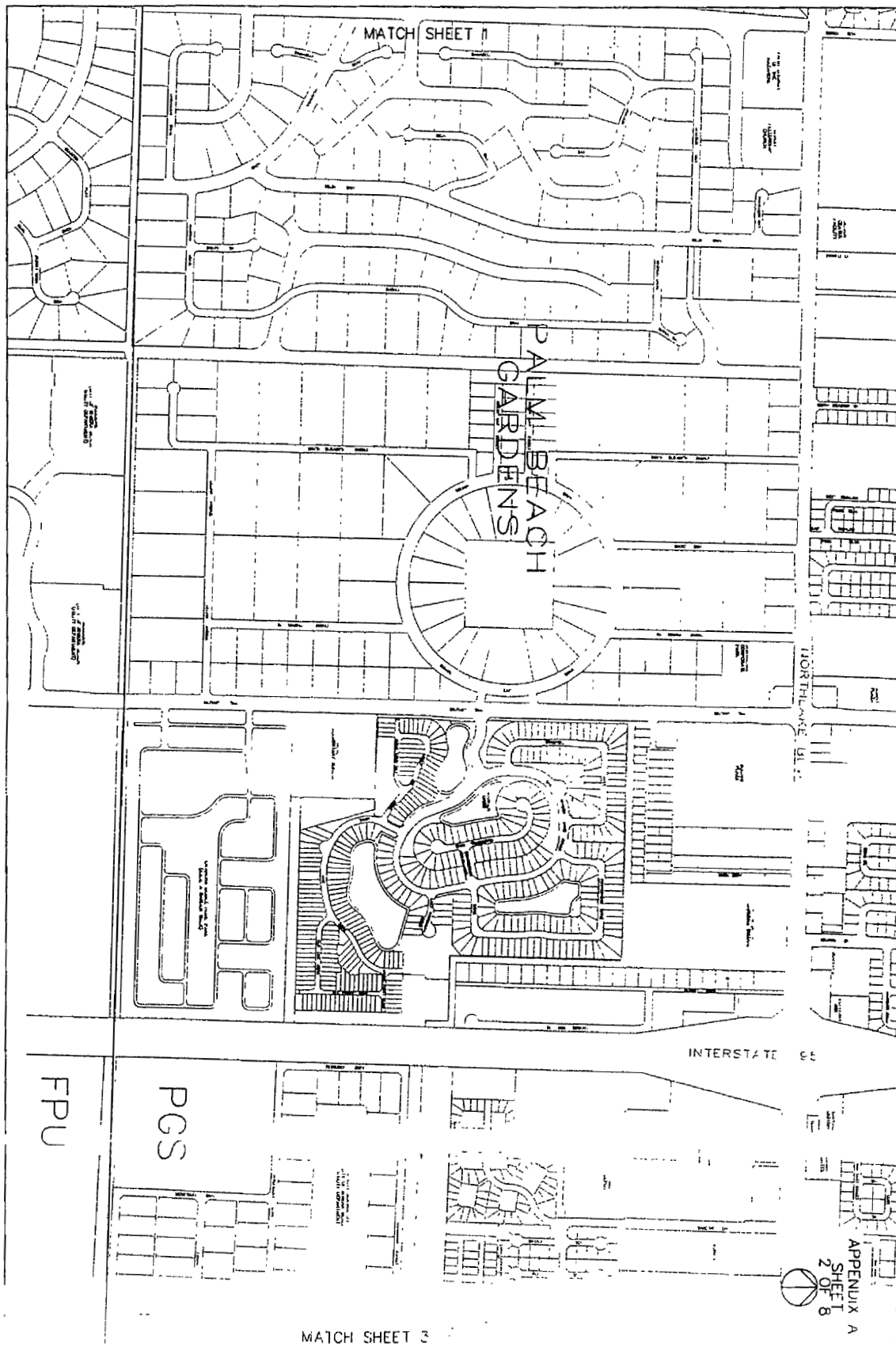
ATTEST:

