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2. In Re: Petition of Florida Public Utilities Company To resolve territorial dispute with Peoples Gas System

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7/8/2004

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: **Petition of Florida Public Utilities
Company To Resolve Territorial Dispute
With Peoples Gas System**

Docket No. 040278-GU

Filed: July 8, 2004

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**FPUC'S RESPONSE TO PEOPLES GAS SYSTEM'S
MOTION TO REVISE PROCEDURAL SCHEDULE**

Florida Public Utilities Company ("FPUC"), through its undersigned counsel, hereby submits its Response to Peoples Gas System's ("Peoples Gas") Motion to Revise Procedural Schedule For Proceedings On Petition Of Florida Public Utilities Company to Resolve Territorial Dispute ("Motion to Revise Schedule"). FPUC submits that the Commission should deny the request of Peoples Gas System to hold this docket in abeyance. The Commission should revise the existing internal schedule, but for the purpose - - not of postponing all activity in the docket--but of establishing a procedural track and milestones for the evidentiary hearing requested by FPUC in its Petition to Resolve Territorial Dispute. In support of this position, FPUC states:

1. FPUC filed the Petition to Resolve Territorial Dispute that initiated this docket on March 30, 2004. In the Petition, FPUC described its plan to extend its system to serve proposed developments on parcels of property known as Mecca Farms and Vavrus Ranch. These parcels are allocated to FPUC's service area in the territorial agreement between NUI City Gas and FPUC. They lie west of the westernmost point of the service area allocated to Peoples Gas in the current territorial agreement between FPUC and Peoples Gas. FPUC alleged that during a meeting between FPUC and the developer of the Scripps Project being planned for the Mecca Farms property, the developer's representative informed FPUC that Peoples Gas had proposed to provide

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FPUC-COMMISSION CLERK

natural gas service to the development. FPUC alleged that Peoples Gas' activities created a territorial dispute between FPUC and Peoples Gas. FPUC requested the Commission to conduct an evidentiary hearing on the issue and determine that, under the criteria applicable to the resolution of a territorial dispute, FPUC should serve the "Disputed Area" delineated in the exhibits to the Petition.

2. As of the date of this filing, Peoples Gas has not responded substantively to the allegations of the Petition. On July 1, 2004, Peoples Gas filed its Motion to Revise Schedule. In its Motion, Peoples Gas requests the Commission to hold this docket in abeyance for six months. The premise of the Motion is the location of the Scripps Project, to which FPUC referred in its Petition to Resolve Territorial Dispute, must be established more definitively. Peoples Gas attached newspaper articles reporting that Palm Beach County is in the process of addressing recently expressed concerns regarding the impact of the planned location of the Scripps Project to include a report on alternative sites¹, and asserts that the existence of a territorial dispute is "hypothetical" and "a mere assumption" at this point. The tenor of the Motion to Revise Schedule is that a dispute exists as to which utility should serve the area described in the Petition only if the Scripps Project is to be built within the boundaries of the area identified in the Petition as the Disputed Area. By implication, the motion suggests that Peoples Gas is interested in serving the area only if the Scripps Project is developed at that location.

3. The Commission should not hold this docket in abeyance. While it is certainly true that FPUC referred in its Petition to the Scripps Project being planned for the Mecca Farms location and the proposed development on the adjoining Vavrus Ranch

¹ Today, the same newspaper reported that the Scripps Institute is proceeding with construction plans, in accordance with its contract with Palm Beach County to develop the Mecca Farms property, notwithstanding, the concerns that caused the County to "pause". See Exhibit 2.

property, neither FPUC's request for an order resolving a territorial dispute nor the need for resolution rests solely on the development of the Scripps Project at that location.

4. In its Petition, FPUC alleged that it would be consistent with the territorial agreement between FPUC and Peoples Gas for Peoples Gas to remain east of the westernmost boundary of the agreement. In its Petition, FPUC alleged that Peoples Gas has overtly attempted to provide service in an area that lies westward of the westernmost point of the boundary between FPUC and Peoples Gas and that FPUC intends to serve. (Peoples Gas has not denied the allegation.) FPUC's assertion distinguishes this situation from that which the Commission addressed in Order No. 15348, which Peoples Gas cites in support of its "hypothetical" argument. In that case, the *petitioner conceded* that "no controversy over customers or territory has yet occurred." Order No. 15348, Docket No. 850132-EU, at page 1. Here, in contrast, FPUC alleges that Peoples Gas has actively pursued a customer in territory that FPUC claims. A real controversy has arisen, and remains "real and actual" with respect to the territory, regardless of what happens to the Scripps Project.

