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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20180085-GU

PETITION BY PEOPLES GAS
SYSTEM FOR ISSUANCE OF AN
ORDER TO THE CITY OF
LEESBURG AND SOUTH SUMTER
GAS COMPANY, LLC, TO SHOW
CAUSE WHY THEY SHOULD NOT
BE REGULATED BY THE
COMMISSION AS A PUBLIC
UTILITY AS DEFINED IN
SECTION 366.02(1), F.S.,
ETC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, June 5, 2018

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Staff, Item No. 3.

3 MS. HARPER: Good morning, Commissioners. I'm
4 Adria Harper with the General Counsel's Office for
5 Item No. 3.

6 So, Item No. 3 is Docket No. 20180085. And
7 this is a petition by Peoples Gas System requesting
8 the Commission to issue an order that the City of
9 Leesburg and South Sumter Gas Company -- a show-
10 cause order as to why they should not be regulated
11 by the Commission as a public utility.

12 And in the alternative, the petition asks the
13 Commission to issue a declaratory statement on who
14 they should negotiate with, either the City of
15 Leesburg or South Sumter Gas, in the territorial
16 dispute Peoples filed in Docket 20180055, the one
17 we just discussed.

18 So, the City of Leesburg and South Sumter Gas
19 Company both filed motions to dismiss to Peoples'
20 petition and requested oral argument on the motions
21 to dismiss. Peoples filed a response in opposition
22 to both of those motions.

23 Staff is recommending that the Commission
24 grant the City of Leesburg and South Sumter Gas
25 Company's motions to dismiss in this case. The

1 Commission -- staff is recommending the Commission
2 should dismiss Peoples' petition because staff does
3 not believe the Commission should exercise its
4 discretion to issue a show-cause order in this
5 docket, and the alternative requests for
6 declaratory statement does not meet the necessary
7 requirements for declaratory statement.

8 As I said, all parties have requested oral
9 argument on this matter. And staff is available if
10 you have any questions.

11 CHAIRMAN GRAHAM: Thank you, staff.

12 Commissioners, same two groups. First
13 question is: Do we grant oral argument? I don't
14 necessarily need to hear the oral arguments, but
15 that doesn't mean -- I won't stop you from
16 listening to them, if you would like to hear the
17 oral arguments.

18 Yes, okay. Looks like we're granting oral
19 arguments.

20 Once again, five minutes, gentlemen.

21 MR. SELF: Thank you, Mr. Chairman,
22 Commissioners. Floyd Self, of the Berger Singerman
23 law firm, on behalf of South Sumter Gas. And I was
24 also remiss in not also identifying my co-counsel,
25 Mr. John Wharton of the Dean, Mead & Dunbar firm,

1 who is also working with me on this in both
2 dockets.

3 This is really simple. You've already
4 answered, by your decision today, in the 55 docket
5 that you just decided, essentially, the questions
6 that Peoples is seeking answers to. So, we
7 completely support the staff recommendation.

8 There's no basis for a show-cause, nor is
9 there any basis for a declaratory statement. And
10 so, we support the staff recommendation and ask
11 that you dismiss this petition, and we will fight
12 it out in the other docket.

13 Thank you.

14 CHAIRMAN GRAHAM: Mr. Moyle?

15 MR. MOYLE: Thank you, again. Jon Moyle on
16 behalf of the City of Leesburg.

17 We, likewise, support your staff
18 recommendation, which is to grant the -- the motion
19 to dismiss here. And to get into a little more
20 detail, you know, a declaratory statement is
21 typically asked by a party when they're unsure of
22 rules or statutes over -- over which you, the
23 Commission, has -- has jurisdiction.

24 The petitioner in this case is -- is really
25 asking for a declaratory statement with respect to

1 how certain actions relate to third parties, SSG
2 and my client, the City of Leesburg. That's --
3 that's not appropriate.

4 You can't file a declaratory statement and
5 say, see what these two people are doing; we want a
6 declaratory statement saying that what they're
7 doing is -- is "X" or "Y." That -- in the rule
8 that is cited in our pleadings, it specifically
9 says you can't ask for a declaratory statement
10 about the actions of -- of third parties.