FLORIDA PUBLIC UTILITIES COMPANY

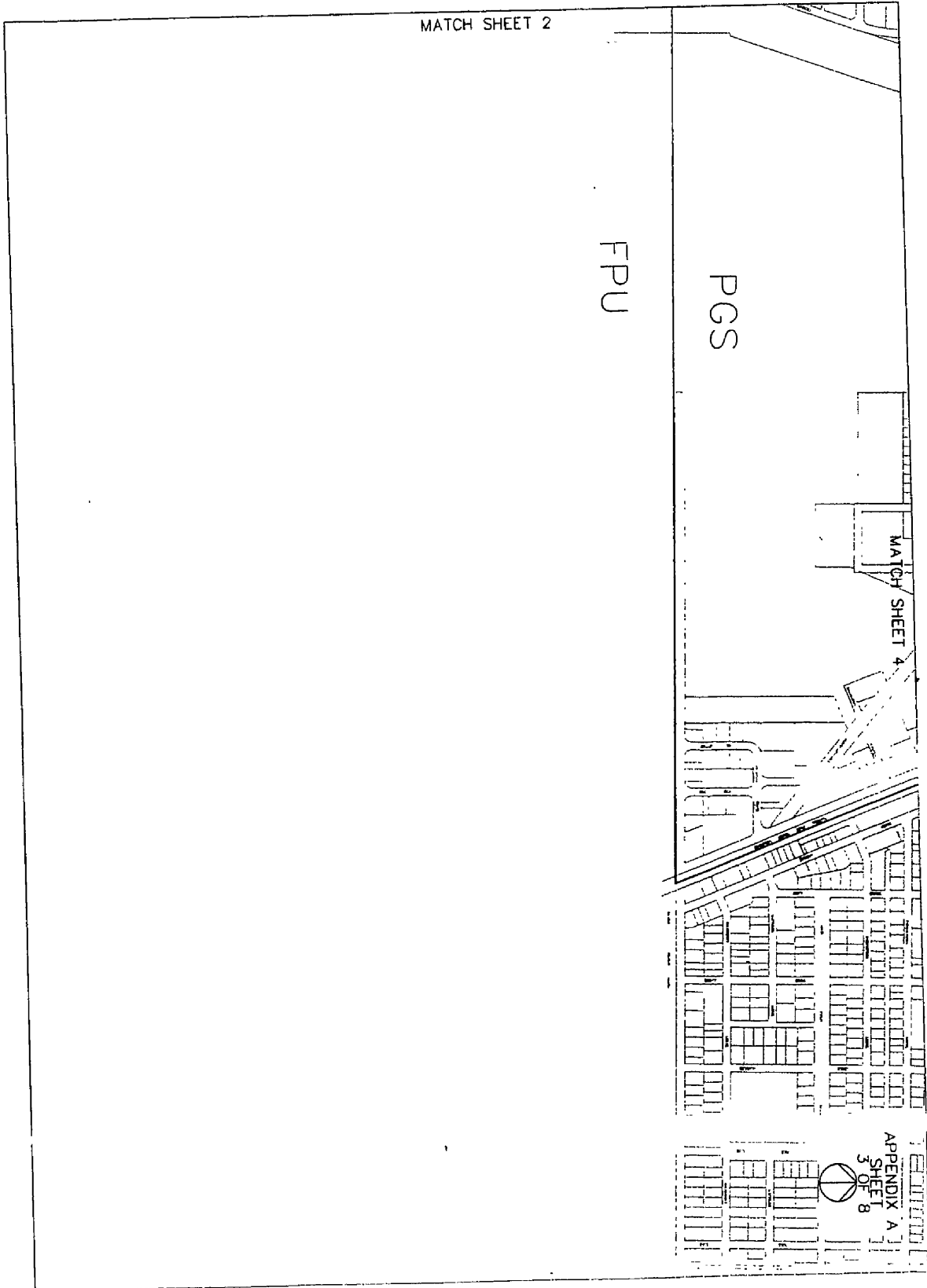
By: 
Marc L. Schneidermann
Director, South Florida

By:  
C.L. Stein
Senior Vice President & C.O.O.





