

WILLIAM J. PEEBLES, P.A.

ORIGINAL

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RECEIVED FPSC  
PETITION (850) 481-2383  
CELLULAR: (850) 566-3029  
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US NOV 16 PM 2:21

COMMISSION  
CLERK

November 16, 2005

050877-GU

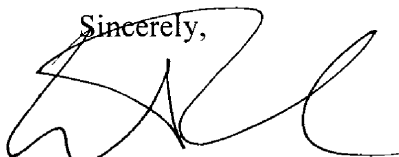
Blanca S. Bayo  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Dear Ms. Bayo

Enclosed is an original 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, along with the required 7 copies.

If there are any questions, please feel free to contact me at my office. Please indicate your receipt of this filing by date stamping a copy of this letter.

Sincerely,



William J. Peebles

WJP/tb

Cc: Ansley Watson, Jr.

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11023 NOV 16 05

FPSC-COMMISSION CLERK

Nov 16 Pen

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: 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 :  
\_\_\_\_\_ :

DOCKET NO. 050877-60

Submitted for Filing:  
11-16-05

**JOINT PETITION**

Petitioners, Peoples Gas System ("Peoples") and Clearwater Gas System, a department of the City of Clearwater ("Clearwater Gas"), by their respective undersigned attorneys and pursuant to Section 366.04(3)(a), *Florida Statutes*, and Rule 25-7.0471, *Florida Administrative Code*, jointly file this petition for an order approving an amendment to the territorial agreement between Peoples and Clearwater Gas, said amendment being attached hereto as Exhibit 1, and in support thereof state as follows:

- 1. The names and mailing addresses of the petitioners are:

Peoples Gas System  
P. O. Box 2562  
Tampa, Florida 33601-2562

Clearwater Gas System  
400 North Myrtle Avenue  
Clearwater, Florida 33755

- 2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this petition are:

Ansley Watson, Jr., Esq.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531

Angela Llewellyn  
Peoples Gas System  
P. O. Box 2562  
Tampa, Florida 33601-2562

William J. Peebles, Esq.  
310 West College Avenue  
Tallahassee, Florida 32301

Chuck Warrington  
General Manager  
Clearwater Gas System  
400 North Myrtle Avenue  
Clearwater, Florida 33755

DOCUMENT NUMBER-DATE

11023 NOV 16 05

FPSC-COMMISSION CLERK

## BACKGROUND

3. In 1994, in Docket No. 940660-GU, PGS initiated a territorial dispute against Clearwater Gas because of the plans of both parties to expand their natural gas distribution facilities in Pasco County. The parties ultimately were able to resolve that territorial dispute through a comprehensive territorial agreement defining the service areas of the parties within Pasco County (the "1995 Agreement").

4. The Commission approved the 1995 Agreement in Order No. PSC - 95-0620-AS-GU, entered May 22, 1995, finding that "the territorial agreement is in the public interest, and its adoption will further our longstanding policy of avoiding unnecessary and uneconomic duplication of facilities." The 1995 Agreement is appended to the referenced order as Attachment A (pages 9 through 23 of the order).

5. Since the approval of the 1995 Agreement the parties have provided natural gas service within their respective territories pursuant to the terms of the agreement and there has, in fact, been no unnecessary and uneconomic duplication of facilities.

6. During 2004, natural gas service was requested to areas allocated by the 1995 Agreement to Peoples, but located adjacent to territory allocated by the agreement to Clearwater Gas. Because of the way in which the facilities of the two parties had developed, it was more economical for Clearwater Gas to provide service to these proposed developments, and the parties sought the Commission's approval of an amendment to the 1995 Agreement to permit such service by Clearwater Gas. The amendment was approved by the Commission's Order No. PSC-05-0163-PAA issued on February 10, 2005, in Docket No. 041385-GU, which order thereafter became final and effective. The amendment is appended to the referenced order as Attachment A (pages 4

through 9 of the order).

7. Natural gas service has now been requested by another proposed development, which lies between the two developments that prompted the amendment to the 1995 Agreement approved in Docket No. 041385-GU. Particularly in view of that amendment, it is again more economical for Clearwater Gas to provide service to this proposed development, and it will likely be more economical for Clearwater Gas to serve any other future development located within this area.

8. Peoples and Clearwater Gas have entered into an amendment (the "Second Amendment," a copy being attached to this Joint Petition as Exhibit 1) to the 1995 Agreement (as previously amended and approved) to permit Clearwater Gas to provide service within the area in which the recently proposed development is located.

