

Eric Fryson

From: Ansley Watson, JR. <AW@macfar.com>
Sent: Wednesday, June 26, 2013 11:17 AM
To: Filings@psc.state.fl.us
Cc: 'Floyd, Kandi M.'; Martha Brown; 'Carole Barice'; 'Dion, Ed'; 'Nicholson, David M.'
Subject: Docket No. 130166-GU -- Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District
Attachments: image001.jpg; 130166 - PGS LANGD Letter - 06262013.pdf

a. Ansley Watson, Jr.
Macfarlane Ferguson & McMullen
P. O. Box 1531
Tampa, Florida 33601
Phone: (813) 273-4321
Fax: (813) 273-4396
E-mail: aw@macfar.com

and

Carole Joy Barice
McGee & Mason, P.A.
101 South Main Street
Brooksville, Florida 34601
Phone: (352) 796-0796
Fax: (352)
E-mail: carolebarice@mcgeemasonlaw.com

b. Docket No. 130166-GU -- Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District.

c. Peoples Gas System and The Lake Apopka Natural Gas District

d. Total of 4 pages

e. The attached document is a letter providing information supplemental to the information contained in the Territorial Agreement and the Joint Petition for approval of same.

Ansley Watson, Jr.
Macfarlane Ferguson & McMullen
One Tampa City Center
P.O. Box 1531 Tampa, FL 33601
201 N. Franklin Street Suite 2000
Tampa, FL 33602
Main: (813)273-4200
Direct: (813)273-4321
Mobile: (813)695-5900
Fax: (813)273-4396
aw@macfar.com
[V Card](#) ♦ [Bio](#)

Please visit www.mfmlegal.com for more information about our Firm



MACFARLANE FERGUSON & McMULLEN

Attorneys & Counselors At Law

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MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

1611 HARDEN BOULEVARD
LAKELAND, FLORIDA 33603
(863) 680-9908 FAX (863) 663-2849

ONE TAMPA CITY CENTER, SUITE 2000
201 NORTH FRANKLIN STREET
P.O. BOX 1631 (ZIP 33601)
TAMPA, FLORIDA 33602
(813) 273-4200 FAX (813) 273-4396

www.mfmlegal.com
EMAIL: info@mfmlegal.com

625 COURT STREET
P. O. BOX 1669 (ZIP 33757)
CLEARWATER, FLORIDA 33756
(727) 441-8966 FAX (727) 442-6470

IN REPLY REFER TO:

Ansley Watson, Jr.
P.O. Box 1531
Tampa, Florida 33601
e-mail: aw@macfar.com

June 26, 2013

VIA E-FILING

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

Re: Docket No. 130166-GU -- Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District

Dear Ms. Cole:

On behalf of Peoples Gas System ("PGS") and The Lake Apopka Natural Gas District ("LANGD"), please accept the following information supplemental to the information contained in the Joint Petition and the Territorial Agreement attached thereto as Exhibit 1 (the "Territorial Agreement"). This supplemental information is responsive to portions of Rule 25-7.0471, *Florida Administrative Code* (the "Rule").

Subparagraph (1)(c) of the Rule requires the submission of a territorial agreement to include "the number and class of customers to be transferred." There are approximately 140 customers that will be transferred from PGS to LANGD. However, none of these customers will be transferred because of, or pursuant to, the Territorial Agreement. Rather, they will be transferred because they are currently receiving gas service through PGS facilities that will be sold to LANGD pursuant to the Asset Purchase and Sale Agreement between the utilities.¹ Those transfers will take place only upon the consummation of that purchase and sale of facilities, which consummation will occur only after the Commission has entered a final order approving

¹ Copy of the Asset Purchase and Sale Agreement was provided to the Commission Staff prior to the filing of the Joint Petition in this docket.

the Territorial Agreement, and such order has become non-appealable. Again, the customer transfers will be made pursuant to the Asset Purchase and Sale Agreement after the Territorial Agreement has been finally approved by the Commission. The Territorial Agreement will then become effective only upon the closing of the purchase and sale called for by the Asset Purchase and Sale Agreement.

Subparagraph (1)(d) of the Rule requires "assurance that the affected customers have been contacted and the difference in rates explained." Exhibit C to the Asset Purchase and Sale Agreement spells out the procedures to be followed by PGS and LANGD in consummating the purchase and sale of facilities (and the customers currently provided gas service through such facilities). It also provides for PGS's taking final meter readings, billing customers based on such meter readings, and sending a letter to customers advising of the transfers. Thus, as of the date of this letter, only a handful of customers has been contacted by either or both of PGS and LANGD.

