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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED 7/24/2019  
DOCUMENT NO. 05938-2019  
FPSC - COMMISSION CLERK

PEOPLES GAS SYSTEM,  
  
Petitioner,

vs. Case No. 18-4422

SOUTH SUMTER GAS COMPANY, LLC.  
AND CITY OF LEESBURG.

RESPONDENTS.

\_\_\_\_\_ /

VOLUME 5  
PAGES 600 - 716

PROCEEDINGS: FINAL HEARING  
BEFORE: E. GARY EARLY  
Administrative Law Judge  
DATE: June 26, 2019  
TIME: Commenced at 9:00 a.m.  
LOCATION: DIVISION OF ADMINISTRATIVE  
HEARINGS  
1230 APALACHEE PARKWAY  
Tallahassee, Florida  
REPORTED BY: DANA W. REEVES  
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the State of Florida  
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P R O C E E D I N G S

THE COURT: Mr. Moyle, are we ready to go?  
You've got Mr. Geoffroy's queued up?

MR. MOYLE: I have Mr. Garcia queued up.  
He'll go first.

MR. BROWN: Are we going to take up the issue  
on Mr. McGee? I guess qualified -- yeah, whether  
he can come in based on qualifications. And Mr.  
Kruppenbacher is going to handle that argument.

THE COURT: Well, let me get -- let me ask  
this first, because I understand that Mr. McGee is  
a safety expert. I mean, we've already had -- Mr.  
Rogers testified a good bit on safety, that I  
recall. I don't recall who else. I'm just kind of  
wondering if we're getting a little cumulative on  
an issue where I haven't really seen a lot in the  
way of dispute, at least in terms of Leesburg's.

MR. MOYLE: Right. I would say no with  
respect to Mr. McGee. He -- and, really, we  
reached an agreement that everything should come in  
except for he thinks he doesn't have the expertise.  
We say, no, we think he does have the expertise.  
He went to Notre Dame and got an engineering  
degree. He worked for Stone and Webster. In his  
exhibit is all of his expertise. There is a CV

1           that is at the back of the exhibit in question.

2           And --

3           THE COURT: Let me do this. Let me hear from  
4           Mr. Kruppenbacher first and we'll -- you made the  
5           offer and I don't recall which exhibit it was.

6           MR. MOYLE: Right.

7           THE COURT: Twenty-two?

8           MR. MOYLE: Yeah -- Judge, if you could  
9           indulge me just for two more minutes.

10          THE COURT: Twenty-four is the exhibit.

11          MR. BROWN: The report is seven. We've  
12          objected to that. I know the Court had ruled kind  
13          of her testifying --

14          MR. MOYLE: It's both places. It's seven as  
15          the report itself and then it's on 24 with the depo  
16          and the report attached. So just, if I could, I  
17          don't want to belabor it, but I think it's really  
18          important that we want to make a record on safety,  
19          because we think safety is important. You'll hear  
20          people say, safety is the most important thing.  
21          And the Commission don't get a lot of opportunities  
22          to weigh in on territorial disputes. So consistent  
23          with your, you know, views about, let's let stuff  
24          in and have a complete and full record, we think it  
25          is appropriate, if I could just show you one page,

1 if I could approach. This is the index of his  
2 report.

3 THE COURT: I have it already.

4 MR. MOYLE: Okay. But to the cumulative  
5 point, you know, he goes through and he looks at  
6 all these federal records and he does a compare and  
7 contrast. He has designed natural gas systems. He  
8 has worked for a natural gas company, you know, and  
9 he would be here but for the fact that he is in the  
10 hospital. So I think the issue, as I understand it  
11 in the dispute is, they say, well, we don't think  
12 he's an expert. Respectfully, that should go to  
13 weight, not admissibility.

14 THE COURT: All right. Mr. Kruppenbacher.

15 MR. KRUPPENBACHER: Yes, Your Honor. First.  
16 Under the Daubert decision from the Florida Supreme  
17 Court, the burden is on Mr. Moyle to qualify him as  
18 an expert. The report, contrary to what is  
19 represented to you, is not part of that deposition.  
20 He may have attached it and tried to slip it in  
21 that way. It was never introduced as an exhibit in  
22 the deposition. When the court reporter sent the  
23 depositions to us, it was not attached. So we  
24 strenuously object to it. Now Mr. Moyle wants to  
25 articulate that he is some sort of safety expert.

1 It is his burden to qualify him as a safety expert,  
2 and in the deposition there were absolutely no  
3 questions from Mr. Moyle to establish and qualify  
4 him as a safety expert. In fact, when I questioned  
5 him, he specifically said, when I said, tell me  
6 specifically what you think you are an expert in as  
7 it relates to gas utilities, on Page 28 of the  
8 depo, Line 4. And now the answer, I find, 6: I  
9 have consulted for gas utilities for decades. I  
10 consider myself to be a management consultant. I  
11 am adept at analyzing numerical information. My  
12 specialty in regard to that subject would be  
13 engineering and natural gas operations.

14 He then proceeds to go on and say throughout  
15 he is familiar with gas safety issues. He's not a  
16 safety expert. Do you consider yourself an expert  
17 in the area of gas safety? Page 33, Line 13.

18 Answer: I'm not sure what you would call an  
19 expert. I'm knowledgeable in it. It's not foremost  
20 in the types of background that I've had before,  
21 but I'm knowledgeable in that area.

22 Tell me what your strengths are, on Page 34 of  
23 37, Line 15: I'm very good at organization and  
24 simulation of natural gas flows in piping systems.  
25 For instance, I think that is my premier strength

1           that I have had, but I consider my knowledge broad  
2           enough to approach any area that a person feels is  
3           worth being analyzed and to do a good job at that.  
4           Nowhere in his deposition does he say, I'm an  
5           expert in the field of safety, nor he's never, by  
6           his own testimony, managed the safety --

7           THE COURT: Well, on Page 35 you did ask, do  
8           you consider yourself an expert in the area of gas  
9           safety. And he says: I would say I don't know  
10          everything about the subject, but in general terms  
11          you could call me an expert if you want, yes. I  
12          mean, he does have some experience.

13          MR. KRUPPENBACHER: But if you follow back, he  
14          basically says, I don't know what an expert is, but  
15          if you want to call me one, you can call me one.

16          THE COURT: All right. Let me do this. I'm  
17          going to take ten minutes. I'm going to skim this  
18          a little bit. I just kind of want to get a sense  
19          for his qualifications, without having to sit here  
20          and do it.

21          MR. WHARTON: Briefly, Your Honor? Can I just  
22          say a brief word?

23          THE COURT: Sure.

24          MR. WHARTON: We're not talking about the  
25          admissibility, because the deposition of an expert



1 is admissible for any purpose. The deposition  
2 infirmity is one of the things listed. The depo's  
3 in. So I think you'll see during your -- while  
4 you're perusing it, there's also a lot of stuff in  
5 there that would fit under facts that we've been  
6 hearing, guys say they've looked at websites and  
7 determine this on gas pressure, or they look at  
8 these calculations. And so I think you -- whether  
9 or not you determine that he is or isn't an expert  
10 on the face of the record would not necessarily  
11 result in the tossing out of the entire deposition.  
12 I think that's -- we would ask --

13 MR. KRUPPENBACHER: Your Honor --

14 THE COURT: You're right. I mean, the  
15 deposition has been admitted into evidence.

16 MR. KRUPPENBACHER: Your Honor, but I want to  
17 be sure. It has been admitted without us  
18 admitting, that if they attached an expert report  
19 to it, that's not part of the depo.

