

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to resolve territorial dispute in )  
Sumter County and/or Lake County with )  
City of Leesburg and/or South Sumter Gas )  
Company, LLC, by Peoples Gas System )  
\_\_\_\_\_ )

Docket No. 20180055-GU  
Filed: April 2, 2018

**SOUTH SUMTER GAS COMPANY MOTION TO DISMISS**

South Sumter Gas Company, LLC (“SSGC”), by and through its undersigned counsel, and pursuant to Florida Statutes Sections 120.569(2)(e), and Rule 28-106.204, Florida Administrative Code (“FAC”), hereby files with the Florida Public Service Commission (“PSC” or “Commission”) this Motion to Dismiss (“Motion”) the Peoples Gas System Petition (“Petition”) in the above stated matter because the Petition initiating this matter does not comport with the minimal filing requirements of Florida law and because there is no territorial dispute that requires any action by this Commission. In support of this Motion, SSGC states as follows:

**I. Introduction and Background**

1. On its face, this case is nothing more than a blatant and futile land grab by Peoples Gas System (“PGS”) combined with an effort to interfere with the business relationship between SSGC and the City of Leesburg (“Leesburg”) and the development plan for the rapidly growing portions of Sumter and Lake counties located south of State Road 44 and being developed by The Villages Land Company, LLC (“Developer”), one of the companies associated with the larger master planned community known as The Villages Community. The Commission should reject any effort to draw a line on the ground because at this time it is completely unnecessary – there is no current territorial agreement or order governing Sumter County or those portions of Lake County that SSGC and The Villages Community seek to develop, the Petition does not make a prima facie case for a territorial dispute, and the Developer

could very easily choose to build homes without natural gas appliances thus mooted this “alleged” but nonexistent “dispute.”

2. The Petition relies upon the agreement between the City of Leesburg and SSGC (“Agreement”)<sup>1</sup> for its alleged territorial dispute. The immediate catalyst for PGS is a new community, to be called The Villages of Southern Oaks (“Southern Oaks”), that is being developed by the Developer south of State Road 44 in Sumter and Lake counties, with some development occurring within the City of Leesburg. Southern Oaks is a continuation of The Villages Community, the largest single site, master planned residential community in the United States, currently located within the unincorporated areas of Marion, Lake, and Sumter counties with portions located or to be located within the corporate municipal limits of the City of Wildwood, the Town of Lady Lake, the City of Fruitland Park, and Leesburg.

3. Southern Oaks is a greenfield development that is not within any natural gas service area subject to any territorial agreement or order of this Commission. Based upon its assessment of business conditions and what is in the best interests of its overall development plan, the Developer made the business decision for Leesburg to be the natural gas utility provider for Southern Oaks. This decision was not made lightly. Parts of the northern sections of The Villages Community were developed many years ago with natural gas service by PGS, but later phases were not built with any natural gas service, resulting in all electric homes. Approximately two years ago, the Developer’s affiliate, the Village of Lake Sumter, Inc. reached an agreement with PGS for PGS to be the natural gas utility provider for the first portion of The Villages Community located south of State Road 44 in Sumter County named The Village of

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<sup>1</sup> PGS references the Agreement in paragraph 11 of its Petition and attached a copy as Petition Composite Exhibit B.

Fenney. However, PGS has proven to be untimely, unreliable, and, in fact, a hindrance to the success of the Village of Fenney project.<sup>2</sup>

4. Based upon the terrible experience of the Village of Lake Sumter with PGS, initially it was decided that SSGC would be the natural gas utility for Southern Oaks (subject to appropriate legal and regulatory requirements). However, as the due diligence for Southern Oaks progressed, it became clear that given the future direction of development to Leesburg, and Leesburg's experience since 1959 as a natural gas utility, Leesburg would be an excellent natural gas utility provider. Given the absence of any territorial agreement or order for Sumter County or the southern portions of Lake County, SSGC reached an agreement whereby Leesburg would be the natural gas utility provider for Southern Oaks and SSGC the construction and financing agent. This Agreement, attached to the Petition, reflects this business decision.

