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IN REPLY REFER TO:

Ansley Watson, Jr.
P.O. Box 1531
Tampa, Florida 33601
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January 18, 2012

VIA FEDEX

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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COMMISSION
CLERK

**Re: Docket No. 110308-GU – Request by Peoples Gas System to modify
Tariff Sheet 5.701 to add sections entitled “Limits of Company's
Responsibilities” and “Continuity of Service”**

Dear Ms. Cole:

Enclosed for filing with the Commission on behalf of Peoples Gas System, please find the original and 12 copies of Peoples' request referenced above. Enclosed also are five copies of Fourth Revised Sheet No. 5.701 to Peoples' Natural Gas Tariff, Original Volume No. 3, for which the Company's request seeks the Commission's approval.

The coded (legislative style) versions of the above revised sheet required by Rule 25-9.005, F.A.C., are attached to the Company's petition.

Please acknowledge your receipt of the enclosures and the date of their filing on the enclosed copy of this letter, and return the same to me in the enclosed preaddressed envelope.

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Ann Cole
January 18, 2012
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Thank you for your usual assistance.

Sincerely,

A handwritten signature in black ink that reads "Ansley Watson, Jr." with a stylized flourish at the end.

Ansley Watson, Jr.

AWjr/a
Enclosures

cc: Ms. Kandi M. Floyd

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Peoples Gas System to)
modify Tariff Sheet 5.701 to add sections)
entitled "Limits of Company's Responsibilities")
and "Continuity of Service.")
_____)

DOCKET NO. 110308-GU

Submitted for filing:
1-19-12

**REQUEST FOR APPROVAL OF
MODIFICATIONS TO TARIFF SHEET NO. 5.701**

Peoples Gas System ("Peoples" or the "Company"), by its undersigned attorneys, requests the Florida Public Service Commission's ("Commission's") approval of modifications to Sheet No. 5.701 of its Natural Gas Tariff, Original Volume No. 3, to add provisions entitled Continuity of Service and Limits of Company's Responsibilities. The revised tariff sheet for which Peoples seeks the Commission's approval is submitted herewith. In support of its request, the Company states:

1. The name and address of the petitioner are:

Peoples Gas System
702 N. Franklin Street
Tampa, Florida 33602

2. The persons to whom notices, orders and pleadings in this docket should be addressed are:

Ansley Watson, Jr., Esquire
Macfarlane Ferguson & McMullen
Post Office Box 1531
Tampa, Florida 33601-1531

Paula K. Brown
Peoples Gas System
Post Office Box 2562
Tampa, Florida 33601-2562

Kandi M. Floyd
Peoples Gas System
Post Office Box 2562
Tampa, Florida 33601-2562

DOCUMENT NUMBER-DATE

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BACKGROUND

3. Peoples periodically reviews the provisions of its Commission-approved tariff based on its operating experience to determine whether any changes are necessary. The Company concluded such a review during 2011, and filed numerous changes for approval, virtually all of which were required to correct typographical and formatting errors or to clarify various provisions in the tariff. The changes to Sheet No. 5.701 covered by the instant request would add new provisions to the Company's Commission-approved tariff.

4. Certain modifications previously approved administratively are relevant to the new provisions for which approval is requested herein.

THE REVISED TARIFF SHEET

5. As previously indicated, the revised tariff sheet for which Peoples seeks approval is attached to this request in legislative style as Exhibit A.

6. Provisions on "Continuity of Service" – substantially the same as the provisions in the tariffs of Commission-regulated electric utilities – and "Limits of Company's Responsibilities" have been added to make clear (in the case of the Continuity of Service provision) that while Peoples will use reasonable diligence to provide regular, uninterrupted gas service to its Customers, it will not be responsible or liable to its customers for matters not within the control of the Company, or for interruptions of gas service which are the result of Peoples' simple or ordinary negligence. This provision will replace the Force Majeure provision that has been a part of the Company's tariff for decades. "Force majeure" is a French term whose literal meaning is "greater force." In the context of contracts, it has come to mean events or circumstances that a party has no

ability to prevent or overcome. Because this is the essence of the Continuity of Service provision being added to the tariff, the force majeure provision is no longer necessary, and was eliminated with the changes to the tariff previously approved. The definition of force majeure, however, has been retained, but moved to the Technical Terms and Abbreviations section of the tariff.