20 MR. MOYLE: Well, Judge --

21 MR. KRUPPENBACHER: Excuse me. Let me finish.  
22 All right.

23 THE COURT: That's one of the reasons I want  
24 to look at this deposition and I can get my own  
25 conclusion whether this thing is attached or not

1           during --

2                   MR. KRUPPENBACHER: Your Honor, if I may, in  
3           his own report -- all right -- he specifically  
4           says, I have been actively involved in operations  
5           and consulting involving natural gas utilities and  
6           industries. He never identifies himself as having  
7           been involved in being an expert in the field of  
8           safety. He analyzes data.

9                   THE COURT: All right.

10                   MR. MOYLE: And, Your Honor, just -- if I  
11           could --

12                   THE COURT: I'm going to give you one last  
13           word and then I'm going to go read a little bit of  
14           this.

15                   MR. MOYLE: On Page 38, he has the report. He  
16           asked him on Line 11, in his question: Let me take  
17           it this way; do you have the report with you and  
18           the attachments in that report, correct? Answer:  
19           I have the report and exhibits that are attached to  
20           the report.

21                   If you look on Page 39, it shows that the  
22           Plaintiff's Composite Exhibit 1 is marked. There's  
23           no prejudice. He had the report. He had  
24           everything -- everything that is there. Mr. Brown  
25           and I, in our conversations, the only thing that he

1           said -- he didn't have a problem with any of the  
2           exhibits. He said, I'm going to challenge his  
3           expertise, is the only thing I'm going to come at.  
4           Just, Judge, consistent with a complete record,  
5           we're going to make a big deal about safety.  
6           You're going to hear from Rick Moses and we think  
7           it should be a defining factor for your  
8           consideration and would ask that the record be  
9           complete.

10                   And, again, I didn't -- I didn't go through  
11           all of this with him because I expected him to be  
12           here today. I didn't know that he was going to  
13           take ill and be in the hospital, and I think it  
14           should come in.

15                   MR. KRUPPENBACHER: Your Honor, this will be  
16           their third expert. The reality is what you have  
17           to anticipate today when you're doing depositions  
18           of experts, is while we're trained never to want to  
19           question our witnesses in a depo, you have to  
20           question them now and qualify them in that  
21           deposition for the very reasons these issues come  
22           up. But this man is not a safety expert and I'd  
23           encourage the Court to scan through that  
24           deposition.

25                   MR. MOYLE: And, Your Honor --

1 THE COURT: Had the Daubert opinion come out  
2 before this -- before March 8th?

3 MR. KRUPPENBACHER: Daubert was in effect --

4 THE COURT: Not -- but I mean the Supreme  
5 Court's adoption of Daubert in Florida?

6 MR. KRUPPENBACHER: No, it did not preexist  
7 that, but even by the prior standard, he wouldn't  
8 qualify. Further, Your Honor, if you look at his  
9 expert report, he goes into discussing the whole  
10 issues regarding the consent decree, analyzing the  
11 entire system across the state of Peoples versus  
12 this little one. So we're going down roads here  
13 that are really --

14 THE COURT: Well, and I will -- I mean, I  
15 recognize -- from what I've heard, I'm probably  
16 convinced at this point that Leesburg runs a very  
17 safe, efficient gas system. But just looking at  
18 366.04(3) and 25-7.0472, safety is not mentioned as  
19 a specific criteria. There is the language that  
20 says the Commission can look at whatever it wants  
21 to in the public interest, but saying it's all  
22 really -- and particularly the rule is generated to  
23 costs is sort of the main focus here.

24 MR. MOYLE: But reliability is also pointed  
25 out in there. And if your safety is in question,

1           you don't have a safe system because it's leaking  
2           and you're having to do things, it impacts  
3           reliability. The other point he does -- we  
4           appreciate it. We'll take the stipulation that  
5           Leesburg is safe, but he compares and contrasts  
6           Leesburg to PGS and that's something you haven't  
7           heard --

8           THE COURT: You probably won't get a  
9           stipulation on that, so be my guest.

10          MR. MOYLE: But the compare, contrast, the  
11          analysis he did, Your Honor, we urge you to accept  
12          it, you know. And then you mentioned yesterday,  
13          Graham. There's not even the Rules of Evidence to  
14          apply in administrative proceedings.

15          MR. KRUPPENBACHER: Daubert does.

16          THE COURT: It's an interesting -- it's such  
17          an interesting area right now, between Graham, and  
18          I don't recall the name of the case that's now  
19          established Daubert, Frye, in Florida, but anyway,  
20          it's an interesting area for me.

21          I'm going to go take a look at this. I'm not  
22          going to take long. I read very quickly. I just  
23          really want to kind of look at this and his  
24          qualifications and I'll make a decision. It may  
25          be -- of course, if this is in, it may just be

1           whether this comes in as an expression of opinion  
2           testimony by expert or as a factual analysis of  
3           various reports. I don't know what he did or  
4           didn't do in this thing, but I'm going to take a  
5           look. We'll come back. We'll sort this out and  
6           then we'll move on with Commissioner Garcia.

7           MR. MOYLE: His qualifications are the first  
8           exhibit to his report, so, to help you out --

9           THE COURT: All right.

10          (Brief recess.)

11          THE COURT: All right. I've read the entirety  
12          of Mr. McGee's deposition. I have not read the  
13          report. I'm convinced that the information deduced  
14          during the course of the deposition gives me enough  
15          to establish that his testimony is relevant and  
16          reliable to the point that I can accept him as an  
17          expert. I'm a little concerned with the expertise  
18          in safety specifically. I think I'm willing to  
19          accept him as an expert in gas operations, but in  
20          his testimony he does say gas safety is one of many  
21          gas operations. So I think he's qualified to talk  
22          in general about safety.

23          The issue that I have is there was very little  
24          discussion during the course of this deposition as  
25          to what his opinion was. It was almost in its

1           entirety a discussion of his expertise and whether  
2           he was an expert in gas safety. I'm going to --  
3           and the report was attached. Since it was -- since  
4           there was an opportunity to question Mr. McGee on  
5           the content of the report and it was attached, Mr.  
6           Kruppenbacher, at your insistence, I'm going to  
7           accept the deposition with the report, but I'll  
8           tell you just, you know, just reading the testimony  
9           itself, there -- this witness identified in his  
10          testimony enough distinctions between Leesburg and  
11          Peoples that I'm just not sure I'm going to find  
12          much substance there, but I'm going to accept it.  
13          I will review the report.

14                 And given -- and I'll give it the weight that  
15          I think it warrants, but, you know, there wasn't  
16          anything in here that just blew the doors off this  
17          case, in my opinion. I think I need to hear  
18          somebody live. It sounds like we have people  
19          queued up to provide that kind of information. I  
20          think I'd prefer to hear it live and really have a  
21          good -- a good crack at a real comprehensive  
22          correct cross examination, so I can get -- derive  
23          my own determination as to the relative safety of  
24          these two systems.

25                 So, with that, I'm going to receive Mr. McGee.

1 I will accept him as an expert in gas operations  
2 with recognition that that does encompass some  
3 safety component. Again, I find the qualifications  
4 of this witness to have established the relevance  
5 and reliability of his testimony and I find that  
6 under 90.802 he meets the qualifications to be  
7 accepted as an expert and we'll go from there.