5. Whether the Scripps Project is developed on the Mecca Farms site or whether the development of this property involves something of an entirely different size and scope, FPUC intends to serve the area; FPUC has the resources to serve the area; service by FPUC would be consistent with the terms of the parties' territorial agreement; and FPUC is positioned better, in terms of the criteria governing the resolution of a territorial dispute, to provide service. Peoples Gas' Motion to Revise Schedule implies that Peoples Gas is interested in serving the "Disputed Area" only if the Scripps Project is developed there. The Commission should not delay the schedule of its consideration of

FPUC's Petition (in which FPUC requested an evidentiary hearing and relief) for six months, for the purpose of providing time for Peoples Gas to decide whether or not it is interested in vying for the area that FPUC fully intends to serve.

6. If the Scripps Project is developed on the Mecca Farms site - - a scenario that FPUC regards as highly likely, notwithstanding the newspaper articles that Peoples Gas attached to its motion on July 1st, for the reason that Palm Beach County has already committed more than \$60 million to purchase the Mecca Farms property - - a delay of the magnitude sought by Peoples could have the effect of impeding the provision of natural gas service to the area within the time frame it is requested by the developers. Such a delay in the ability to provide service could have serious consequences on a project of this type and magnitude. Indeed, if a delay results in the inability to extend service to the property within the time frame requested by the developers, the developers could decide to modify their plans so as to reduce or eliminate the role of natural gas in the project.

7. Peoples Gas is in error when it asserts that a delay of six months will not adversely affect FPUC. Peoples Gas is further in error when it asserts that FPUC has not received a request to serve a customer within the "Disputed Area". In May 2004 FPUC received an inquiry from the Gardens Science and Technology Community, *which will be located on the Vavrus property*. (The Gardens Science and Technology Community project is separate from the Scripps Project.) FPUC also received an inquiry from the developers of the Callery-Judge Grove property, which lies approximately 2 3/4 miles south of the Mecca Farms and Vavrus properties. FPUC must extend its system to serve these customers. A resolution of the territorial dispute created by Peoples Gas' effort to serve the Scripps Project is necessary to enable FPUC to plan and construct the extension

to its system to serve these potential new customers in the most efficient manner possible. If FPUC serves the Mecca Farms and Vavrus Ranch properties (including the Gardens Science and Technology Community, which will be located on the Vavrus property and which has *requested service from FPUC*) (see letter dated May 17, 2004 from FPUC's Raquel Steffes to Mr. Warren McKinnie, Exhibit 1), then the most efficient and economical manner for FPUC to extend service to Mecca Farms, Vavrus Ranch, and the Callery-Judge Grove would be by means of extending a main from its present location at the Ibis Golf and Country Club westward along Northlake Boulevard. to Pratt and Whitney Road, then south along Pratt and Whitney Road and past the "M" Canal, which is adjacent to Callery Judge Groves. However, if FPUC constructs its system in this manner, and FPUC's plan to serve the Mecca Farms and Vavrus properties is then frustrated by a competing effort by Peoples Gas, FPUC will have incurred unnecessary costs, (to the detriment of the customers who ultimately must bear such costs) because it would have sized the capacity of the extension differently to serve only the Callery-Judge Grove development.

8. Contrary to the argument of Peoples Gas, then, the issue raised by FPUC's Petition is neither hypothetical nor remote. A dispute exists now, and the need for resolution of the dispute exists now. Effectively, the impact of the dispute is not confined to the two properties described in the Petition. The effort of Peoples Gas System to lay claim to the Scripps Project - - even if the interest of Peoples Gas in serving the Mecca Farms location is contingent on the development of a large commercial complex there - - is affecting FPUC's ability to plan and construct the most efficient, cost-effective extensions required to provide service to other customers. The territorial dispute relating

to the “Disputed Area” of the Petition can be rendered moot only by a stipulation by Peoples Gas System that it accedes to FPUC’s intent to serve the Mecca Farms and Vavrus Ranch properties - - which stipulation, gauging by its Motion to Revise Schedule, Peoples is apparently unwilling to provide, unless and until Palm Beach County announces that it will relocate the Scripps Project. To ensure the delivery of timely and efficient natural gas service to the area, the Commission should require FPUC and Peoples Gas to demonstrate how each would serve the “Disputed Area” under the assumption that the Scripps Project and related activities will be developed as planned. The Commission should also require each to state whether it will serve smaller developments in the event the Scripps Project is relocated. Further, the Commission should proceed on a schedule that would enable it to address the issue without delay. Having brought the territorial dispute to the Commission, FPUC should not be forced to wait six months or longer before the Commission initiates activity to consider its Petition simply because Peoples has not determined the extent of its interest in serving the “Disputed Area”².

