

State of Florida



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: December 21, 2005

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

FROM: Office of the General Counsel (Gervasi) *SB for MAH and RB*
Division of Competitive Markets & Enforcement (Beard, Bulecza-Banks) *CBB CRB* *[Signature]*

RE: Docket No. 050877-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: 01/05/06 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050877.RCM.DOC

Case Background

In 1994, Peoples Gas System (Peoples) initiated a territorial dispute against Clearwater Gas System (Clearwater) 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 was in the public interest, and that adoption of the

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agreement would further the Commission's longstanding policy of avoiding unnecessary and uneconomic duplication of facilities.

In 2004, Peoples and Clearwater filed a Joint Petition requesting approval of the First Amendment to the 1995 Agreement. In the amendment, both parties agreed to permit Clearwater to provide natural gas service to the developer of Connerton, a 4,800 acre community that was under development, and that neither Peoples nor Clearwater was serving. The Commission approved the Amendment in Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, in Docket No. 041385-GU, In re: Joint Petition for approval of amendment in Pasco County, by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater, finding that the First Amendment to the 1995 Territorial Agreement was in the public interest.

On November 16, 2005, Peoples and Clearwater filed a Joint Petition requesting approval of a Second Amendment to the 1995 Territorial Agreement (Territorial Agreement), which is attached to this recommendation as Attachment A. The Second Amendment requests that Clearwater be permitted to provide natural gas services to a new development, Lakeshore Ranch, as well as to the surrounding areas shown on the attached map.

The Commission has jurisdiction pursuant to 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 upon the expiration of the appeal period following the issuance of the Consummating Order in this docket. (Gervasi, Beard, Bulecza-Banks)

Staff Analysis: Natural gas service has been requested by a developer for the proposed Lakeshore Ranch development located in Pasco County. Lakeshore Ranch is located between two existing developments, Serenova Development and Connerton. The existing Connerton development prompted the First Amendment to the Peoples and Clearwater Territorial Agreement. In the First Amendment, the parties agreed to permit Clearwater to provide natural gas service to the developer of Connerton, a 4,800 acre community that was under development, and that neither Peoples nor Clearwater was serving.

With respect to the current development, and those in the surrounding areas, both Peoples and Clearwater find that it is more economical for Clearwater to provide services to Lakeshore Ranch and future developments in this area. As a result, the companies have worked together to develop a Second Amendment to the Territorial Agreement. Under the Second Amendment, Clearwater will be permitted to provide services to Lakeshore Ranch and to surrounding areas as shown on the attached map. Both companies agree that implementation of the Second Amendment (attached) will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of either Peoples or Clearwater.

The Second Amendment meets the requirements set forth in Rule 25-7.0471, Florida Administrative Code, Territorial Agreement for Natural Gas Utilities. Approval of the Second 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 development to provide such service. The Second Amendment will not cause a decrease in the reliability of gas service to existing or future ratepayers of Peoples or Clearwater. Therefore, staff believes the Second Amendment is in the public interest and should be approved. The amendment should become effective upon the expiration of the appeal period following the issuance of the Consummating Order in this docket.

Docket No. 050877-GU
Date: December 21, 2005

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 Order approving this amendment, the docket should remain open. (Gervasi)

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 Order approving this amendment, the docket should remain open.

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."

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 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.

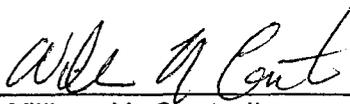
4. First Revised Exhibit "A" to the Agreement is hereby deleted, and Second Revised Exhibit "A" attached hereto is hereby substituted therefor.

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.

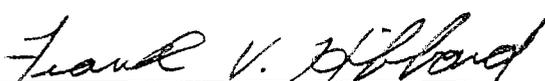
IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed by their respective duly authorized officers as of the date first written above.

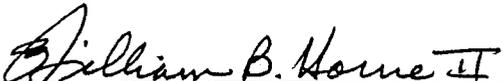
**PEOPLES GAS SYSTEM, a division
of Tampa Electric Company**

By: 
William N. Cantrell
President

Countersigned:

CITY OF CLEARWATER, FLORIDA

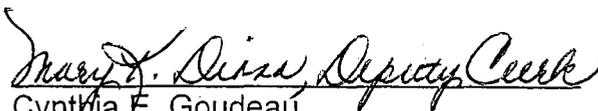
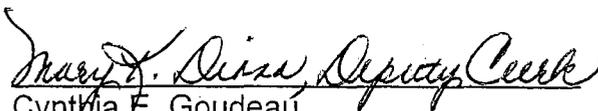

Frank V. Hibbard
Mayor

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

