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Sent: Monday, November 10, 2008 4:29 PM
To: Filings@psc.state.fl.us
Cc: Kandi Floyd; Binswanger, Lewis M.; Doc Horton; Keino Young
Subject: Docket No. 080642-GU
Attachments: 080642 - PGS Motion.pdf

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- b. Docket No. 080642-GU – Petition of Florida Public Utilities Company to resolve a territorial dispute with Peoples Gas System
- c. Peoples Gas System
- d. Total of 3 pages
- e. The attached document is Peoples' Motion to Dismiss Petition or, in the Alternative, for More Definite Statement.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities :
Company to resolve a territorial dispute :
with Peoples Gas System. :
_____ :

Docket No. 080642-GU

Submitted for filing:
11-10-08

**PEOPLES' MOTION TO DISMISS PETITION OR,
IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT**

Pursuant to Rule 28-106.204, *Florida Administrative Code*, Peoples Gas System ("PGS") moves the Commission for an order dismissing the Petition of Florida Public Utilities Company ("FPUC") to Resolve a Territorial Dispute, filed in the captioned docket on October 15, 2008 (the "Petition") or, in the alternative, for more definite statement, and in support of its alternative motions says:

MOTION TO DISMISS PETITION

Peoples moves the Commission for an order dismissing the Petition on the ground that the Petition fails to state a claim upon which relief can be granted (*i.e.*, fails to allege the existence of a dispute the Commission has jurisdiction to resolve) in that:

1. The Petition fails to describe the territory in dispute between FPUC and Peoples. The territory in dispute is variously described as "areas served by FPUC" (Petition ¶9), "areas in the expansion plans of FPUC" (Petition ¶9), an "area shown in Exhibit 'A'" where "FPUC has installed lines within an area" within certain boundaries (Petition ¶10), "several areas between the St. Lucie Canal and the Turnpike" where FPUC allegedly serves propane customers with an underground system which it plans to convert to natural gas (Petition ¶10), "the described service area" (which is not identified in the Petition) (Petition ¶13), and "the service area of FPUC as described on Exhibit A" ("wherefore" clause of Petition). Peoples submits that the Petition fails to

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allege the area in dispute with sufficient specificity for the Commission to determine (other than from FPUC's conclusory allegations in the Petition) that a territorial dispute over which the Commission has jurisdiction even exists.

2. While Rule 25-7.0472, *Florida Administrative Code*, does not govern the contents of a petition to resolve a territorial dispute, that rule requires each utility party to a territorial dispute to provide a "map and written description of the disputed area." FPUC's Petition provides the map included in its tariff (Exhibit "A" to the Petition) and two other maps (Exhibit "B" to the Petition). The Petition does not indicate which, if any, of the maps FPUC contends depicts the area (or areas) allegedly in dispute between FPUC and Peoples.

3. Section 366.04(3), *Florida Statutes*, quoted by FPUC (Petition ¶3), vests the Commission with jurisdiction to resolve territorial disputes between "natural gas utilities." The Petition makes no allegation that FPUC is providing "natural gas service" within or even adjacent to any of the possible, but unspecified disputed areas mentioned in the Petition. In fact, to the extent the disputed area is the area to the west of Stuart depicted on the two maps comprising Exhibit "B" to the Petition, FPUC's most proximate source of natural gas to serve the area is approximately 20 miles away.

ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT


In the alternative, and based on paragraphs 1 through 3 above, inclusive, Peoples moves the Commission for an order requiring a more definite statement by FPUC with respect to

A. the area(s) within Martin County within which FPUC currently delivers natural gas to customers; and

B. the area(s) within Martin County which FPUC alleges to be the "disputed area(s)" as to which it desires the Commission to determine that either FPUC or Peoples is entitled to provide natural gas service.

Counsel for Peoples has conferred with counsel for FPUC, who opposes a grant of this alternative motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the forgoing Motion to Dismiss Petition or, in the Alternative, for More Definite Statement, has been furnished by regular U.S. Mail to Norman H. Horton, Jr., Esquire, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308, and Keino Young, Esquire, Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 10th day of November, 2008.



Ansley Watson, Jr.