9. In its Petition, FPUC asserted that, based on the application of the governing criteria - - which include, among other things, the relative capacities of the competing utilities’ existing facilities and the costs that each utility must incur to establish service - - FPUC is positioned far better than Peoples Gas to extend its system to reach the “Disputed Area”. FPUC specifically requested the Commission to conduct an evidentiary hearing on the issues raised by its Petition. See Sections 120.569 and

² For the reasons stated herein, the Commission should deny Peoples Gas’ request to hold this case in abeyance. As a separate matter, and without abandoning its other arguments in opposition to the motion, FPUC submits the six month period sought by Peoples Gas is arbitrary and excessive. Peoples Gas makes no effort to relate the postponement it seeks to the timing of the confirmation of the location of the Scripps Project.

120.57(1), Florida Statutes, pertaining to the right of a party to an evidentiary hearing where a dispute of fact is involved. However, the Case Assignment and Scheduling Record prepared for this docket contemplates that the Commission will issue an Order on Proposed Agency Action without first conducting an evidentiary hearing. Aside from the fact that FPUC requested a hearing on the factual assertions on which it bases its request for an award of the disputed area, FPUC submits that the PAA process is not well suited to the circumstances of this case. Unless Peoples Gas stipulates to the facts asserted by FPUC in the Petition and stipulates to the entry of an order awarding the area to FPUC, FPUC submits that a PAA order would not be the most efficient manner in which to proceed from this point. As long as Peoples Gas contests the matter, FPUC wants the opportunity to support its factual assertions with evidence-- and challenge any competing claims that Peoples Gas may assert - - in an evidentiary hearing before the Commission purports to determine, in an order, which utility better meets the applicable criteria.

10. To the extent the existing internal case schedule was prepared in the belief that it would foster the possibility of a settlement, FPUC submits that a schedule requiring the parties to submit testimony and otherwise prepare for a hearing without delay would provide a far more compelling incentive to enter settlement discussions. Peoples Gas should be directed to indicate now whether it disputes FPUC's assertions regarding which utility is better able to serve the area. If Peoples Gas does so, then - - rather than issue a PAA with the knowledge that it would be protested when issued - - the Commission should promptly develop a schedule that provides reasonably, but without delay, for the preparation and submission of prefiled testimony, discovery, prehearing conference, evidentiary hearing, and decision.

CONCLUSION

The Commission should not hold this docket in abeyance, as requested by Peoples Gas. The Commission should revise the case schedule, but the revisions should be for the purpose of establishing dates for discovery, prefiled testimony, and the evidentiary hearing that FPUC requested in its Petition.

s/ Joseph A. McGlothlin
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Attorney for Florida Public Utilities
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Motion of Peoples Gas System to Revise Procedure Schedule has been provided on this 8th day of July 2004, by U.S. Mail to:

Adrienne Vining
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Ansley Watson
MacFarlane Ferguson Law Firm
111 Madison Street
Suite 2300
Tampa, FL 33601

s/ Joseph A. McGlothlin
Joseph A. McGlothlin

May 17, 2004

Mr. F. Warren McKinnie
LBFH, Inc.
2090 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Dear Mr. McKinnie:

This letter is a response to your request from Florida Public Utilities to state capacities, commitments and our ability to provide gas service to the Gardens Science and Technology Community (GSTC). We are confident in our ability to serve the this project and look forward to working with all of the involved parties to meet timing deadlines and provide natural gas service to the development as needed.

Your letter request outlined the following queries for which we have prepared a response.

1. The projected excess capacities of the facilities and transmission line to which connection will be made at present and for each phase through completion of the project.

Florida Public Utilities Company ("FPU") is planning to serve the Gardens Science and Technology Community ("GSTC") by extending an existing 6" nominal outside diameter epoxy coated steel gas main westward to the site. FPU's existing facilities that will be extended for the PBC BRP were placed into service during March 1992.

FPU's gate station, which interconnects the interstate pipeline system with FPU's distribution system, used for supplying the existing gas main and future extension to the PBC BRP is located in close proximity to 45th Street and the east side of the Florida Turnpike in West Palm Beach. The gate station has a daily capacity of 10,000 Dth and an hourly maximum capacity of 600 Dth (which is equivalent to 600,000 cfh [cubic feet of natural gas per hour]).