8 All right.

9 MR. MOYLE: Thank you, Your Honor.

10 THE COURT: Commissioner Garcia is on deck.

11 MR. MOYLE: Commissioner Garcia is called to  
12 the stand.

13 THE COURT: Commissioner Garcia, would you  
14 raise your right hand, please?

15 Whereupon,

16 JOSE ANTONIO GARCIA

17 was called as a witness, having been first duly sworn to  
18 speak the truth, the whole truth, and nothing but the  
19 truth, was examined and testified as follows:

20 THE WITNESS: I do.

21 THE COURT: Full name, please.

22 THE WITNESS: Joe Garcia.

23 THE COURT: Be seated.

24 DIRECT EXAMINATION

25 BY MR. MOYLE:



1 Q Good morning, Mr. Garcia, would you please  
2 state your full name and address for the record?

3 A Joe Garcia, Jose Antonio Garcia. And for the  
4 Bar, it's Jose Antonio Garcia.

5 Q And your address?

6 A It's 2457 Commons Avenue, Apartment 307.

7 Q Who hired you to provide expert testimony in  
8 this case?

9 A City of Leesburg.

10 Q And let me go through some of your background,  
11 if I could.

12 A Sure.

13 Q Could you tell the Judge about your  
14 educational background, college and graduate school?

15 A Yes. My undergraduate was completed at the  
16 University of Miami. My law school was completed also  
17 at the University of Miami.

18 Q You might want to move that mic a little  
19 closer to you. Yeah.

20 A Okay. Is that better?

21 Q There it is. Could you provide an overview of  
22 your professional background?

23 A Sure. I worked as an administrator to  
24 non-profits. I've been involved in public and political  
25 life. I served for six years on the Florida Public

1 Service Commission as a Commissioner and then Chairman.  
2 I've served in the Department of Energy as a  
3 Presidential Appointee, Senate-confirmed, and I've been  
4 a member of Congress in terms of my public life.

5 Privately, I've worked for Merchant Bank, I've worked  
6 for a public relations firm, and I've worked for  
7 non-profits. Presently, I'm co-chairman of Mercury,  
8 which is a public affairs and advocacy group. I work  
9 out of their Florida office, but I spend a good deal of  
10 time in Washington representing different clients.

11 Q Did you ever serve as an adviser to FERC?

12 A I served as an advisor to FERC on issues of  
13 competition and dockets that it had before it. I also  
14 served as an adviser to the Federal Communications  
15 Commission on its joint boarding.

16 Q And in your work today as a consultant, are  
17 you involved in energy issues?

18 A I am. I have a -- in particular, I have a  
19 client that is engaged in an energy business called 21st  
20 Century Utilities, and I've been doing work with them  
21 for a few years. They are a great believer of the  
22 utility rate-of-return regulation, but believe in  
23 incorporating renewables much more aggressively than is  
24 being presently done by utilities.

25 Q And I also assume when you were providing

1 public service in Washington as a member of Congress,  
2 energy issues crossed your desk?

3 A Both in the Department of Energy, as well as  
4 in Congress. Not very much moves in Congress, but --

5 MR. MOYLE: Your Honor, I would tender Mr.  
6 Garcia as an expert in energy policy matters.

7 MR. KRUPPENBACHER: Your Honor, I'd object at  
8 this point. I don't think he's qualified him as an  
9 expert. He simply said matters came in front of  
10 him. He actually lead him with his questioning,  
11 but there's been no detailed evidence put in the  
12 record of an experience as it relates to these  
13 matters.

14 THE COURT: All right. What I'm going to do,  
15 I think consistent with Commissioner Deason, I  
16 recognize the limitations on any individual witness  
17 opining as to policy. That's ultimately going to  
18 be a matter for the Commission. It will be a  
19 matter that I'm going to do my best effort to break  
20 down in my order for the Commission, but as with  
21 Commissioner Deason, I'm willing to give Mr -- or  
22 Commissioner -- actually, since you get your title  
23 for life, I mean, which one do you prefer? Do you  
24 like Congressman, Commissioner?

25 THE WITNESS: You can use them

1 interchangeably.

2 THE COURT: I'm going to use Commissioner.

3 THE WITNESS: Joe is fine, too.

4 THE COURT: That one seems to be more  
5 pertinent to this proceeding, so I'm going to give  
6 Commissioner Garcia a good bit of running room  
7 today as I did with Commissioner Deason. I'll  
8 receive him as an expert as tendered with the  
9 limitation that I've set forth. I'm going to --  
10 like I said, policy in some regard is an expression  
11 that the combination of facts and law and both of  
12 those I, at this point, get to keep for myself, but  
13 I'm willing to hear Commissioner Garcia's take on  
14 it and I'll weigh it up against Commissioner  
15 Deason's. If I like either one of them, I'll use  
16 them. And if I don't, I won't.

17 THE WITNESS: That's the story of my life.

18 THE COURT: All right. So let's proceed.

19 MR. MOYLE: All right. Thank you.

20 BY MR. MOYLE:

21 Q Could you just tell the Court what you did,  
22 what were you asked to do in this case and what you  
23 looked at with respect to forming opinions and views?

24 A Well, I looked at the contract. I looked at  
25 the docket that had been filed. I looked at the

1 testimony that was given, particularly Commissioner's  
2 Deason's. I looked at the statute. I looked at the  
3 rules that pertained in this.

4 Q And when you say you looked at the docket,  
5 that's the PSC docket --

6 A Correct.

7 Q -- that was filed and all of the pleadings in  
8 there and things like that?

9 A Correct.

10 Q You were here when Mr. Deason testified, were  
11 you not?

12 A Yes, I was.

13 Q So some of the topics I'm going to talk to you  
14 about he addressed, but there may be some others that I  
15 will ask you about. The first issue I would like to ask  
16 you about is -- as a matter of public policy,  
17 particularly in natural gas, the role that competition  
18 plays or should play or not play in your view.

19 A Well, natural gas is a little bit different in  
20 Florida than, say, electricity where you have a much  
21 more-defined territory, but even in those cases you have  
22 the spectrum. Let's begin with the Florida Public  
23 Service Commission, as it stands in a space, because you  
24 don't have competition; the nature of infrastructure,  
25 its expense. Our country a long time ago decided to

1 create a system whereby the PSC stood in, or Public  
2 Service Commission, or the Government stood in the role  
3 of finding a provider, limiting the up and down side for  
4 that provider, but making sure you had capital  
5 investment in growing these new industries, in  
6 particular, electricity, natural gas, water.

7 And so, in this case, when I look at this case  
8 and when I look at the natural gas industry in Florida,  
9 it's a little bit different. Right. This isn't Ohio or  
10 this isn't New York or Massachusetts where natural gas  
11 is part, almost an essential service because of heating  
12 and other things. In Florida, it's been more of a  
13 wildcat sort of operations. Right. They go out, they  
14 try to capture customers. They need customers to grow  
15 this system and people have a right to deny not -- have  
16 a right not to serve people. Right.

17 As a general rule, best way to describe it is  
18 if I'm -- let me just use Florida Power and Light. If  
19 I'm Florida Power and Light and Mr. Moyle moves into a  
20 rural area within what is my defined service territory,  
21 there's a very good chance I've got an obligation to  
22 serve. I've got to string up a line and catch Mr.  
23 Moyle.