5. It is important for the Commission to understand that given the awful experience with PGS in the Village of Fenney, the Developer could have just as easily made the business decision to construct all electric homes and businesses within the remaining portions of the Community. However, given the present and future anticipated growth of The Villages Community toward and into the City Leesburg, Leesburg's natural gas utility service history, Leesburg's agreement to utilize SSGC as the construction and financing agent so that construction would be timely and up to the high standards required of The Villages Communities, and Leesburg's agreement on rates and rate structure combined to provide the best means for building homes and businesses utilizing clean and affordable natural gas service.

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<sup>2</sup> This Motion is necessarily confined to arguments appropriate for a Motion to Dismiss. If this matter does in fact go to hearing, SSGC is confident that Leesburg will be proven to be the superior provider for Southern Oaks and all future developments within The Villages.

6. All of these decisions have been made in the context of there being no territorial agreement or order governing Sumter County and those portions of Lake County in which Developer intends to develop. Accordingly, PGS has not identified in its Petition any existing “Territorial Agreement” as that term is defined in Rule 25-7.047, Florida Administrative Code, governing natural gas service within Sumter County or that part of Lake County. Further, PGS has not identified any territorial order of this Commission governing natural gas service within Sumter County or the applicable part of Lake County. The self-serving, false, and misleading references on PGS Petition Exhibit E to the “Peoples Gas Service Area” and “Future PGS Service Area” is not by any order or agreement of this Commission or by any other lawful authority. In the absence of such agreements or orders, property owners and development partners, especially for large scale, master planned developments like The Villages Communities, are in the best position to make natural gas service provider decisions for their property. This is especially true for developers of greenfield projects like Southern Oaks where there is an option to build out with or without natural gas, unlike electric and water service which are essential. Given the inaccuracies of the PGS map attached to its Petition, SSGC is providing the Commission with Confidential Exhibit A to this Motion that more accurately places the PGS facilities in context with the plan for Southern Oaks and the future development of The Villages. Even a cursory examination of this map demonstrates why service by Leesburg reflects the more natural and cost effective extension of the Leesburg natural gas service area.

7. Rule 28-106.204(2), Florida Administrative Code, provides in part that “motions to dismiss the petition or request for hearing shall be filed no later than 20 days after assignment of the presiding officer.” The usual context for the “assignment of the presiding officer” is the receipt of a petition by an agency, the agency’s referral of that petition to the Division of

Administrative Hearings (“DOAH”) for a hearing, and the assignment by DOAH of an Administrative Law Judge to hear the matter, at which time the 20-day clock starts. However, the Commission usually hears its own petitions, and on March 13, 2018, the Commission’s docket management system was updated to reflect the assignment of this docket to the full panel of Commissioners and the assignment of Commissioner Polmann as the prehearing officer. This assignment date was confirmed to undersigned counsel by an email to all parties, including PGS, from the Commission’s General Counsel Office on that day. Accordingly, the 20-day clock for Rule 28-106.204(2) purposes started on March 13, 2018, and this Motion is timely filed within the authorized 20-day window for motions to dismiss.<sup>3</sup>

## **II. Standard of Review**

8. Under Florida law the purpose of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action.<sup>4</sup> In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted.<sup>5</sup> When “determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side.”<sup>6</sup> The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party

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<sup>3</sup> *Order Denying Summertree Water Alliance and Ann Marie Ryan’s Motion to Dismiss and Denying Request for Oral Argument*, Docket No. 160101-WS, Order No. PSC-17-0157-PCO-WS (May 5, 2017).

<sup>4</sup> *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

<sup>5</sup> *Order Granting Request for Oral Argument, Denying Motion to Dismiss, and Denying Motion to Stay.*, Docket No. 941121-WS, Order No. PSC-95-0614-FOF-WS, at 5 (May 22, 1995); *Varnes*, 624 So. 2d at 350.

<sup>6</sup> *Id.* See also *Flye v. Jeffords*, 106 So. 2d 229 (Fla. 1st DCA 1958) (consideration should be confined to the allegations in the petition and the motion).

in determining if the petitioner has stated the necessary allegations.<sup>7</sup> However, while accepting the allegations in the petition as true, the petition cannot make merely conclusory allegations, which are insufficient to support proceeding.<sup>8</sup> As is demonstrated below, at best the PGS Petition makes conclusory statements, and otherwise the Petition is incomplete and unnecessary, meriting dismissal.