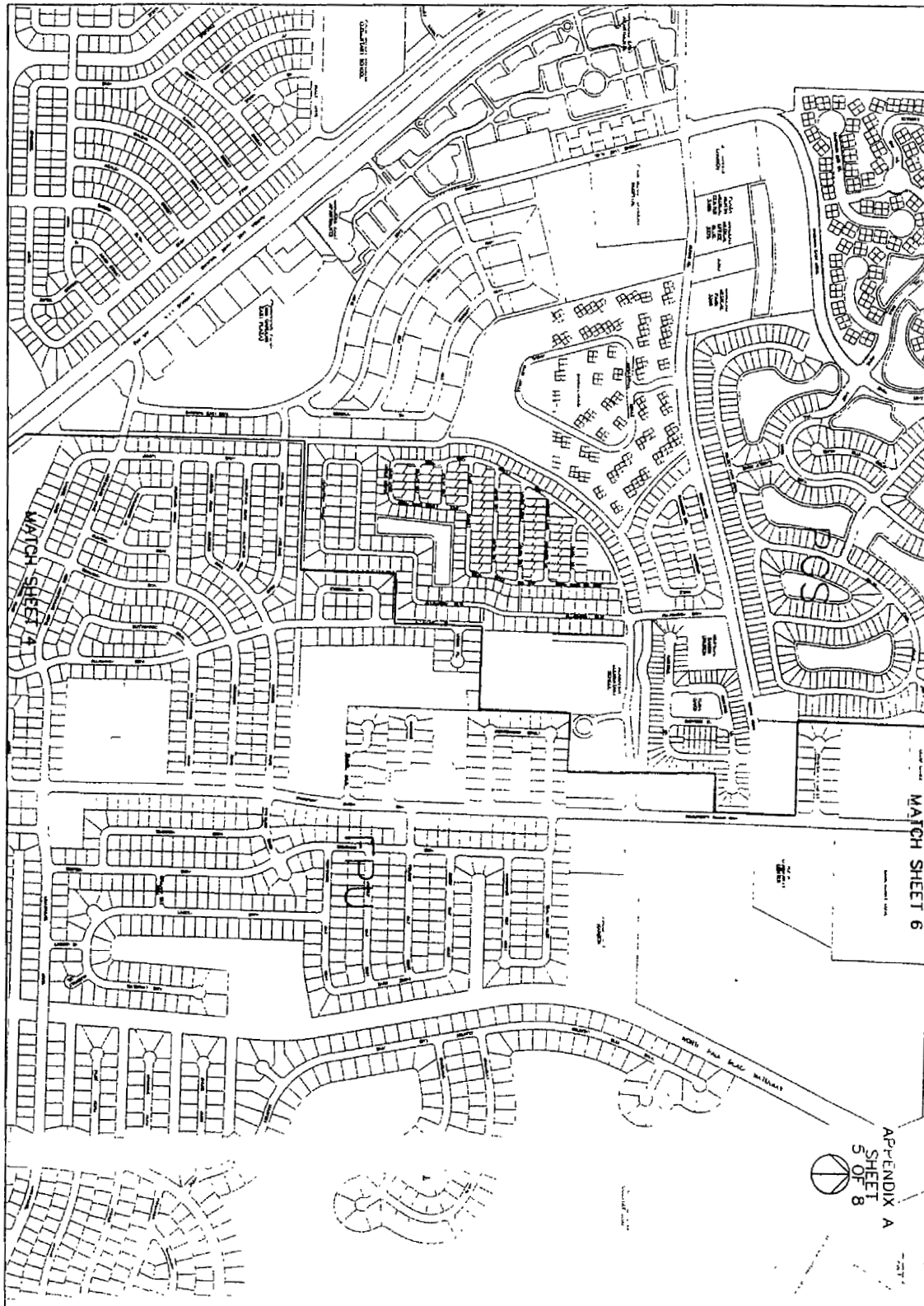
1.15
2/24

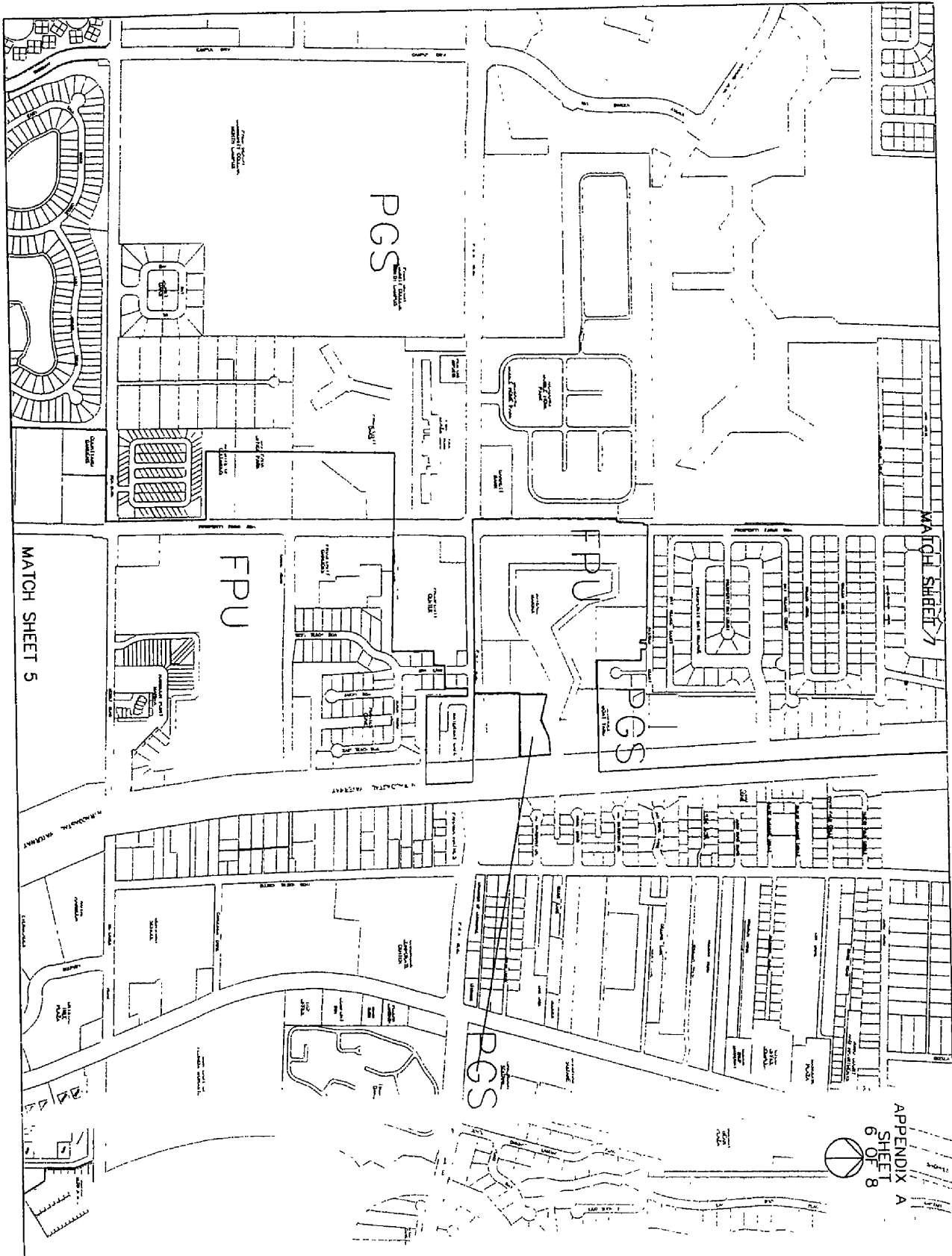