24 That is not true generally in the gas  
25 industry. The gas industry is a little bit different,

1 because what has happened historically is gas developers  
2 work very close with land developers, providing products  
3 and other things to entice that service and thereby  
4 giving them that ability. So it's why the PSC doesn't  
5 play such a key role in natural gas, although we  
6 still -- and if you'll forgive me, Your Honor, I like  
7 referring to myself as still part of the PSC since I can  
8 use the title -- we play that role. It's a little bit  
9 different. We play the safety role, which is still  
10 encompassing and we still have a role to play. But as a  
11 general rule, this is an area where competition does  
12 exist and where people reach out and capture customers.

13 Q In your answer, you had mentioned a little bit  
14 about developers and the role that they play. Could you  
15 expand on that, please?

16 A Well, because the load is so different, right,  
17 than traditionally in electric, the PSC has not defined  
18 territories, but the territories are sort of captured by  
19 the users, or by the -- by the companies. And so as a  
20 general rule, I will -- I will try to -- I will get  
21 customers so I can build out my system because customers  
22 have a right not to take you, which is not the case when  
23 you are in an electric utilities territory. You don't  
24 have a right to choose that, as a general rule.

25 But I -- and I think it's the Gulf Coast case

1 that talks about this, or Gulf Coast Cooperative, I  
2 think it is. The idea that when two companies are going  
3 out and capturing customers, it's not a bad thing. In  
4 fact, it's a good thing. It's one of those things where  
5 the PSC doesn't necessarily need to get involved if  
6 customers have choice. That's not typical when you lay  
7 out utilities, but it's a good thing when it does happen  
8 because it provides, I think, a better option and gives  
9 people choice.

10 Q I want to shift and talk a little bit about  
11 the agreement between my client and SSGC. There's been  
12 some conversation about that. I think Mr. Deason said  
13 it was unprecedented in nature, but I'd ask you to -- I  
14 assume you've reviewed the contract, have you not?

15 A Yeah.

16 Q And from a public policy perspective, would  
17 you please tell the Court your view of that arrangement?

18 A I thought it was an interesting arrangement.  
19 It's a sophisticated transaction between two  
20 sophisticated parties. On one side you have the city  
21 and the other side you have this sophisticated  
22 developer. They're coming into an agreement to do  
23 several things. The city's trying to catch customers,  
24 which is not a bad thing, and the utility wants to get a  
25 certain level of service and a guaranteed way to do it.



1           I think the city doesn't have to worry about  
2 anything on its balance sheet. They don't have to go  
3 into their treasury or into bonds or borrow money.  
4 They're given a system, which they will operate.  
5 They're not running any risk. In fact, the utility gets  
6 paid. The developer only makes money when the utility  
7 gets paid, or in this case the city gets paid.

8           I thought it was -- I thought it was  
9 interesting. I wouldn't go as far as Mr. Deason saying  
10 it's unprecedented, but I think it's an agreement  
11 between two very sophisticated parties that are looking  
12 to try to achieve something here.

13           Q     Mr. Deason was asked whether he thought it  
14 created a hybrid utility. I'd ask you the same  
15 question.

16           A     No. It's municipal utility. And a municipal  
17 utility is the one that's serving the customers here.  
18 The utilities figured out an interesting way of a  
19 municipal utility of financing a huge expansion. I  
20 thought it was -- I thought it was a good idea.

21           Q     I want to talk a little bit about the role of  
22 municipal regulation, vis-a-vis the role of the Public  
23 Service Commission. There's been some discussion by one  
24 of your former colleagues, I'm not sure you all served  
25 at the same time, but once a Commissioner always a

1 Commissioner, but that point was addressed with respect  
2 to the respective regulatory constructs of a municipal  
3 regulatory authority compared to the PSC. I'd ask you  
4 to comment on that, please.

5 A It's a governing authority. I think the  
6 legislature, in its wisdom, gives tremendous latitude to  
7 elected bodies of municipal governments. I think when I  
8 was on the Commission, and I'm certain Mr. Deason shared  
9 my opinion, that you tended to give tremendous leeway to  
10 local governing authorities. They're closer to the  
11 people. They're elected locally. They have a feel for  
12 the area.

13 The PSC -- the PSC's role's a little bit  
14 different, but, you know, our job is to represent the  
15 public interest. Right. And there I -- you know, I  
16 make a small distinction with what Mr. Deason said. I  
17 think when you're at the public counsel's office, you're  
18 representing the public and in many cases the consumer,  
19 but at the PSC we're representing, at least the way I  
20 saw it, the public interest, which at times is not  
21 necessarily exactly the same thing. Right. At the PSC  
22 we're looking after the state as a whole, and the  
23 customers were part of that, but so was the utility we  
24 were regulating, so were the different classes of  
25 customers that are in the state.

1                   You want to promote growth. You want to  
2 promote healthy economy, and so we took a much broader  
3 view of that, but I don't disagree that both are  
4 governing institutions, that in essence are there to  
5 protect the interests of the people they serve at large,  
6 whether it's a local utility or whether it's the Public  
7 Service Commission in Tallahassee. In Tallahassee we  
8 tend to be a bit far -- I always made it -- when I was a  
9 Commissioner, I always made it a point to say I was a  
10 Commissioner from Miami because everyone else was on the  
11 Commission -- was a way to distinguish that, but to just  
12 sort of talk about the fact that, you know, we become  
13 captive of Tallahassee sometimes, and that's why I think  
14 the legislature sort of sees, and we at the Commission  
15 always saw, to give great latitude to local elected  
16 bodies.

17               Q     And the local elected bodies, they are  
18 involved in rate setting and soup to nuts with respect  
19 to regulation and safety, is that your understanding?

20               A     Yeah. They go at it -- they go about it in a  
21 different way when you're talking about local utilities,  
22 but in essence what they're trying to do is provide  
23 service. The Commission is in a different situation.  
24 We have what are in essence investor-owned operations  
25 where a great deal of money is being invested and a

1 return for that money is expected and we are expected to  
2 allow a fair and reasonable rate-of-return for that  
3 investment.

4 Cities are very different operations. Cities  
5 are invested in a different outcome for their citizens  
6 and the locality, but in essence if they don't make  
7 money on what they're doing, somebody's going to pay for  
8 it locally.

9 In our case, it's -- we're making sure that  
10 while we build out the utility system, that at the same  
11 time there's a fair rate-of-return and that the state  
12 does well by it, but it's just a different type of  
13 regulation. In other words, the utility does more of a  
14 rate-based type regulation. I think municipality is  
15 probably a -- as they try to figure out cost of service,  
16 because they're not responding to shareholders that  
17 expect a specific rate-of-return, but they are dealing  
18 with local electives -- I mean local citizens.

19 Q There was some discussion yesterday about risk  
20 that may be -- may or may not be present in this  
21 arrangement you had with customers in the villages, both  
22 customers who are currently receiving service and those  
23 in the future. I'd ask you to comment on that, if you  
24 would.

25 A Well, I think it's a remote risk. In the end,

1 these are customers that are being served by a system.  
2 That system has a value. Those customers have a value.  
3 If anything, the customers here, I think, are doubly  
4 protected. At one point they have a local-elected group  
5 of people who are going to be handling this utility, and  
6 these are not just some executives in some corporate  
7 office somewhere, but they are local folks who are going  
8 to be responding to complaints, which is the city, and  
9 from all I've read, has a well-operating utility system.  
10 And then they've got this other protection, which is  
11 that their rates are pegged to the -- by the rate that  
12 the PSC has assigned Peoples Gas, or TECO in this case.