### **III. Pleading Deficiencies of the Petition**

9. The PGS Petition does not properly state a cause of action because it has not complied with an essential pleading requirement. The pleading requirements are set forth in Rule 28-106.201, Florida Administrative Code, which provides in its entirety as follows:

#### **28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term “petition” includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency’s file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner’s representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner’s substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

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<sup>7</sup> *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2nd DCA 1960).

<sup>8</sup> *See Shands Teaching Hosp. and Clinics, Inc. v. Estate of Lawson ex rel. Lawson*, 175 So.3d 327, 331 (Fla. 1st DCA 2015) (en banc).

- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
  - (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
  - (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
  - (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.
- (3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

While the PGS Petition did not identify in its pleading each aspect of this rule, reading the Petition in a light most favorable to PGS, PGS still did not plead, or sufficiently plead, "A statement of all disputed issues of material fact."

10. PGS listed selected facts germane to its business along with some of the actions taken by SSGC and the City of Leesburg, but PGS has not alleged a dispute let alone make a statement of disputed issues of material fact as required by the Rule. Instead, PGS has merely stated that "a dispute exists because the natural gas facilities either under construction or to be constructed by Leesburg, or by South Sumter Gas for operation and maintenance by Leesburg, would uneconomically duplicate existing natural gas facilities currently operated by PGS in many portions of the area covered and to be covered by the Gas System Construction Agreement."<sup>9</sup> This statement is a conclusion without any factual allegations. It is a speculative

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<sup>9</sup> Petition, at 5.

statement by PGS that SSGC's action would be uneconomical because it may be duplicative. This is not a dispute.

11. Focusing on the PGS Petition, it fails to sufficiently allege the minimum pleading requirement necessary to sustain a territorial dispute. PGS did not allege that the Leesburg construction notices conflict with any of its own notices for facilities in the same geographic area. PGS did not allege that the construction notices duplicate PGS distribution facilities already in place within Southern Oaks. PGS did not allege there is a race of competing utilities to serve the Southern Oaks. PGS did not make any of these allegations because it has no facilities within the areas identified by the notices. Further, PGS has no right to place facilities within the geographic area that is the subject of the notices because the Developer chose Leesburg, and otherwise could have built without natural gas service.

12. The fact that new PGS distribution facilities located within the Village of Fenney may be near the separately noticed Leesburg distribution facilities within Southern Oaks does not create a territorial dispute. Indeed, as this Commission has found, and the Florida Supreme Court has affirmed, the mere physical proximity of one utility's infrastructure to another does not make for duplicative facilities, let alone uneconomic duplication of facilities.<sup>10</sup> Unlike the situation in that *Gulf Coast-Gulf Power case*, PGS has not provided any evidence or allegations of its legal right to serve the area. There is no allegation that the Leesburg distribution facilities in Southern Oaks duplicate the PGS distribution facilities within the Village of Fenney. The

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<sup>10</sup> See, Docket No. 930885-EU, *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power*, Order No. PSC-98-0174-FOF-EU (January 28, 1998), *affirmed on appeal*, *Gulf Coast Electric Cooperative v. Johnson*, 727 So.2d 259 (1999) collectively, these decisions are referred to as the "*Gulf Coast-Gulf Power case*"). Among other conclusions, the PSC order concluded, "ORDERED, that a territorial boundary shall not be established in the 27 identified areas of south Washington and Bay Counties between Gulf Power Company and Gulf Coast Electric Cooperative, Inc., and that territorial disputes will be resolved on a case-by-case basis."



Developer has already drawn the line on the ground for the Village of Fenney and separately for Southern Oaks, and the natural gas infrastructure for Southern Oaks is being constructed by Leesburg and SSGC pursuant to the Agreement. There are simply no issues of disputed fact, and thus no dispute for this Commission to resolve.