7. The Limits of Company's Responsibilities provision states, in essence, that Peoples will not be liable for any damages resulting from the Customer's installations or things the Customer or others may do on the Customer's premises. It also provides that Peoples will not be responsible for the use, care or handling of gas after it has actually been delivered to the Customer. Finally, it provides that Peoples will not be liable to the Customer for naturally occurring or other impurities, regardless of the source, such as water, sand, black powder, sulfur, butane, or other chemicals or compounds in the gas delivered to Customer, and that an interruption or other limitation of gas service resulting from Peoples' determination that an emergency or system operating condition warrants interruption, curtailment or other limitation of the gas service being rendered, will not constitute a breach of contract or render Peoples liable for resulting damages, or excuse the Customer from continuing to fulfill its obligations to Peoples.

8. Both the Continuity of Service and Limits of Company's Responsibilities provisions Peoples seeks to add to its tariff can be broadly characterized as "limitation of liability" provisions. These types of provisions have been routinely approved by public utility regulatory bodies throughout the United States, and upheld by the courts for many years. The provision of natural gas service, as is the provision of electric service, is a

fundamental and necessary activity to serve the public welfare. A utility's exposure to liability from the provision of this service can sometimes be considerable, to the point that if a utility was forced to self-insure for the liability exposure, it might well not be able to provide adequate service at reasonable rates. Balancing these two competing societal concepts – the demand for a remedy for harm caused by another, and the demand for the provision of natural gas service at reasonable rates – courts and state utility commissions have supported limitations of liability such as the Continuity of Service provision as being in the public interest.

9. The leading case on public utility limitations of liability in Florida is *Landrum v. Florida Power & Light Company*, 505 So.2d 552 (Fla. 1987), wherein the Florida Supreme Court stated:

It is well established that a limitation of liability contained in a tariff is an essential part of the rate, and that the consumer is bound by the tariff regardless of his knowledge or assent thereto. . . . (citations omitted)

The court in *Landrum* relied in part on the U.S. Supreme Court's decision in *Southwestern Sugar & Molasses Co. v. River Terminals Corp.*, 360 U.S. 411, 418, 78 S.Ct. 1210, 3 L.Ed.2d 1334, 1340-41 (1959), and stated:

As stated by the United States Supreme Court, "[f]or all we know, it may be that the rate specified in the relevant tariff is computed on the understanding that the exculpatory clause shall apply to relieve the [utility] of the expense of insuring itself against liability for damage . . . and is a reasonable rate so computed."

In *Bellsouth Telecommunications, Inc. v. Kerrigan*, 55 F.Supp.2d 1314 (N.D. Fla. 1999), after discussing the filed rate doctrine, the court stated:

. . . A limitation of liability clause in a tariff is an essential and valid part of the rate, and serves the public interest by allowing lower utility rates. . . . (citations omitted)

10. Peoples would note that both provisions to be added to the tariff address circumstances over which the Company has virtually no control; that is, they deal with circumstances that would satisfy the definition of force majeure that has been a part of Peoples' tariff for many years, or that occur through the acts or omissions of the Customer or others after the point at which gas is delivered by the Company to the Customer. It would be inherently unfair to charge Peoples with responsibility or liability for matters over which it has no control.