13           So, you know, they are protected by our  
14 regulated rate, which have very little to do with the  
15 rates of this utility, but they're nonetheless sort of  
16 contained by that. And at the same time they've got a  
17 local elected body that should probably be responsive to  
18 the needs of the community.

19           Q     There's been some discussion about --

20           A     Let me answer that. And one other thing  
21 that -- they're also part of a development, and a  
22 developer that have an interest here. And so while this  
23 is not a direct of the case, you know, The Villages,  
24 from my understanding, and I don't have a deep  
25 understanding because The Villages tend to vote

1 Republican so I haven't tapped in there, but the reality  
2 is that The Villages have provided a quality of life  
3 sort of standard for the people that live there. And so  
4 I'm sure that if things don't go well with the utility,  
5 I'm sure that they'll respond. They've put themselves  
6 in that position here, to some degree, to make an extra  
7 investment in how this system gets laid out. So I  
8 assume that they have an interest in making sure that  
9 service is good because of what they sell written large  
10 to their customers -- or to their clients.

11 Q One of the considerations that may or may not  
12 be considered by the Judge is customer preference. You  
13 first have to determine is there a dispute and then you  
14 have to weigh a bunch of factors, and then if you come  
15 to the conclusion that they're substantially the same,  
16 call it a jump ball, and customer preference would be  
17 something to be considered, but I would ask you to  
18 comment as you see the role of customer preference.

19 A Well, the reality here is that the customer  
20 initially is a little bit different. Right. It's a  
21 developer. And if the developer doesn't want natural  
22 gas, the customer never sees -- and when you say  
23 customer, I assume you're referring the eventual  
24 occupier, receiver of service of gas. But, in this  
25 case, the developer seems to be looking for something

1 specifically that he wants from his gas provider. The  
2 customer has choice, right, in the sense that the -- he  
3 could have no gas, now he has gas, and he has it  
4 provided by the developer, or in this case the city,  
5 which I think protects the sort of public interest that  
6 we would be worried about, but then I don't know if  
7 that's what you're trying to get at.

8 Q Let me -- there's a couple of other provisions  
9 I want to ask you about.

10 A Okay.

11 Q One is the issue related to natural gas  
12 utilities being located close to one another or having a  
13 line and saying, well, that's my line. That means I got  
14 everything. You've been on the Commission and you have  
15 experience on that. Could you just comment, you know,  
16 comment on that? I mean, in south Florida are  
17 utilities, natural gas utilities, close together from  
18 your experience?

19 A Yeah. No, we've had --

20 MR. KRUPPENBACHER: Excuse me, Your Honor.

21 I'd like to object. It's not been established that  
22 he has any experience on the safety aspect of --

23 THE COURT: Sustained.

24 BY MR. MOYLE:

25 Q There is a provision in the rule that talks

1 about urbanization and I would ask you to comment on  
2 your views with respect to the rule and urbanization, if  
3 you would.

4 MR. KRUPPENBACHER: Your Honor, same  
5 objection. It's not established that he has any  
6 expertize in dealing with urbanization.

7 THE COURT: Well, I think he's being asked to  
8 comment on the rule's use of the term urbanization  
9 and I think that fits closely enough to utility  
10 policy, but I do recognize Commissioner Garcia  
11 isn't here as a fact witness to talk about the use  
12 of gas operations or something of that sort. Mr.  
13 McGee was in, but in terms of how this rule  
14 applies --

15 BY MR. MOYLE:

16 Q Thank you. You can respond.

17 A Yeah. Look, I think as a general rule when  
18 areas grow, you're going to have utilities come up near  
19 each other and they're going to have overlapping  
20 services, some of the cases that have been talked about  
21 today. I don't think it's a necessarily bad thing. I  
22 think, you know -- I don't want to go into the safety  
23 issue, but these are just normal operating engineering  
24 issues that come with growth.

25 You know, to use -- to use a classic example



1 that no longer exists, you know, we at the Commission  
2 used to have these ridiculous hearings about counties as  
3 opposed to central offices in the phone business. And,  
4 of course, AT&T or BellSouth, in this case, had no --  
5 you were providing customers so that they would cross  
6 these boundaries all the time. And, yet, if you ended  
7 up on the opposite side of the street, every call you  
8 made, it was a long-distance call. So this happens all  
9 the time and the Commission tried to resolve those in  
10 cases where it could, but it had to do with  
11 functionality, but as systems grow together, they sort  
12 of co-mingle and it's a natural consequence.

13           Natural gas is much more so because it's a  
14 business where people are aggressively seeking to  
15 capture customers as opposed to keeping territory.  
16 Right. There again, the obligation to serve is a little  
17 bit different. In Telecom, for example, just the, you  
18 know, I talk too much about electricity -- last time --  
19 but in Telecom is one of those examples where if you're  
20 in the service area of a telecommunication provider, you  
21 have an obligation to serve.

22           I'm trying to remember, there was this little  
23 island -- we said -- case is a island off the shore.  
24 You know, it was a huge problem for the phone company  
25 and they provided eventually. We settled it by giving

1 everybody a cell phone -- right -- because they had an  
2 obligation to serve. So that is not the case generally  
3 with the electricity when you're capturing customers and  
4 growing on the fly.

5 THE COURT: Those were the happy days. No.

6 THE WITNESS: There were years and years of  
7 both Ms. Clark's and Mr. Deason's life that will  
8 never be returned, and if they tried to decipher  
9 those rulings, we would have no idea what we were  
10 doing there at the Commission figuring out these  
11 things.

12 BY MR. MOYLE:

13 Q And my client's taken the position with the  
14 Judge that there's no territorial dispute in this case  
15 at the outset, given some of the past practices and  
16 rulings. Could you comment on that, please?

17 A Yeah. I don't see a territorial dispute here.  
18 I see a customer that is being served by a local  
19 utility. It make sense. They agreed to do it. The  
20 developer has -- is under no obligation to take service  
21 from Peoples Gas or TECO. They decided to take service  
22 from a local utility, in this case a local city utility.  
23 I think it -- I don't know what they're arguing about,  
24 right, because if the developer wouldn't let them in,  
25 they wouldn't -- they're not forced to let them in. So

1 I just don't see that there's a territorial dispute.

2           There's this thing about running a line out  
3 there, right, that -- which is, again, I would assume  
4 that before Peoples Gas runs a line out, that they make  
5 sure it's in the best interest of their ratepayers and  
6 investment for their overall body. Likewise, I'm sure  
7 that the city was thinking in those same terms when it  
8 decided to go out there. But, obviously, if you had a  
9 captured customer, it's to its benefit and it's a wise  
10 investment.

11           Q     And you said you assumed that PGS had  
12 customers up there. Why would you make that assumption?

13           A     Well, because unlike, you know, the natural  
14 development that requires an obligation to serve, the  
15 same is not true for natural gas. So if I built out  
16 this whole infrastructure in hoping to serve The  
17 Villages and The Villages says to me, we're not  
18 interested, I'm stopped.

19                     So now if you were -- if it were local  
20 municipality, the city manager would have to turn around  
21 to its fathers -- its Commissioners and say, hey, I  
22 spent all this money, guys, and we're not going to get  
23 the service, and I'm sure somebody would pay the price  
24 in the local administration.

25                     Likewise, if I'm TECO or Peoples Gas and I

1 built out a system where there are no customers, one  
2 would then have the Commission, at some point, would  
3 say -- would this approve an expense made on behalf of  
4 its customers.