11 And that's -- that's what's being done here,
12 when -- when you boil it down. It -- it's not
13 permissible. It's not authorized by statute. And,
14 as your staff notes, it's not authorized by your
15 rule.

16 There's another provision in here where they
17 are asking you to issue a declaratory statement
18 about municipal operations, municipal functions
19 and -- and I think Section 80 -- you don't have
20 jurisdiction over that. That's not an appropriate
21 request.

22 And even the definitions about -- their
23 question is, shouldn't someone have asked us to get
24 consent, and there's a definition of private party
25 in that statute, but the definition of private

1 party doesn't include a natural-gas company. So,
2 that's -- that's not applicable.

3 And the show-cause request -- that's something
4 that -- that is within your discretion. You
5 oftentimes will issue show-cause if someone is not
6 doing something they're supposed to, but at this
7 point in -- in this proceeding, it's not an order.
8 And the petition, respectfully, should -- should be
9 denied.

10 Thank you. And I'm happy to answer any
11 questions you might have.

12 CHAIRMAN GRAHAM: Thank you, Mr. Moyle.
13 Leesburg -- I'm sorry -- Peoples.

14 MR. BROWN: Thank you. Andy Brown, again,
15 representing Peoples Gas, of Macfarlane Ferguson in
16 Tampa.

17 Part of the -- part of the -- part of my
18 difficulty in talking about this is it's unclear
19 what is -- what the result of the petition, their
20 motion to dismiss being denied in the other filing,
21 is going to have on this.

22 So, I'm going to talk -- I'm going to talk
23 about it in general because, what I would urge the
24 Commission to do, with regard to the show-cause
25 portion of the petition is to formally consolidate

1 it with the 55 docket and so it will be clear that
2 all of these issues are going to be addressed.

3 And I want to talk a little bit about the
4 reasons for that; and that is that this issue is
5 not going to go away any time soon. There are
6 approximately five to 10,000 customers that are in
7 the -- the developments that are at issue currently
8 in this -- in the territorial dispute, the 55
9 docket.

10 The Villages just announced, on May 25th, in
11 their -- the Villages Daily Sun that they have
12 now -- are going to develop ter- -- property
13 between 501 and the turnpike, and that that's going
14 to be another 22,000 customers.

15 In addition, in the agreement between Leesburg
16 and the SSGC, they have territory in Lake County
17 that, presumably, is going to have another 10,000
18 or more customers.

19 So, what -- what we're in a situation is that
20 this is going to be a big issue as -- as the
21 Villages development continues. And so, I think
22 it's important that this be formally in front of
23 the Commission in some form or fashion.

24 I understand the issue of, perhaps, not
25 wanting it to be a separate docket and to clarify

1 and make clear that we're dealing with all these
2 issues in the other docket. And that's what we
3 would ask for.

4 I would like to take the opportunity, though,
5 to talk about this agreement and why it is
6 significant and why this petition should not be
7 dismissed.

8 The pe- -- the position that has been taken by
9 SSGC and Leesburg -- but SSGC in particular -- is
10 that they are not a gas company. They are called
11 SSGC, South Sumter Gas Company.

12 The maps that are attached to the agreement
13 with -- with the City of Leesburg talks about -- it
14 identifies the South Sumter Gas service area in
15 Exhibit A. And -- and the maps -- the maps that
16 were submitted as part of the construction notices
17 are emblazoned South Sumter Gas Company, but when
18 we get down to what actually goes on, they say, no.
19 No. No, we're not a gas company. We're not a gas
20 company. We don't want to be regulated.

21 And it's important to note that -- that the
22 parties in that agreement have serious concerns
23 about the fact that this may be, in fact, a public
24 gas utility, as that term is defined in statutes,
25 because the agreement provides that, if the PSC,

1 the Public Service Commission, determines that this
2 agreement is subject to regulation, then they blow
3 up the agreement and this deal doesn't happen.

4 And that's why that's going to be an issue
5 that's going to come up in the territorial dispute
6 because it goes to the issue of whether they're
7 going to be able to serve and provide gas because,
8 if it is determined that this arrangement is
9 regulated, then the arrangement goes away. And if
10 that happens, the only gas company that's even
11 capable of serving these people is Peoples Gas.