While the Asset Purchase and Sale Agreement contemplates notice to customers being given only after the Commission's final approval of the Territorial Agreement, and the subsequent consummation of the purchase and sale of facilities provided for in the Asset Purchase and Sale Agreement, PGS and LANGD have agreed to provide such notice, including information with respect to the "difference in rates," as soon as practicable within the next week. The Lake Apopka Natural Gas District has agreed to apply the same rates as charged by TECO Peoples Gas through September 30, 2014. The notice informs the customers of this, and that they will not see a difference in rates. A copy of such notice will be filed with the Commission as additional information supplemental to that provided in this letter, the Joint Petition, and the Territorial Agreement.

Subparagraph (1)(e) of the Rule requires "information with respect to the degree of acceptance by affected customers, i.e., the number in favor and those opposed to the transfer." On this aspect of the Rule, we would point out the following (some of which has been previously mentioned above):

a. The Territorial Agreement provides for no transfers of customers, and will become effective as between PGS and LANGD only after final approval by the Commission and the consummation of the purchase and sale of facilities provided for in the Asset Purchase and Sale Agreement (which consummation will take place only after receipt of the Commission's final approval of the Territorial Agreement).

b. The parties will be notifying customers to be transferred within the next week. Even after such notice has been provided (and time has passed), it is

unlikely that any significant number of the approximately 140 affected customers will advise whether they are "in favor" of or "opposed to" the transfer. Thus, it is unlikely the parties will be able to provide the Commission with any meaningful number of "pros" and "cons" to the transfers. (The undersigned would also note that, despite having sought Commission approval for numerous territorial agreements in the past (some of them providing for contemporaneous or future customer transfers), he has never provided the information sought by subsection (1)(e) of the Rule as a part of obtaining Commission approval of the territorial agreements.

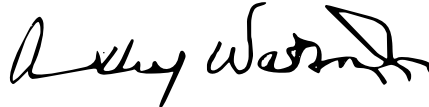
c. Notwithstanding paragraph b above, the parties are aware of a handful of customers that have expressed opposition to their transfer from PGS to LANGD based presumably on the differences in rates between the two utilities. However, the Lake Apopka Natural Gas District has agreed to apply the same rates as charged by TECO Peoples Gas through September 30, 2014. While customers are, pursuant to §366.04(4), *Florida Statutes*, and the Commission's rules, entitled to present oral and written communications and, if substantially affected, intervene, in this proceeding, we do not believe a mere rate differential rises to the level of making the transfers "contrary to the public interest" so as to provide a basis for the Commission's withholding approval of the Territorial Agreement in this docket. *Cf.*, *Utilities Com'n of City of New Smyrna Beach v. Florida Public Service Com'n*, 469 So.2d 731 (Fla. 1985).

The Asset Purchase and Sale Agreement was entered into by PGS and LANGD for the purpose of documenting and consummating LANGD's exercise of options to purchase gas distribution facilities installed by PGS pursuant to agreements between them, and in which LANGD was granted an option to purchase such facilities at a later date (the "1990 Agreements"). PGS maintains that none of the Asset Purchase and Sale Agreement, or the 1990 Agreements, is a "territorial agreement,"² because none of such agreements identifies the geographical areas to be served by the parties to the agreement, and therefore do not meet the definition in the Commission's rules. The Territorial Agreement which is the subject of the Joint Petition for Commission approval in this docket was entered into by the parties to acknowledge, as between the parties, that the locations occupied by the Transfer Facilities constitute a service area of LANGD. For the reasons set forth in the Joint Petition, the Territorial Agreement should be approved by the Commission.

² The Florida Statutes do not define the term "territorial agreement." The Commission's Rule 25-7.047(1) defines the term as "the entire agreement between two or more natural gas utilities which identifies the geographical areas to be served by each natural gas utility party to the agreement (emphasis supplied)

Ms. Ann Cole
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Respectfully,

A handwritten signature in black ink, appearing to read "Ansley Watson, Jr.", written in a cursive style.

ANSLEY WATSON, JR.

AWjr/a
Enclosure

cc: Carole Joy Barice, Esquire
Ms. Kandi M. Floyd