5           It's -- you know, Commissioner Deason made an  
6 argument like this when he talked about it. He said,  
7 you know that their ratepayers are going to have to pay  
8 for this investment. The problem is that unlike, you  
9 know, an electric system where everybody has to take  
10 your service, you don't have an alternative. Here,  
11 customers don't have to take natural gas; therefore that  
12 investment has to be borne by the rest of the citizens  
13 because you can't force it or the -- or use of return,  
14 the ratepayers of the regulated utility.

15           Q All right. And back in your day on the  
16 Commission, you're aware of a contribution in aid of  
17 construction, CIAC provision, that was put in place so  
18 that utilities --

19           MR. KRUPPENBACHER: I'm going to object, Your  
20 Honor, he's leading the witness. He's telling him  
21 why it was put in place. Ask him if he's aware of  
22 it and why it was done.

23           THE COURT: Okay. Do you want to rephrase it?

24           MR. MOYLE: Sure.

25           BY MR. MOYLE:

1 Q Do you have familiarity with CIAC?

2 A Yeah, it's done to promote investment in the  
3 utility and its funds that are collected to make the  
4 system better and to serve future customers for the  
5 benefit of all customers.

6 Q Let me switch topics with you and ask you to  
7 comment from a matter of public policy with respect to  
8 changing customers. Just assume that there are 800  
9 customers that are in place, they paid their deposits,  
10 they're getting their bills, they're happy and they're  
11 being served by the City of Leesburg. From a public  
12 policy matter, how would you view a change of that, the  
13 government coming in and saying, well, no, we've  
14 decided, you know, you've got to go in a different  
15 direction?

16 A Well, it just doesn't make much sense. Right.  
17 If their customers are receiving service from an entity  
18 and they're satisfied with that service, why change it?  
19 Right. In essence, you know, unless the customers are  
20 demanding it, it just doesn't make economic sense. You  
21 already have the infrastructure in place. They're  
22 already being served. It's just a standard operating of  
23 the utility. And changing that, unless there's some  
24 underlying reason I'm not aware of, just seems absurd.

25 MR. MOYLE: Can I just have one minute?

1 THE COURT: Sure.

2 MR. MOYLE: We have no further questions.

3 Thank you.

4 THE COURT: Mr. Self, do you have any  
5 questions for Mr. Garcia?

6 MR. SELF: I've wanted to have Mr. Garcia, as  
7 well as Commissioner Deason, under oath for many  
8 years to ask you guys to explain a few things in  
9 your prior rulings, but we'll defer on that for  
10 today.

11 THE COURT: Go back to the telephone world for  
12 that.

13 MR. SELF: No questions.

14 THE COURT: All right. Mr. Brown or Mr.  
15 Kruppenbacher, who's going to handle -- Mr.  
16 Kruppenbacher.

17 CROSS EXAMINATION

18 BY MR. KRUPPENBACHER:

19 Q Good morning, sir.

20 A Good morning, sir.

21 Q You best describe yourself as a politician,  
22 correct?

23 A Yeah. I don't know if that's a positive or a  
24 negative, it's just a statement.

25 Q You, as I've read through your deposition, and

1 see your background, believe in the concept of fiduciary  
2 duty, correct?

3 A I would assume, yes. I don't know if I  
4 referred to it in my testimony, but sure.

5 Q Do you believe the Commission has a fiduciary  
6 duty to the public's interest?

7 A Sorry. Can you repeat the question?

8 Q Do you believe that the Public Service  
9 Commission has a fiduciary duty to the citizens of  
10 Florida?

11 A I would assume so, yeah.

12 Q And does the City of Leesburg have a fiduciary  
13 duty to their citizens who reside within the city?

14 A I would assume so.

15 Q And does The Villages --

16 A I assume you're using fiduciary as sort of a  
17 broad sort of concept and responsibility to the people?

18 Q Yeah. And do you believe The Villages have a  
19 fiduciary duty to the people that they sell homes to?

20 A Yeah, I would assume so, in a broad sort of  
21 way.

22 Q And, in your mind, what does that mean a broad  
23 sort of way, of a fiduciary duty?

24 A They have a responsibility to those clients  
25 that they're serving, I think is what you're trying to

1 say, right? They have a --

2 Q To look out for their best interest.

3 A Yeah.

4 MR. MOYLE: If he can let him answer.

5 THE WITNESS: Yeah, I would assume that the --  
6 usually fiduciary means certain specific legal  
7 connotations, but I think they have a, I guess, an  
8 interest, would probably be a better word. Right.  
9 They have an interest in serving their customers.  
10 They have mutual interest. They are trying to --  
11 they have an interest in the outcomes of certain  
12 things.

13 BY MR. KRUPPENBACHER:

14 Q And that interest is to do the best for those  
15 people, correct?

16 A Are you -- now you're speaking about the three  
17 entities you mentioned?

18 Q Yes.

19 A I would assume so.

20 Q Well, on the Public Service Commission, did  
21 you ever deal with any gas territorial disputes?

22 A I don't recall specifically. I think I was  
23 asked in the depo. I don't remember if I ever did any  
24 one of these cases.

25 Q And you're familiar with municipal utilities



1 by your testimony, correct?

2 A Yes.

3 Q And am I correct you've never seen a municipal  
4 utility do an agreement like this, correct?

5 A I've never seen an agreement like this. This  
6 is the first time I've looked at one of these  
7 agreements. I don't know if you -- but as a general  
8 rule, the municipalities in today's world tend to be --  
9 tend to be very creative because they need to try to  
10 find all sort of ways to serve their clients,  
11 particularly with diminishing revenues.

12 Q And in looking out for earlier -- the best  
13 interest of the citizens and of the customers, it would  
14 be reasonable that those exercising that fiduciary duty  
15 or that interest in looking out, they would be looking  
16 to provide the most-efficient form of service, along  
17 with the most-efficient pricing, correct?

18 A Are you talking about everybody combined or  
19 are you talking about The Villages or are you talking  
20 about --

21 Q Yes.

22 A -- the utility or are you talking about  
23 Peoples Gas?

24 Q I'm talking about all three.

25 A Yeah. From a business -- but I assume

1 everybody from a business perspective would try to do  
2 what's best for their investment, but there are very  
3 different interests here. One is serving a group of  
4 elected leaders in the City of Leesburg. Another one is  
5 serving a series of Board of Directors, which sits  
6 somewhere else, and I assume -- I have no idea where the  
7 developers in this case reside, but they also have a  
8 different --

9 Q Okay. But go back to what you acknowledged,  
10 that -- let's take Leesburg. For their customers, it  
11 would be their responsibility to look out for the  
12 most-efficient service at the most -- and at the best  
13 pricing, correct?

14 A For the customers of the utility, yeah, I  
15 would assume so. I mean, we want to provide the  
16 service.

17 Q Now, when you -- have you ever seen a gas  
18 utility, whether a municipal or a regulated, have two  
19 different rates for residential customers?

20 A Have I ever seen -- well, in this case, you're  
21 talking about residential customers of -- no, I would  
22 assume that generally those rates are specifically set  
23 for -- but there are different classes of customers.  
24 Sometimes they're even -- they're different rates within  
25 those. Right. For example, FPL has a tiered rate in

1 electric service -- right -- and residential customers  
2 are treated differently depending on how much  
3 electricity they use. They're also --

4 Q Question: Have you ever seen a gas utility  
5 that has, whether it's a regulated or unregulated, that  
6 has different rates for residential customers?

7 A I don't think so, no.

8 Q Have you ever seen the Public Service  
9 Commission set rates for a utility based upon what  
10 another utility is charging?

11 A No, but if I can expand on that, I've also  
12 seen-

13 Q No. Just answer yes or no --

14 THE COURT: Mr. Kruppenbacher, I let Mr.  
15 Deason run like a thoroughbred yesterday.

16 MR. KRUPPENBACHER: But he was my  
17 thoroughbred, Judge.

18 THE COURT: They're both thoroughbreds in my  
19 eyes and we're going to have a good horse race in  
20 this case, so -- Commissioner, do you --

21 THE WITNESS: Yes. What I have seen is  
22 municipal utilities, and this happens all the time,  
23 electric utilities, for example, is one that I  
24 know. You know, you look at the rates and they're  
25 set very differently than how TECO would set its

1 rates. Right. They're there based on the  
2 provision of the service, the -- all the things  
3 that go into ratemaking. And then municipal  
4 utilities sometimes say, well, here's what it costs  
5 to serve X, 14 cents a kilowatt, but, you know  
6 what, we're going to put another penny on that  
7 because we want to develop an industrial park or we  
8 want to have more park service, or we want to -- we  
9 want to enrich the coffers of the general  
10 administration of the city. That also happens.

11 BY MR. KRUPPENBACHER:

12 Q Well, let's go back. You jump over to  
13 electric a lot. Let's stay with gas.

14 A Sure.

15 Q You haven't seen any gas companies with  
16 different residential rates for gas, is what you  
17 testified to?

18 A Yes. Yes. And I wasn't going against it.

19 Q Are you aware of a gas company in Florida,  
20 regulated or unregulated, that has an outside party --  
21 well, strike that. Are you aware of a municipal  
22 unregulated gas company that has a third party, other  
23 than the elected officials, have oversight control over  
24 the rates?

25 MR. MOYLE: That's kind of -- if he can

1 understand it, but he used a couple of phrases that  
2 are --

3 THE COURT: Did you understand the question?

4 THE WITNESS: No, I don't. If you're saying  
5 that there's an outside developer that has control  
6 of the rates, is that the question that you're  
7 asking?

8 BY MR. KRUPPENBACHER:

9 Q Yes.

10 A I don't think that's what happened. I think  
11 the city here set the rates and negotiated with the  
12 outside developer, but in the end it's an agreement that  
13 the parties came to, what the rate would be, a maximum  
14 rate.

15 Q What if they want to change that rate? The  
16 city can't unilaterally change the rate, can they?

17 A No.

18 Q Okay. They have to get agreement from the  
19 developer, correct?

20 A Correct.

21 Q You're not aware of any unregulated utility in  
22 the State of Florida that cedes that control or  
23 authority to a developer, are you?

24 A No. I don't know the point you're making, but  
25 in this case the city has to work with the developer.

1 The developer made this capital investment and so  
2 they're part of the deal. The utility collects the  
3 rates and then pays the developer for his efforts.

4 Q So the city has ceded to the developer its  
5 ultimate fiduciary duty as it relates to controlling the  
6 rates for its customers, because that developer can say  
7 we're not agreeing to it in this agreement, correct?

8 A No, that isn't what the agreement says. They  
9 come to an agreement. They set the rate. The rate is  
10 in place when they made the agreement. They haven't  
11 ceded anything; they just set the rate.

12 Q Really? What if the city wants to raise the  
13 rate? Under the agreement, what happens?

14 A They can't. They have to get an agreement  
15 from the developer in this case and therefore --

16 Q So the city is controlled as to the ratemaking  
17 in this agreement by changing that rate by the  
18 developer?

19 A Yes. They have to talk to the developer.

20 Q And you're not aware of any agreement --

21 A No, I think it's --

22 Q -- either regulated or unregulated utility in  
23 the state that gives that kind of power to a developer?

24 MR. MOYLE: He's already answered.

25 THE COURT: Overruled.

1 THE WITNESS: That's exactly what I said  
2 before, yes.

3 BY MR. KRUPPENBACHER:

4 Q Are you aware, is a regulated utility in  
5 Florida permitted to enter into a development agreement,  
6 like the agreement you've reviewed in this matter,  
7 that's Petitioner's Exhibit 1?

8 A That's really out there because, you know, as  
9 you can imagine, utilities like Tampa Electric and  
10 others enter all sorts of agreements with outside  
11 parties, that this particular agreement that entered a  
12 developer, look, I participated -- can I -- well, since  
13 the judge --

14 Q I'll withdraw that and ask it differently.

15 A No, let me go ahead -- so you understand --

16 Q Wait a minute.

17 A -- I've seen cases where -- give you an  
18 example -- an electric utility --

19 Q Not electric. Stay with gas.

20 THE COURT: All right. Mr. Kruppenbacher, I'm  
21 going to let him run. He's on the rail and he's  
22 making his moves, so I'm going to let him go. I  
23 recognize we're talking about gas and electric.

24 THE WITNESS: Yeah, but it's -- whether -- so  
25 I'll give you an example. Right. So I've seen

1 cases where -- and it's not an electric utility --  
2 where utilities will come in to joint trenching  
3 agreements with a developer, right, and all the  
4 utilities have to participate, right, and so that  
5 the utility basically, in many cases it's the  
6 electric, because they're the lead on this, but in  
7 other cases it can be the telephone company. They  
8 come to an agreement to joint trench and then  
9 they've hired the developer. They've hired the  
10 joint trenching company that is going to do all  
11 this work, right, and everybody pays into a fund  
12 and then they get paid back.

13 So I've seen cases where they've come into  
14 these agreements, and as a Commissioner I got calls  
15 from developers that said to me, Commissioner, we  
16 have this problem, right, this isn't working right,  
17 this agreement that the company -- and so I visited  
18 with the company and said, look, your developer is  
19 having a problem, can you try to fix this so that  
20 the system works out, right. They were falling  
21 behind in what they were doing and things of that  
22 nature. So they came into agreement with somebody  
23 to perform work and then someone else has to change  
24 it, but that's like one example of thousands that a  
25 company comes to.



1 BY MR. KRUPPENBACHER:

2 Q Thank you for that. Now, tell me -- answer my  
3 question. Are you familiar, or do you have knowledge of  
4 an agreement that exists that gives the revenue  
5 generated from the sale of gas to a developer who is not  
6 a gas utility?

7 A No.

8 Q Thank you.

9 A I want to make sure I'm answering that  
10 correctly. The revenue that the city receives and then  
11 the developer is paid, because the city collects it.  
12 Yeah.

13 Q When the PSC sets rates for a regulated  
14 utility, how do they do that? What goes into that?

15 A Everything in essence, right. The utility  
16 basically -- the utility puts on a case where it  
17 explains all its costs to serve on its investment to  
18 reach a customer. It puts in its cost of capital, you  
19 know, O&M. And rate-of-return regulated case is usually  
20 just a pass-through cost. Then it's a capital  
21 infrastructure investment that, you know, all of this is  
22 put in and it's factored and you figure out the usage  
23 that's going to be. You then figure out how you break  
24 that up in different classes of customers and what that  
25 revenue is going to be. Make sure that there's, on this

1 capital investment, the utility's able to make a  
2 rate-of-return. And after you go through that very  
3 complex process, it spits out basically what a utility  
4 is allowed to make, what the revenue is going to be,  
5 what is required. But safety goes in there -- lot of --  
6 I'm sure --

7 Q And as a Commissioner on the PSC, where you  
8 were on, the PSC now, that's done to protect the  
9 citizens of Florida to ensure that the rates are  
10 reasonable and proper and they're not being, for lack of  
11 a better word, ripped off, correct?