Handwritten signature or initials



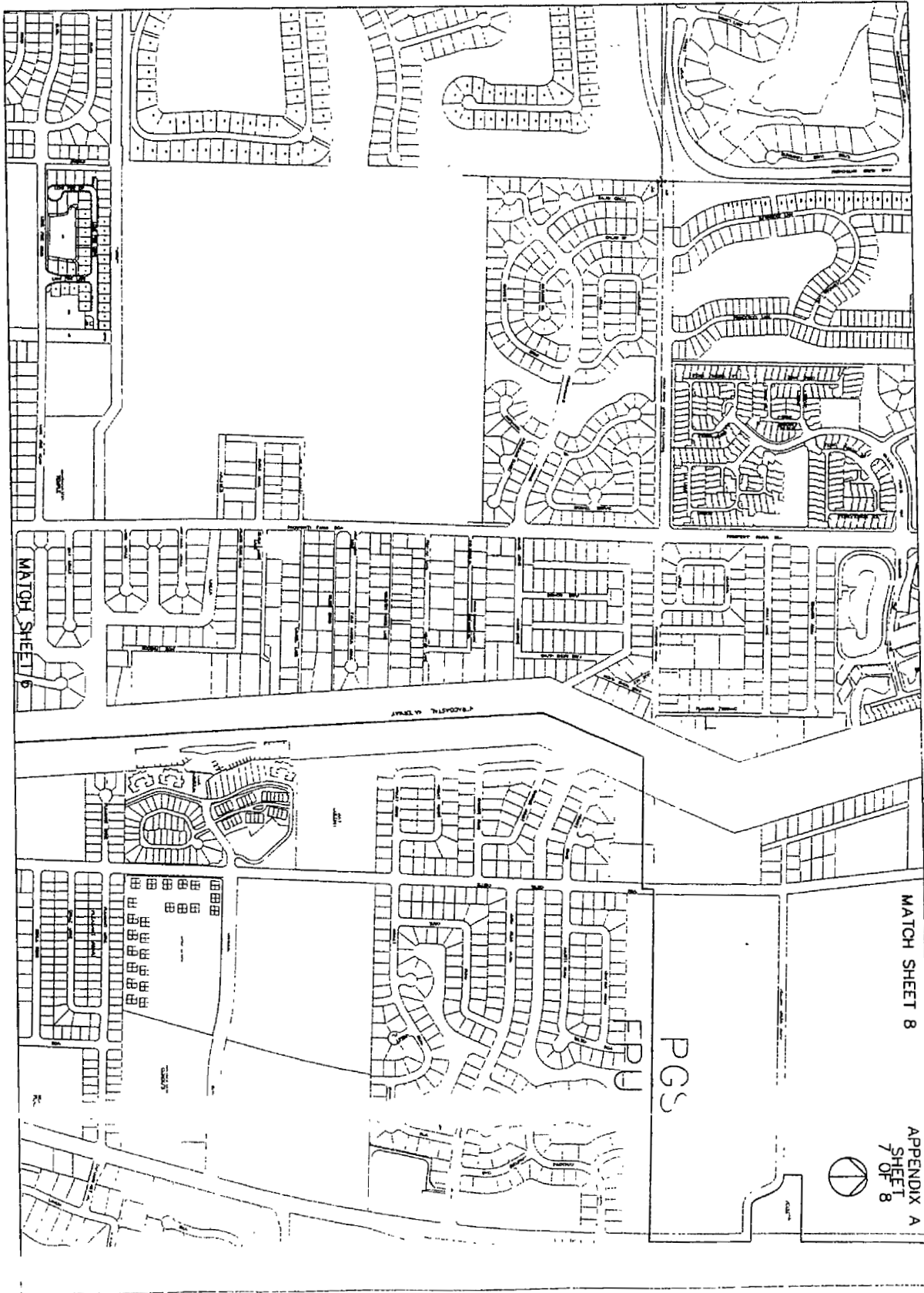
147
167





Handwritten initials/signature

DOCKET NO. 020670-GU
MARCH 20, 2003



12
29