13. The highly speculative conclusions PGS has made, without a full and complete presentation of the facts, do not make for disputed issues of material fact or a territorial dispute. In considering this Motion, the Commission may only look to the four corners of the Petition, and cannot consider any factual matters not alleged therein, nor can the Commission engage in any “speculation” about what the disputed facts may be. In fact, when considering the dismissal of a petition for a hearing under Section 120.57, Florida Statutes, an agency must “accept as true the factual allegations of the petitions and may not consider any factual matters outside the amended petitions.”<sup>11</sup>

14. Here, PGS has not alleged a real dispute nor any disputed issues of mutual fact because there are none. PGS has simply stated its opinion in a conclusory fashion regarding the Agreement, and SSGC’s construction activity, and has otherwise speculated, inaccurately, about what it all may mean. Given these procedural failings, the PSC should dismiss the Petition.

#### **IV. There is No Dispute that is Ripe For Resolution**

15. The Petition is premised on the idea that there is a bona fide, actual dispute over who is going to serve Southern Oaks, and all of Sumter County and those portions of Lake County that is not currently served by Leesburg. As this Commission and the Florida Supreme Court made clear in the *Gulf Coast-Gulf Power case*, it is completely unnecessary for the

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<sup>11</sup> *Save our Creeks v. State of Florida Fish & Wildlife Conservation Commission*, 112 So. 3d 128, 130 (Fla. 1st DCA 2013) (citing *St. Francis Parkside Lodge of Tampa Bay v. Dep’t of Health & Rehabilitative Servs.*, 486 So.2d 32, 34 (Fla. 1st DCA 1986)); see also *Herbits v. Board of Trustees of Internal Improvement Trust Fund*, 195 So. 3d 1149 (Fla. 1st DCA 2016).

Commission to reach out and decide the fate of the entire county, let alone the more limited area of the Southern Oaks development that is the subject of the Leesburg notices. In strict legal terms, set by this Commission in the *Gulf Coast-Gulf Power case*, the matter is simply not ripe for consideration and should be dismissed.

16. The foundation for the concept of ripeness can be found in Article III, Section 2 of the United States Constitution and requires the existence of a “case” or “controversy.” The ripeness doctrine is designed to serve as “a tool that courts may use to enhance the accuracy of their decisions and to avoid becoming embroiled in adjudications that may later turn out to be unnecessary or may require premature examination of, especially, constitutional issues that time may make easier or less controversial.”<sup>12</sup>

17. Much as this Commission and the Florida Supreme Court found in the *Gulf Coast-Gulf Power* decision, without specifically saying the case was not ripe for disposition, the courts have said that “ripeness is a justiciability doctrine designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.’”<sup>13</sup>

18. Here, there is no case or controversy stated. Rather, after PGS’s admitted dismal performance with the Village of Lake Sumter, PGS is dissatisfied that for this new greenfield development within The Villages Community the Developer chose SSGC to construct and finance, and Leesburg to serve as the natural gas utility. Then, without identifying or otherwise

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<sup>12</sup> *Simmonds v. INS*, 326 F. 3d 351, 357 (2d Cir. 2003).

<sup>13</sup> *Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 807, 123 S. Ct. 2026, 155 L.Ed.2d 1017 (2003) (citing *Abbott Labs, et al. v. Gardner*, 387 U.S. at 148–49, 87 S. Ct. 1507 (1967)).

articulating how, PGS makes the conclusion that Leesburg’s service would somehow “uneconomically duplicate natural gas facilities operated by Petitioner.” As was described previously in this Motion, there has been no accurate evidence offered and, more importantly when considering a motion to dismiss, no factual allegations made regarding a dispute or duplicative facilities. Conclusory statements, without sufficient allegations, do not make for a territorial dispute under Section 366.04(3)(b), Florida Statutes.