11. With respect to the gas quality ("impurities") portion of the Limits of Company's Responsibilities provision, Peoples and other Florida natural gas utilities ("LDCs") have no control over the characteristics of the gas they deliver to their customers. Standards for some of the more important characteristics of the gas are set forth in the Federal Energy Regulatory Commission ("FERC") tariffs of the interstate pipelines with which Florida LDCs are interconnected. Some (but not all) major characteristics of the gas are measured by the pipeline delivering the gas into the LDC's distribution system through the use of gas chromatographs at points throughout their pipeline systems.¹ Although gas quality information is posted on interstate pipelines' electronic bulletin boards, the postings are not a complete analysis of the quality of the gas, nor are the characteristics measured at each point on the pipeline. While Peoples monitors the chromatograph readings of the interstate pipelines, the Company does not possess its own chromatographs to measure gas quality (other than those at various power plants). Impurities are sometimes


¹ The interstate pipelines with which Peoples is interconnected generally measure BTU (higher heating value), CO₂, N₂, specific gravity, methane, ethane, propane, I-butane, N-butane, I-pentane, C₆, C₇, H₂, helium and oxygen.

introduced into the interstate pipelines' systems (e.g., compressor oil, sea water through line breaks, etc.) notwithstanding their FERC tariffs' very specific quality requirements for the gas they will accept for transportation. Other impurities could be introduced into the Peoples system through unconventional supplies (e.g., landfill gas). To date, Peoples has not accepted these supplies into its distribution system, but this could change in the future. Notwithstanding Peoples' inability to control the quality of the gas received into its distribution system, its Commission-approved tariff contains detailed specifications with respect to the characteristics of the gas it will accept. It is therefore entirely reasonable that Peoples not be responsible in the event a Customer causes gas containing impurities (which would not meet the specifications for gas Peoples has agreed to accept) to be introduced into the Company's system.

12. Peoples submits that the Continuity of Service and Limits of Company's Responsibilities provisions for which approval is sought by this request are reasonable, have been approved by this and other commissions for many years and upheld by the courts when challenged, and should be approved.

WHEREFORE, Peoples respectfully requests the Commission will enter its order permitting revised Tariff Sheet No. 5.701, attached to this request, to become effective on the date of the Commission's vote.

Respectfully submitted,



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Attorneys for Peoples Gas System

PEOPLES GAS SYSTEM

“EXHIBIT A”

REVISED TARIFF SHEET

SHEET No. 5.701

Peoples Gas System
a Division of Tampa Electric Company
Original Volume No. 3

Third Fourth Revised Sheet No. 5.701
Cancels Second Third Revised Sheet No. 5.701

VII

LIMITS OF COMPANY'S RESPONSIBILITIES

The Company shall not be liable for any property damage, fatality, or personal injury sustained on the Customer's premises resulting from the Customer's Installation or the gas pipe, fittings, appliances and apparatus of any type of others on Customer's premises. The Company will not be responsible for the use, care or handling of Gas delivered to Customer after it passes from the Company's lines on the Customer's side of the Point of Delivery. The Company shall not be liable to the Customer for naturally occurring or other impurities, regardless of the source, such as water, sand, black powder, sulfur, butane, or other chemicals or compounds in the Gas delivered to Customer.

Whenever Company deems an emergency or system operating condition warrants interruption, curtailment or other limitation of the Gas Service being rendered, such interruption, curtailment or other limitation shall not constitute a breach of contract and shall not render Company liable for damages suffered as a result of such interruption, curtailment or other limitation of Gas Service, or excuse Customer from continuing to fulfill its obligations to Company.

VIII

CONTINUITY OF SERVICE

The Company will use reasonable diligence at all times to provide regular, uninterrupted Gas Service, and shall not be liable to the Customer for any fatality, injury to person, or loss of or damage to property arising from causes beyond its control or from the ordinary negligence of the Company, its employees, servants or agents, including, but not limited to, damages for complete or partial failure or interruption of service, for initiation of or re-connection of service, for shutdown for repairs or adjustments, for fluctuations in Gas flow, for delay in providing or restoring Gas Service, for termination of Gas Service, or for failure to warn of interruption of Gas Service.

IX

LIMITATION ON CONSEQUENTIAL DAMAGES

Customer shall not be entitled to recover from Company any consequential, indirect, incidental or special damages, such as loss of use of any property or equipment, loss of profits or income, loss of production, rental expenses for replacement property or equipment, diminution in value of real property, or expenses to restore operations, or loss of goods or products.

Issued By: G. L. Gillette, President
Issued On: October 19, 2011

Effective: