

State of Florida



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# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
CLERK

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** January 20, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Vining) *AEV*  
Division of Competitive Markets & Enforcement (Bulecza-Banks, Makin) *MB*  
Division of Regulatory Compliance & Consumer Assistance (Mills) *CM*

**RE:** Docket No. 041385-GU – Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.

**AGENDA:** 02/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\041385.RCM.DOC

## Case Background

In 1994, Peoples Gas System (Peoples Gas) initiated a territorial dispute against Clearwater Gas System (Clearwater Gas) because both parties planned to expand their natural gas distribution facilities in Pasco County. The parties ultimately were able to resolve that territorial dispute through a comprehensive agreement defining the service areas of the parties within Pasco County.

The Commission approved the Agreement in Order No. PSC-95-0620-AS-GU, issued May 22, 1995, in Docket No. 940660-GU, In re: Petition to Resolve Territorial Dispute with Clearwater Gas System, a Division of the City of Clearwater, by Peoples Gas System, Inc., finding that the 1995 territorial agreement is in the public interest, and adoption of the agreement will further the Commission's longstanding policy of avoiding unnecessary and uneconomic duplication of facilities.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 041385-GU  
Date: January 20, 2005

On December 8, 2004, Peoples Gas and Clearwater Gas filed a Joint Petition requesting approval of the First Amendment to the 1995 Agreement. This recommendation addresses the proposed amendment.

Jurisdiction over this matter is vested in the Commission by Sections 366.04, 366.05, and 366.06, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the joint petition for approval of the amendment to the territorial agreement in Pasco County filed by Peoples Gas and Clearwater Gas ?

**Recommendation:** Yes. The Commission should approve the joint petition filed by Peoples Gas and Clearwater Gas for approval to amend their existing territorial agreement. The amendment should become effective 30 days from the issuance of the Consummating Order in this docket. **(Vining, Bulecza-Banks, Makin, Mills)**

**Staff Analysis:** Natural gas service has been requested by the developer of Connerton, a 4,800 acre planned community in Central Pasco County that neither Peoples Gas nor Clearwater Gas are currently serving. Per the 1995 Agreement, Peoples Gas was allocated this territory; however, the territory is also adjacent to territory allocated to Clearwater Gas. The parties agree that because of the way that Peoples Gas and Clearwater Gas have developed their gas systems, it would be more economical for Clearwater Gas to provide service to the area.

Peoples Gas and Clearwater Gas have agreed to amend the 1995 agreement to permit Clearwater Gas to provide natural gas service to the area. Peoples Gas and Clearwater Gas agree that approval and implementation of the First Amendment to the 1995 Agreement (attached) will not cause a decrease in the availability or reliability of natural gas service to existing or future rate payers of either company.

The First Amendment meets the requirements set forth in Rule 25-7.0471, Territorial Agreements for Natural Gas Utilities, Florida Administrative Code. Approval of the First Amendment will permit the parties to continue to avoid uneconomic duplication of facilities, and will permit the party best suited to providing service to the developments to provide such service. There is also no reasonable likelihood that the First Amendment will cause a decrease in the reliability of gas service to existing or future ratepayers of Peoples Gas or Clearwater Gas. Therefore, staff believes the First Amendment is in the public interest and should become effective 30 days from the issuance of the Consummating Order in this docket.

**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 amendment, the docket should remain open. **(Vining)**

**Staff Analysis:** 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 amendment, the docket should remain open.

**FIRST AMENDMENT TO AGREEMENT**

This First Amendment to Agreement (this "First Amendment") is made and entered into this 2nd day of December, 2004, by and between **Clearwater Gas System**, a department of the City of Clearwater, a Florida municipal corporation ("Clearwater"), and **Peoples Gas System**, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.), a Florida corporation ("PGS"), to amend certain provisions of the Agreement dated March 17, 1995, between Clearwater and PGS (the "Agreement"). Clearwater and PGS are sometimes referred to singularly as "Party" and collectively referred to as "Parties."

**WITNESSETH:**

WHEREAS, Clearwater and PGS have heretofore entered into the Agreement, a copy of which is attached hereto, for the purpose of avoiding uneconomic duplication of facilities used to provide natural gas service to the public within Pasco County, Florida;

WHEREAS, the Agreement was approved by Order No. PSC-95-0620-AS-GU (Docket No. 940660-GU), issued by the Florida Public Service Commission (the "PSC") on May 22, 1995;

WHEREAS, because of the manner in which the Natural Gas facilities of the Parties have developed, it is desirable that Clearwater provide Natural Gas service to certain areas designated in the Agreement as PGS Territorial Area;

WHEREAS, 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 conditions herein set forth, hereby agree as follows:

1. Section 1.2 of the Agreement is hereby amended to read in its entirety as

follows:

Section 1.2 Clearwater Territorial Area As used herein, the term "Clearwater Territorial Area" shall mean the areas labeled Clearwater Gas System Pasco County Service Area on First Revised Exhibit "A" to this Agreement, which areas are more particularly described as follows:

The Original 1995 Clearwater Territory:

(a) Beginning at the Gulf of Mexico at the northwest corner of Section 30, Township 25 South, Range 16 East and then running easterly along the section lines approximately 0.5 mile north of Ridge Road to the westernmost property line of the frontage property along the western side of Little Road and then generally northerly along the westernmost property lines of the frontage properties along the western side of Little Road to the centerline of SR 52 and then generally easterly along the centerline of SR 52 to the easternmost boundary of the Serenova Development, intersecting at the centerline of SR 52. Then following the eastern and southern boundary lines of the Serenova Development (the legal description of such Development being attached hereto and made a part hereof as Exhibit "B") and then westerly along the southern boundary of the Serenova Development to the northeast corner of Section 2, Township 26 South, Range 17 East and then southerly along the east line of Section 2, 11, 14, 23, 26 and 35 of Township 26 South, Range 17 East to the Hillsborough/Pasco County line, then westerly along the Hillsborough/Pasco County line to the Gulf of Mexico.