19. It is also important to note that the Commission’s jurisdiction in resolving natural gas territorial disputes is different from that for electric utilities, and is not based upon “uneconomically duplicative existing facilities” or “more economically served” arguments that are the basis for PGS’s Petition.<sup>14</sup>

20. Generally, Section 366.04(3)(b) governing natural gas territorial disputes is essentially the same as the corresponding electric statute, Section 366.04(2)(e), Florida Statutes. For natural gas disputes, Section 366.04(3)(b) provides:

In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

21. However, in resolving electric service territorial disputes the PSC must consider additional statutory provisions. Specifically, Section 366.04(2)(c), Florida Statutes, proves the PSC with authority “[t]o require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.” Further, Section 366.04(5) grants the PSC jurisdiction “over the planning, development, and maintenance of a coordinated electric power

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<sup>14</sup> See, PGS Petition, paragraph 16.

grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.” The PSC’s rule for resolving natural gas territorial disputes, Rule 25-7.042, Florida Administrative Code, generally tracks the more limited natural gas dispute statute, and does not include demonstration of “uneconomic duplication” or most economical to serve.<sup>15</sup>

22. Recognizing that cost is a part of the rule, it is also important to note that on its face the Petition fails to make sufficient allegations as to how PGS would be cheaper or more cost effective for customers. Indeed, its documentation demonstrates the exact opposite. The exhibits to the Petition include the Agreement and the corresponding City of Leesburg implementation ordinances. Critically, the rates that the future customers of The Villages Community will pay are linked to the rates of PGS. This means that in SSGC building and financing all of the infrastructure necessary for natural gas service in future portions of The Villages Community, customers will pay no more than PGS’s customers. This is especially beneficial to Leesburg and the eventual Southern Oaks customers since SSGC bears the direct and carrying costs of the construction, with SSGC being paid only as Leesburg adds customers and provides service. Again, PGS has not made any allegations regarding how or why it would be more economic for it to serve, whereas the supporting materials it has provided reflect the exact opposite of what its Petition claims or at least equal rates, in which case customer choice prevails. Reading all of this in the light most favorable to PGS, and excluding conclusory

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<sup>15</sup> This Rule certainly includes *consideration* of “the extent to which additional facilities are needed” and certain cost information, but uneconomic duplication and “more economically served” are not part of the statutory or rule analysis. Rule 25-7.0472(2), Florida Administrative Code.

statements, none of this rises to the level of an actual controversy between PGS and Leesburg/SSGC that requires action by the Commission.

23. The United States Supreme Court identified a two-prong test for ripeness.<sup>16</sup> The first prong in determining whether administrative action is ripe for action involves an evaluation of the issue's fitness for judicial decision. The second prong involves consideration of the hardship to the party that is being withheld from court consideration.

24. The first prong involves a "baseline question [of] whether allowing more time for development of events would significantly advance [the court's] ability to deal with the legal issues presented or aid us in their resolution."<sup>17</sup> Clearly the answer is in the affirmative in this case. The issue now solely involves the handful of notices for Southern Oaks, construction that is now largely occurring on private property owned by the Developer. Generally, even after sales of individual homes and businesses, the natural gas facilities SSGC is constructing will generally be in private easements held by the Developer except for where they cross public roads or traverse public rights of way after plats are recorded. PGS is seeking a Commission determination with respect to all future portions of The Villages Community where development will occur over the course of many years. There are simply not any alleged facts that would merit Commission on such a sweeping decision with such far reaching consequences. Again, as the Commission and Florida Supreme Court recognized in the Gulf Coast-Gulf Power case, it is better to deal on a case-by-case basis with real disputes and for the Commission to not be placed "in a judicial straight-jacket by this Court to establish territorial boundaries in the absence of an

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<sup>16</sup> *Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 807, 123 S. Ct. 2026, 155 L.Ed.2d 1017 (2003).

<sup>17</sup> *Doe v. Bush*, 323 F.3d 133, 138 (1st Cir.2003).

existing dispute over service to current or future customers.”<sup>18</sup> The uncertainty is too prevalent and the consequences of a decision now could be very far reaching and wrong.

25. The second prong of the ripeness test dealing with hardship to a party if the Commission withholds a decision has been found “to inhere in legal harms, such as the harmful creation of legal rights or obligations; practical harms on the interests advanced by the party seeking relief; and the harm of being forced to modify one's behavior in order to avoid future adverse consequences.”<sup>19</sup>

26. In order to constitute a hardship, the impact of SSGC’s and the Leesburg actions must be “sufficiently direct,” resulting in an “immediate and significant change in the plaintiffs’ conduct.”<sup>20</sup> There will be no hardship to PGS here because by its own Petition, it has not alleged how the construction notices or actual construction will cause PGS to change its conduct. Similarly, in the absence of a territorial agreement or order, and the fact that this Leesburg service area is occurring within private property, PGS has not alleged any direct consequences of these actions to it. To the extent PGS has alleged that it can more cheaply provide service, that allegation is false on its face given the exhibits attached to the Petition and Leesburg’s commitment to mirror PGS’s rates. Thus, both with respect to the Southern Oaks project and the larger south Sumter County area, there is nothing alleged in the Petition that Petitioner will suffer any immediate harm as the facility is being constructed.

27. As the Court of Appeals for the D.C. Circuit has explained, “[w]ere we to entertain anticipatory challenges pressed by parties facing no imminent threat of adverse agency action, no hard choice between compliance certain to be disadvantageous and a high probability

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<sup>18</sup> *Gulf Coast*, 727 So.2d at 265.

<sup>19</sup> *Texas*, 497 F.3d at 499 (citing *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 734, 118 S. Ct. 1665 (1998)); *Choice*, 691 F.3d at 715.

<sup>20</sup> *Abbott Labs.*, 387 U.S. at 152–53, 87 S. Ct. 1507.

of strong sanctions, we would venture away from the domain of judicial review into a realm more accurately described as judicial preview.”<sup>21</sup> PGS’s arguments and requested relief lies solely in the realm of the hypothetical and are completely unnecessary. Consequently, the Petition is not ripe for review by the Commission.

28. To date, SSGC has entered into a contract with the City, and has engaged in construction to fulfill its part of the contract. Leesburg, as the natural gas utility, has filed the appropriate notices with the Commission and taken such other actions it is required to do as the utility. In the absence of a territorial agreement or order, for which there should be no dispute, Leesburg, SSGC, and the Developer are proceeding as they should. These facts do not constitute a dispute. Accordingly, the Commission should dismiss the Petition.

#### **V. The Public Interest Does Not Require Action at this Time**

29. PGS has not alleged that its service to customers in the disputed area would be in the public interest, or in the alternative that SSGC’s and/or the City’s provision of natural gas to customers in the disputed area will somehow be detrimental to the public. Indeed, given the overall master planned community envisioned by the Developer and implemented in part by the SSGC-Leesburg Agreement, the Developer, with decades of experience, is in the best position to ensure that future residence and business owners within The Villages Community have access to the best provider of natural gas service that it has chosen, which is Leesburg. Moreover, with Leesburg’s commitment in the Agreement to not charge rates higher than PGS, and SSGC leading the construction and financing, the Developer has ensured that future customers will have access to high quality, timely, and cost-effective service.

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<sup>21</sup> *Tenn. Gas Pipeline Co., A Div. of Tenneco, Inc. v FERC*, 736 F. 2d 747, 751 (USCA Dist. of Col. 1984).

30. “The legal system favors the settlement of disputes by mutual agreement between the contending parties. This general rule applies with equal force in utility service agreements.”<sup>22</sup> While PGS complained in its Petition about the failed meeting it had with SSGC and the Developer, a master planned community like The Villages, and the new portions thereof, require responsive and responsible working partners. PGS failed in the Village of Fenney development. PGS has no inherent right to serve anywhere it says it wants, and certainly no present legal right to claim the massive land grab it has identified on its Petition Exhibit E. Given the facts as presented by PGS, and what is addressed by the construction notices and the absence of any overlapping, duplicative, or comingled facilities, there is no dispute requiring Commission resolution or action.

### **Conclusion**

WHEREFORE, based upon the foregoing, SSGC respectfully requests that the Commission grant this Motion to Dismiss the PGS Petition as failing to conform to Rule 28-106.201, Florida Administrative Code, and failing to state a cause of action for which relief may be granted as the matters brought forth by Petitioner are not yet ripe for review.

Respectfully submitted this 2<sup>nd</sup> day of April, 2018.

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<sup>22</sup> *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732 (1985).



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 2<sup>nd</sup> day of April, 2018, to the following:

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/s/ Floyd R. Self  
Floyd R. Self

# Existing and Proposed Gas Pipeline Distribution System

Docket No. 20180055-GU  
SSGC Redacted Exhibit A  
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