12 But I want to talk a little more about the
13 specifics of this agreement. It provides that the
14 location -- what this agreement does is essentially
15 create a separate gas utility within the City of
16 Leesburg. And it is a separate gas utility that
17 serves the Villages developments only.

18 The Villages determines where the lines are
19 going to be extended. The Villages determines
20 where Leesburg is going to build mains. And
21 that's -- that's the -- what the language of the
22 agreement does, particularly in Section 4.

23 The rates are determined by South Sumter Gas
24 Company. What the agreement does is set up a dual
25 rate structure. There is a rate structure for all

1 of the people that are in the Leesburg portion
2 of -- of the Leesburg gas company, and there is a
3 separate gas -- separate rate structure set up for
4 the Villages, for SSGC.

5 CHAIRMAN GRAHAM: You've got a minute left.

6 MR. BROWN: And so, that is an important
7 element of that and it goes in -- the agreement
8 goes into that.

9 The income from the agreement is derived by
10 the sale of gas. SSGC gets paid based on how much
11 gas is sold, and it sets forth what the payment to
12 SSGC is to be.

13 They like to call this a financing
14 arrangement, but you'll note there's nowhere in the
15 agreement that says what the cost of the
16 infrastructure is. There's nowhere that says what
17 the financing rate is. It's not related to any
18 rate of return on the investment or an interest
19 rate. It is simply, they get paid, per customer,
20 by gas.

21 So, if you determine where the lines go, if --
22 if you determine what the rates are, and you get
23 paid based on how much gas is sold, you're a gas
24 company. That's what you are. That's what you're
25 doing. And they've created a separate structure

1 with -- for the Villages only.

2 And so, to that extent, I don't -- I would --
3 we would prefer this not be dismissed and that it
4 be formally consolidated. I think that will make
5 clear all of the issues that are in play here.

6 Otherwise, the Commission is going to be
7 dealing with this again as they expand and as
8 people start trying to figure out who's serving
9 what. These issues are going to come up.

10 And so, I would ask that, rather than dismiss
11 this comp- -- this petition --

12 CHAIRMAN GRAHAM: Sir --

13 MR. BROWN: -- as the staff as asked for --

14 CHAIRMAN GRAHAM: -- your time is up.

15 MR. BROWN: -- that we consolidate it. Thank
16 you.

17 CHAIRMAN GRAHAM: Okay.

18 MR. SELF: Mr. Chairman, I have a procedural
19 objection to what we've just heard.

20 CHAIRMAN GRAHAM: Okay.

21 MR. SELF: Peoples is now attempting to
22 trans- -- transform this argument today regarding
23 whether or not the petition should be dismissed or
24 not, into consolidating this docket with the other
25 docket, for which you've just denied the motion to

1 dismiss.

2 I think that's improper, given the procedural
3 posture of the case. We certainly haven't had an
4 opportunity to prepare or analyze whether or not
5 the -- this docket should be consolidated. I still
6 think the fundamental staff recommendation is very
7 sound and that they haven't established the
8 procedural basis, by which you can proceed with the
9 show-cause.

10 And again, as the staff points out, you're
11 certainly at liberty in the other docket, based
12 upon what ultimately happens there, to deal with
13 those matters that are within your exclusive
14 jurisdiction. So, I think it's very inappropriate
15 to even consider consolidation of this.

16 CHAIRMAN GRAHAM: Mr. Self, your -- your
17 objection is duly noted.

18 MR. SELF: Thank you.

19 MR. MOYLE: And Mr. Chair, on behalf of the
20 City of Leesburg, if we could join in that
21 objection and -- and just note, I think -- I mean,
22 it's essentially a new motion. They're saying,
23 well, we filed -- filed this petition as a motion
24 to dismiss, and they're -- well, don't dismiss it;
25 why don't you consolidate it.

1 I think, in their argument, they essentially
2 said, it's going to be an issue in this other
3 docket. The -- the agreement in question is
4 attached to the other petition. So, I just don't
5 see why you don't go through the normal issue ID
6 process and deal with it in that docket as compared
7 to, you know, doing anything else.