(b) All parcels of property adjacent to the western right of way of Little Road within the area described in paragraph (a) above.

The Added 2004 Clearwater Territory:

(c) Beginning at the easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at the centerline of SR 52 near Hays Road, then easterly along the centerline of SR 52 to the centerline of Ehren Cutoff Road (CR 583); then southerly along the centerline of Ehren Cutoff Road (CR 583) to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of Little Lake Thomas Road; then southwesterly

along the centerline of Little Lake Thomas Road to the centerline of Tower Road; then southwesterly along the centerline of Tower Road to the east section line of Section 16, Township 26 South, Range 18 East; then south to the southeast corner of Section 16, Township 26 South, Range 18 East; then west to the northeast corner of Section 20, Township 26 South, Range 18 East; then south to the southeast corner of Section 20, Township 26 South, Range 18 East; then west to the northwest corner of Section 30, Township 26 South, Range 18 East; then continuing west to the northwest corner of Section 25, Township 26 South, Range 17 East; then north along the west section lines of Sections 24, 13, 12 and 1, Township 26 South, Range 17 East to the northwest corner of Section 1, Township 26 South, Range 17 East; then east along the north section lines of Section 1, Township 26 South, Range 17 East and Sections 6, 5, 4, 3 and 2, Township 26 South, Range 18 East, to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of State Road 52. When reference is made to the centerline of a road, it is intended that adjacent parcels on both sides of the road be included within the Clearwater Territorial Area.

(d) A corridor in Section 30, Township 26 South, Range 18 East from the intersection of the centerline of SR 54 and the centerline of the future entrance road to the Bexley Ranch property, northerly along the centerline of the future entrance road to the Bexley Ranch property to the northern boundary of Section 30, Township 26 South, Range 18 East. Said corridor shall include all parcels on the easterly side of the future entrance road to the Bexley Ranch property and all parcels on the westerly side of said entrance road, but excluding all parcels adjacent to SR 54.

If there is a conflict between the boundaries of the Clearwater Territorial Area set forth in this Section 1.2 and the boundaries of the Clearwater Territorial Area as depicted on First Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.2 shall govern.

2. Section 1.3 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.3 PGS Territorial Area As used herein, the term "PGS Territorial Area" shall mean the areas labeled Peoples Gas

System Pasco County Service Area on First Revised Exhibit "A" to this Agreement, such areas consisting of all areas within Pasco County which are not located within the Clearwater Territorial Area described in Section 1.2 of this Agreement. If there is a conflict between the boundaries of the PGS Territorial Area set forth in this Section 1.3 and the boundaries of the PGS Territorial Area as depicted on First Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.3 shall govern.

3. Section 1.8 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.8 Territorial Boundary Line As used herein, the term "Territorial Boundary Line" shall mean each of the boundary lines so labeled, designating the dividing line between the areas shown on First Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.

4. Exhibit "A" to the Agreement is hereby deleted, and First Revised Exhibit "A" attached hereto is hereby substituted therefor.

5. Except as modified by this First Amendment, the Agreement shall continue in full force and effect.

6. The provisions and the Parties' performance of the Agreement, as hereby amended, are subject to the regulatory authority of the PSC, whose approval of the Agreement, as hereby amended, shall be an absolute condition precedent to the validity, enforceability and applicability of this First Amendment and of the Agreement as hereby amended. This First Amendment shall have no force or effect whatsoever until such approval has been obtained, and the Parties hereby agree to jointly petition the PSC for

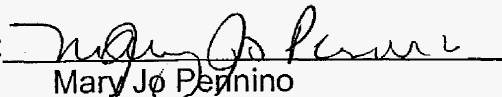
Docket No. 041385-GU  
Date: January 20, 2005

Attachment A

such approval. This First Amendment shall become effective on the date of expiration of the appeal period following the issuance by the PSC of an order approving this First Amendment and the Agreement as hereby amended. In the event the PSC declines to approve this First Amendment, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their respective duly authorized officers as of the date first written above.

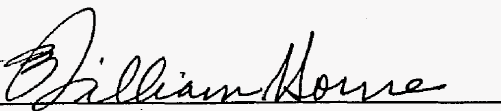
**PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company**

By:   
Mary Jo Perrino  
Vice President – Energy Delivery

Countersigned:


**CITY OF CLEARWATER, FLORIDA**

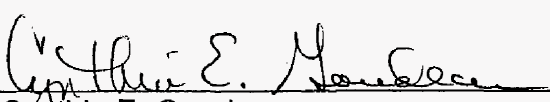
  
Brian J. Aungst  
Mayor-Commissioner

By:   
William Horne  
City Manager

Approved as to form and  
Legal sufficiency:

Attest:

  
Pamela K. Akin LAURA LIPOWSKI  
Asst. City Attorney

  
Cynthia E. Goudeau  
City Clerk



# First Revised Exhibit "A" Clearwater Gas System/Peoples Gas System Pasco County Territorial Map