FPU's distribution system that will be used to serve the GSTC has experienced a peak flow of approximately 78,000 cfh. Without any adjustments, the distribution system can transport upwards of 215,000 cfh. By increasing the normal operating pressure of the distribution system to 200 PSIG, the facilities will have the capability of transporting upwards of 418,000 cfh. A pressure upgrade will not require any capital investment by FPU. We believe that capability will exceed the requirements of the PBC BRP but we will need to receive the expected gas requirements (maximum hourly consumption and minimum required pressure) from the PBC BRP project coordinator. Without a pressure upgrade, the excess capacity is 137,000 cfh. If a pressure upgrade is required to increase the capacity of FPU's distribution system, FPU will have approximately 340,000 cfh available for the project in addition to the accounts noted in our response to item 2 of the data request (below).

May 17, 2004
Mr. Warren McKinnie
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2. Any other commitments that have been made for this excess capacity.

- To date, FPU has only made a commitment to serve a proposed elementary school located along FPU's future main extension to the GSTC as well as a commitment to serve the undeveloped lots within IBIS Golf and Country Club. The remaining coincident projected peak requirements for the school and IBIS will be approximately 4,000 cfm. It is evident that FPU will have a substantial amount of excess capacity to serve the GSTC.

3. A statement of your ability to provide service at all times during and after development.

FPU is confident that we have the ability to serve the GSTC at all times during and after development subject to verification of the actual gas usage requirements which were not included in this package.

Please feel free to contact our South Florida Division Director, Marc Schneidermann, whose responsibilities include engineering, with any questions pertaining to natural gas infrastructure and design. His contact information and other FPU Management personnel are included on the attachment to this letter.

We look forward to working with you through the development of the Gardens Science and Technology Community.

Respectfully,

Raquel Steffes
Marketing Manager
Florida Public Utilities

RKS:pg
Enclosure
Copies: Marc Schneidermann
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BUSINESS

PalmBeachPost.com

Scripps weighs four as construction manager

By David Sedore, Palm Beach Post Staff Writer
Thursday, July 8, 2004

The Scripps Research Institute has picked four finalists for the construction manager job at its planned Palm Beach County bioscience research campus, a list that includes some of the largest commercial construction companies in the country.

Under terms of its contract with the county, Scripps is using county bidding procedures to secure contracts for the design and construction of its 364,000-square-foot laboratory to be built on a 100-acre section of Mecca Farms in the northwestern part of the county.

Scripps in South Florida



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Scripps is moving forward with its construction plans, although the county commission has wavered on the Mecca site in recent weeks. Long-term cost projections up to \$670 million to convert the Mecca orange groves into a giant research park for Scripps have caused the county to pause.

Scripps could select a manager to oversee construction-related activities, including preparing bid documents and the actual work on the site, next week after interviewing the finalists. They are:

Turner Construction Co. of Dallas, which *Building Design & Construction* magazine ranks as the largest contractor in the country, based on 2003 revenue of \$6 billion. Its Tompkins Building subsidiary was involved in the construction of the World War II memorial on the mall in Washington. Turner has offices in Miami, Tampa and Orlando

Suitt Construction Co. of Greenville, S.C., which has done considerable work in the Orlando area for hospitality and entertainment companies, including Universal Studios and Disney. It also has done work for Florida pharmaceutical firms, including Ivax of Miami-Dade County. Suitt maintains an office in Maitland.

DPR Construction Co. and The Weitz Co., which rank 14th and 24th in the nation, respectively, according to *Building Design & Construction's* national rankings. DPR, which had \$1.1 billion in revenue during 2003, has built laboratory and office space for the Institute for Geneomic Research in Rockville, Md. Weitz's résumé includes the recently completed Cohen Pavilion at the Kravis Center for the Performing Arts in West Palm Beach. It had \$747 million in revenue last year.

Skanska USA Building of Parsippany, N.J., ranked fourth in the country, with revenue of \$3.16 billion in 2003. The company is a subsidiary of Skanska AB, a Swedish construction giant; its portfolio includes Gillette Stadium, home of the New England Patriots, the Fred Hutchinson Cancer Research Center in Seattle

and the M.D. Anderson Cancer Center in Orlando. Skanska has offices in Jacksonville, Tampa and Orlando.

"There's going to be a group meeting here on July 13," said Scripps spokesman Keith McKeown, adding that the decision could come soon after that.

The county is picking up the \$200 million tab for the lab and the entire Mecca site, but Scripps is awarding the building and design contracts with county input.

The county has chosen Catalfumo Construction of Palm Beach Gardens as construction manager for the county's portion of the Mecca Farms tract, which is the remainder of the 1,900 acres of the overall research park.

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