8 CHAIRMAN GRAHAM: Okay. Mr. -- Commissioner
9 Polmann.

10 COMMISSIONER POLMANN: Thank you,
11 Mr. Chairman. I could see why you had a lot of
12 time spent with staff.

13 Ms. Harper, Item 3 -- as I -- I recall we
14 discussed in -- in briefing, this is strictly a
15 legal issue that you've brought forth. And as your
16 analysis described, this has no business
17 implications and, in fact, we don't have any
18 jurisdiction or any interest in any other aspect of
19 the relationship between the parties here, other
20 than the legal aspect.

21 I'm making a comment or a statement --

22 MS. HARPER: Right.

23 COMMISSIONER POLMANN: I -- I'm just looking
24 for concurrence --

25 MS. HARPER: Right, yes.

1 COMMISSIONER POLMANN: -- that this is
2 strictly a legal matter here.

3 MS. HARPER: Item 3 is recommending to dismiss
4 on a -- for a legally-procedural basis, the
5 declaratory-statement requests and the -- the
6 petition-to-show-cause portion as well for not
7 meeting the threshold requirements there necessary
8 for a declaratory statement.

9 So, the idea would be for the -- this
10 particular petition to be dismissed. And any of
11 these matters, substantively, that maybe were
12 alleged in the petition, yes, may come -- come up
13 with the other docket and probably will. And
14 that's exactly why we are -- one of the reasons why
15 we're -- we're saying it's not appropriate for
16 declaratory statement.

17 COMMISSIONER POLMANN: Okay. Thank you.

18 Mr. Chairman, Item 2 and 3 are -- are matters
19 that fundamentally address the territorial dispute.
20 That is at Docket 20180055-GU. And just -- my
21 position is simply to allow that petition to move
22 forward through its natural process.

23 And -- and in order for that to happen, my --
24 my motion would be to support the staff
25 recommendation on Item 3, all issues, and allow the

1 normal process to proceed. So, that's my motion,
2 to move the staff recommendation on Item 3, all
3 issues.

4 CHAIRMAN GRAHAM: It's been moved and
5 seconded, but we'll continue with the
6 conversations.

7 Commissioner Fay.

8 COMMISSIONER FAY: Mr. Chairman, I appreciate
9 the deference on the oral argument. I -- I was
10 looking to second that -- that motion.

11 CHAIRMAN GRAHAM: Okay.

12 Commissioner Brown?

13 COMMISSIONER BROWN: Just -- just a follow-up
14 comment/question to Ms. Harper regard- -- from
15 Commissioner Polmann. So, if we go with the staff
16 recommendation -- just want to be clear that the
17 issues that were alleged in the petition, even
18 under the show-cause, can arise -- we can still do
19 discovery under the 55 docket.

20 MS. HARPER: That's correct. The pre-hearing
21 officer in the 55 docket will have the discretion
22 to look at a show-cause order or any other kind of
23 relevant matters that are appropriate.

24 COMMISSIONER BROWN: And then the Commission,
25 of course, on its own motion or volition can

1 iss- -- issue a show-cause --

2 MS. HARPER: That's correct.

3 COMMISSIONER BROWN: -- upon discovery in that
4 docket.

5 MS. HARPER: It just -- correct.

6 COMMISSIONER BROWN: Okay.

7 CHAIRMAN GRAHAM: Question to staff: If not
8 for the Item No. 2, the 55 docket, they could have
9 come before us and asked for the dec statement,
10 correct?

11 MS. HARPER: Yes, under the dec statement
12 rules, anybody has a right to ask for a dec
13 statement, if they meet the necessary procedural
14 requirements.

15 CHAIRMAN GRAHAM: But because the 55 docket
16 was already filed, then that kind of preempted them
17 coming back -- circling back around for the dec
18 statement.

19 MS. HARPER: Yes, that's one of the problems.

20 The other problem, though, is they're asking
21 us to declare something affecting third parties.
22 So, there's still a problem with that as well.

23 CHAIRMAN GRAHAM: Okay. All right. We have a
24 motion on the floor that's been duly seconded. Is
25 there any other discussion on that motion?

1 Seeing none, all in favor, say aye.

2 (Chorus of ayes.)

3 CHAIRMAN GRAHAM: Any opposed?

4 By your action, you have approved the motion,
5 which -- that's -- approves the staff
6 recommendation on Item No. 3.

7 MR. SELF: Thank you, Commissioners.

8 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
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DATED THIS 13th day of June, 2018.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021