

Marguerite McLean

From: Ansley Watson, JR. [AW@macfar.com]
Sent: Thursday, May 14, 2009 4:49 PM
To: Filings@psc.state.fl.us
Cc: Doc Horton; Keino Young; Binswanger, Lewis M.; Floyd, Kandi M.; Wall, Rick F.; Bruce Narzissenfeld
Subject: Docket No. 080642-GU
Attachments: 080642 - PGS Response to FPUC Amended Petition.pdf

- a. Ansley Watson, Jr.
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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. Five (5) pages
- e. The attached document is Peoples' Response to FPUC's Amended Petition.

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DOCUMENT NUMBER-DATE

04689 MAY 14 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities : Docket No. 080642-GU
Company to resolve a territorial dispute :
with Peoples Gas System. : Submitted for filing:
: 5-14-09
_____:

PEOPLES' RESPONSE TO FPUC's AMENDED PETITION

Peoples Gas System ("Peoples") responds to the Amended Petition filed in this docket by Florida Public Utilities Company ("FPUC") to resolve a purported territorial dispute, and says:

GENERAL RESPONSE

Commission Staff, by letters dated January 9, 2009 (prior to FPUC's filing of its Amended Petition), requested that each of the parties to this alleged dispute "submit all requirements of Rule 25-7.0472(2), F.A.C., by March 9, 2009." While not covered by subsection (2) of the rule, subsection (1) requires that each party to the dispute "provide a map and written description of the disputed area." Peoples did not initiate this proceeding, and therefore cannot provide either a map or written description. Peoples alleges that such written description is a prerequisite to a finding that a dispute which the Commission has jurisdiction to resolve even exists.

Notwithstanding its lack of knowledge as to what FPUC contends is the disputed area, Peoples will endeavor to respond to FPUC's Amended Petition.

RESPONSE TO AMENDED PETITION

With respect to the correspondingly numbered paragraphs of the Amended Petition, Peoples states:

1. Admitted.

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2. Admitted.

3. Admitted.

4. Denied to the extent Paragraph 4 of the Amended Petition alleges that FPUC provides natural gas service to any customers in Martin County, Florida (other than customers that would – absent the Commission’s approval of an agreement between FPUC and Indiantown Gas Company (“IGC”) in Order No. PSC-06-9948 – be located within the service territory of IGC. Otherwise, the allegations of Paragraph 4 are admitted.

5. Denied that a territorial dispute exists, and otherwise admitted.

6. Admitted that the Commission’s Order No. PSC-06-0948 approved a territorial agreement between IGC and FPUC, that FPUC’s Second Revised Sheet to its natural gas tariff is attached to the Amended Petition as Exhibit A; otherwise denied.

7. Admitted.

8. Admitted that Peoples does not currently provide natural gas service to customers in Martin County west of the Turnpike, and at the time of the filing of the Amended Petition had begun construction of a section of pipe that extends under the Turnpike; otherwise denied.

9. To the extent it is alleged in Paragraph 9 that FPUC provides natural gas service in the areas described in said paragraph, denied; otherwise, without knowledge.

10. Admitted that at the time of the filing of the Amended Petition Peoples was constructing a line running east to west on SW Martin Hwy and under the Florida Turnpike and that Peoples intends (and communicated such intent to FPUC) to complete such construction; otherwise denied.

11. Admitted that FPUC and Peoples have had numerous conversations regarding the installation of the line running east to west on SW Martin Hwy and under the Florida Turnpike, that Peoples intends to install a line in the area generally described in the fifth sentence of paragraph 11 of the Amended Petition, and that one purpose of such line would be to tie into Peoples' existing mains to improve reliability and capacity; otherwise denied.

12. Denied that either of the agreements attached to the Amended Petition as Exhibit C or D obligates FPUC (or contains any commitment by FPUC) to provide natural gas service; otherwise without knowledge.

AFFIRMATIVE ALLEGATIONS

13. No "territorial dispute" within the meaning of Chapter 366, *Florida Statutes*, exists between FPUC and Peoples in Martin County because:

a. There is presently no threat, or even likelihood, that the facilities of one party will be duplicated by those of the other party.

b. To the extent there is demand for natural gas service at any location in Martin County, and whether the "disputed area" is the area depicted on Exhibit A to the Amended Petition or Exhibit B to the Amended Petition, Peoples is far better positioned to extend its facilities to serve such demand than is FPUC, and would be able to do so at a far lesser cost because of its greater proximity to virtually all locations in the county.

c. FPUC provides natural gas service in Martin County only within a small area located entirely within the natural gas service area of IGC.

Such service is provided through an exchange meter that allows IGC to sell natural gas to FPUC for the purpose of serving a new residential development in the small area. Upon information and belief, this small area is the one covered by the territorial agreement between IGC and FPUC approved by the Commission in November 2006 (Order No. PSC-06-0948).

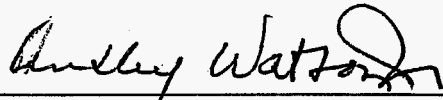
14 FPUC's tariff sheet map (Exhibit A to the Amended Petition) is irrelevant to the disposition of the dispute alleged in the Amended Petition. To the extent deemed relevant, the service area map contained in Peoples' tariff (Original Sheet No. 3.000), including all of Martin County, first became effective on June 9, 2000, several years before the effective date of Exhibit A to the Amended Petition. Further, First Revised Sheet No. 6.101-2, originally effective April 1, 2000, lists "Stewart" and "Unincorporated Martin County" as Peoples' service area in Martin County.

15. Neither the Commission's Order No. PSC-06-0948, nor the territorial agreement between IGC and FPUC approved by such order, is binding on Peoples, nor does such order or territorial agreement confer any rights on IGC or FPUC as against Peoples.

16. FPUC has no interconnection with an interstate or intrastate natural gas transmission pipeline in Martin County from which to obtain supplies of natural gas.

WHEREFORE, Peoples prays the Commission will enter an order finding that no territorial dispute as contemplated by Section 366.04(3), *Florida Statutes*, exists, and dismissing the Amended Petition of FPUC without prejudice to the re-filing of a petition at such time as a dispute exists.

Respectfully submitted,

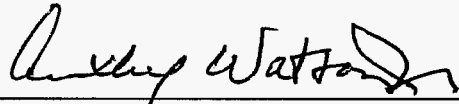


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Attorneys for Peoples Gas System

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Peoples' Response to FPUC's Amended Petition has been furnished electronically and by regular U.S. Mail to Norman H. Horton, Jr., Esquire, Messer, Caparello & Self, P.A., P. O. Box 15579, Tallahassee, Florida 32317, and Keino Young, Esquire, Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 14th day of May, 2009.



Ansley Watson, Jr.