### **RELIEF REQUESTED**

9. Petitioners seek the Commission's approval of the Second Amendment to the 1995 Agreement in accordance with Section 366.04(3)(a), *Florida Statutes*, and Rule 25-7.0471, *Florida Administrative Code*.

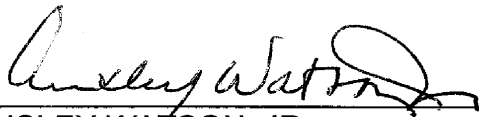
10. The Commission's approval of the Second Amendment is a condition precedent to its effectiveness.

11. Each of Peoples and Clearwater Gas represents that approval and implementation of the Second Amendment to the 1995 Agreement will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of either Peoples or Clearwater Gas.

12. Petitioners submit that the Commission's approval of the Second Amendment will permit the parties to continue to avoid the future uneconomic duplication of facilities, will permit the party best suited to provide service to the development which has recently requested service to provide such service, and is therefore in the public interest.

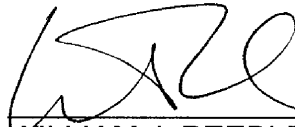
WHEREFORE, Clearwater Gas and Peoples respectfully request that the Commission enter its order approving and adopting the Second Amendment to the 1995 Agreement.

DATED this 16<sup>th</sup> day of November, 2005.



ANSLEY WATSON, JR.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531  
(813) 273-4321

Attorneys for Peoples Gas System



WILLIAM J. PEEBLES, ESQ.  
310 West College Avenue  
Tallahassee, Florida 32301  
(850) 681-7383

Attorney for Clearwater Gas System

## SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement (this "Second Amendment") is made and entered into this 4th day of November, 2005, 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 (as heretofore amended, the "Agreement"). Clearwater and PGS are sometimes referred to singularly as "Party" and collectively referred to as "Parties."

### W I T N E S S E T H:

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 developed, it became desirable that Clearwater provide Natural Gas service to certain areas designated in the Agreement as PGS Territorial Area, and the Parties entered into the First Amendment to Agreement dated December 2, 2004, which was approved by Order No. PSC-05-0163-PAA-GU, issued February 10, 2005; and

WHEREAS, the Parties have determined it is desirable that Clearwater provide Natural Gas service to additional areas designated in the Agreement as PGS Territorial Area.

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 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 Second 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. The 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 and 2005 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 Hayes 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 easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at or near 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 southern boundary line of the Serenova Development (Exhibit "B"); then continuing north along the eastern boundary of the Serenova Development until intersecting the centerline of SR 52.

(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.

(e) When reference is made in paragraphs (a) and (c) above to the "centerline" of a boundary line road between the Clearwater and PGS Territorial Areas, it is intended that adjacent parcels on both sides of that road be included within the Clearwater Territorial Area provided that Clearwater has extended its main along the subject boundary line road; however, (i) if Clearwater has not extended main along a boundary line road and (ii) service is requested by a potential customer lying on the PGS side of such a road serving as a boundary line, and (iii) PGS's facilities for the provision of such service are more proximate to such customer than are those of Clearwater, then PGS shall have the right to serve such customer.



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 Second 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 Second 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 Second 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 Second Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.

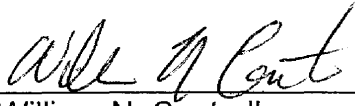
4. First Revised Exhibit "A" to the Agreement is hereby deleted, and Second Revised Exhibit "A" attached hereto is hereby substituted therefor.

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

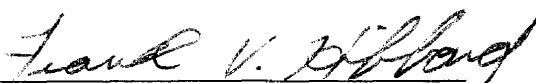
IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed by their respective duly authorized officers as of the date first written above.


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

By:   
William N. Cantrell  
President

Countersigned:

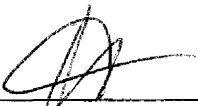
**CITY OF CLEARWATER, FLORIDA**

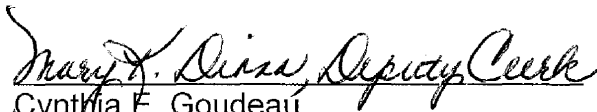

  
Frank V. Hibbard  
Mayor

By:   
William B. Horne II  
City Manager

Approved as to form:

Attest:

  
Laura Lipowski  
Assistant City Attorney

  
for   
Cynthia E. Goudeau  
City Clerk

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