12 A I wouldn't use that term. One of the criteria  
13 is that they're not being ripped off and they're not --

14 Q They're not unreasonable --

15 MR. MOYLE: Let him answer, please.

16 THE COURT: Let him finish his answer.

17 THE WITNESS: That they're not being ripped  
18 off is a bit out there. What you want to make sure  
19 is that not only that the rates are fair, just and  
20 reasonable, but that they -- that the system is  
21 able to perpetuate itself and keep growing and that  
22 kind of thing, but, yeah, it's all -- it's all part  
23 of that.

24 BY MR. KRUPPENBACHER:

25 Q And you would agree that that would be an

1 appropriate approach for an unregulated municipal to  
2 approach their customers?

3 A Not necessarily. That's why I made, as the  
4 judge called it, I was out on the rail there, I was  
5 trying to make the comment that the municipalities come  
6 at this in a very different way, right, than the PSC.  
7 The PSC -- the municipality is in essence regulating  
8 itself as it provides service to its customers. The  
9 rate-of-return utility, like Peoples Gas, TECO here, is  
10 in essence the PSC stands in the place of making sure,  
11 your words, ripped off, but I think, more properly,  
12 making sure it's fair, just and reasonable because  
13 they're making a large expense into an area, but the  
14 folks who run a local municipality have some -- may have  
15 some different views on that when they calculate their  
16 rates. They're just different.

17 Q Well tell me how they're different, if you  
18 know, or if you don't know, tell me.

19 A Sure. I think when you're regulating a  
20 rate-of-return entity, you've got a board of directors  
21 that has to make a profit and they have to get back  
22 their capital investment and you've got to -- you've got  
23 to require them to make additional capital investments  
24 to keep up the project, to keep it going -- system, to  
25 keep it going, but in essence they're responding to a

1 group of financial backers or investors to make a  
2 rate-of-return.

3           Municipal fathers, as a general rule, are  
4 trying to make ends meet at the very beginning. They're  
5 providing service that others haven't provided or -- or  
6 they decided to provide this to their customers, and  
7 sometimes they make some money, sometimes they lose some  
8 money, but it's different in that way. Right. I've  
9 seen -- I've seen municipal utilities lose money on an  
10 industrial park. Right. They know it's going to bleed  
11 money. They know they're not going to make money there,  
12 but they figure they can make it on another section of  
13 their town. It makes their citizens more wealthy. They  
14 pay more taxes. They pay -- so that it's a very  
15 different weighing of considerations.

16           Q     Talking about the municipal fathers, when  
17 they're dealing with setting the rate for their  
18 customers, what is generally their goal, in your  
19 opinion?

20           A     Their goal is -- it really depends, but as a  
21 general rule, I would assume that their goal is to have  
22 a good system that serves its citizens and to be able to  
23 make sure it grows, that they have a sufficient revenue  
24 to make it operate, that they're providing a service, in  
25 many cases.

1           Q     Is it their goal to make a rate-of-return or  
2 to just provide service for the public and cover their  
3 expenses?

4           A     It depends.  It's sort of, like I said, the  
5 city has so many other ways that its books balance, and  
6 now I'm not talking about financially.  I mean as a city  
7 father, if I show up and I said -- as a mayor of a city  
8 I said, look, I told my utility to give these guys  
9 cheaper electric rates, but they brought to town a  
10 thousand jobs, right, the city manager may have to give  
11 up some from his coffers, but in essence the city's  
12 pleased because everybody gets a better job.  That's  
13 very different.

14           A     A rate-of-return regulation, the stockholders  
15 that, in the end own that utility, while they may have  
16 great and very beneficial interests in the overall  
17 well-being of a community, they've got money on the line  
18 and they've got to make that money back and they've got  
19 to pay their shareholders and they've got to bring --  
20 they've got a responsibility to their board.  They have  
21 a fiduciary responsibility to their board of directors  
22 in a very financial way.

23           Q     Do you believe in fair competition and equal  
24 competition?

25           A     I believe competition is generally a good

1 thing and for competition to work, it should be fair.

2 Q Yet the Public Service Commission would not  
3 allow a pay-to-play scheme that's been set up here for a  
4 regulated gas utility, would they?

5 A I'm sorry, I -- pay-to-play scheme? Where was  
6 the pay-to-play scheme?

7 Q The Public Service Commission. You sat here  
8 yesterday and heard the testimony.

9 A I have to be honest, I might have missed some  
10 of the testimony. As scintillating as it was, I might  
11 have missed some of it because I had some client calls  
12 that I had to take.

13 Q All right. Public Service Commission would  
14 not allow a regulated gas utility to enter into an  
15 agreement like this with a developer and give revenue  
16 from that from agreement being generated by customers  
17 based upon nothing other than the revenue going to them,  
18 as in this agreement?

19 MR. MOYLE: Speculative.

20 THE WITNESS: That's -- of course not --

21 THE COURT: Hold on a second.

22 THE WITNESS: I'm sorry?

23 THE COURT: Go ahead.

24 THE WITNESS: Yeah, of course not, because the  
25 rate-of-return-regulated utility doesn't do its

1 rates this way, right, because it's a completely  
2 different format on how it collects its revenues,  
3 so --

4 BY MR. KRUPPENBACHER:

5 Q So we don't have fair --

6 THE COURT: Let him finish his answer.

7 MR. KRUPPENBACHER: Well he stopped, Judge.

8 THE WITNESS: I just -- I just want to make  
9 sure you understand my distinction, because one  
10 sets its rates and its revenues and is regulating  
11 in a very different way that -- so, likewise, if  
12 FPL or TECO showed up and said, we're going to give  
13 away this stuff, we generally wouldn't allow them  
14 to do it because it's not in the public interest,  
15 right. We don't get to make that decision in the  
16 local format, in the local municipality. So the  
17 way FPL sets its rates or TECO or any  
18 investor-owned utility, in this case Peoples Gas,  
19 it's set up that way. That would be difficult to  
20 justify within the context of a  
21 rate-of-return-regulated case.

22 BY MR. KRUPPENBACHER:

23 Q Now, let's talk about your comment that --  
24 about customers. The Villages is not the customer in  
25 this matter, is it?

1           A     The Villages is not the customer in this  
2 matter? I would assume no. It's the residents that are  
3 going to go in these neighborhoods.

4           Q     And you're unaware of anything where residents  
5 existing within The Villages that are currently served  
6 by Peoples are demanding that The Villages go with the  
7 City of Leesburg?

8           A     I may have read some testimony that the  
9 developers had problems and their residents have  
10 problems with the provision of service by Peoples Gas,  
11 but I'm not aware that there are any residents clamoring  
12 for the City of Leesburg to be their service provider,  
13 correct.

14          Q     And you're not aware of any customers  
15 clamoring?

16          A     I think that's what I just said. If I said --

17          Q     You said residents so I'm using the word  
18 customers to clarify.

19          A     Yes. I'm sorry. Yes. Forgive me.

20          Q     You agree as a former member of the Public  
21 Service Commission with your knowledge of the Commission  
22 today, that the Public Service Commission seeks to avoid  
23 the unnecessary duplication of investments by utilities  
24 so that they're not duplicating one another in areas,  
25 correct?



1           A     I'm aware that that's part of the reason we  
2 set territories, yes.

3           Q     I think -- the regulated utility has a  
4 obligation to serve where they are, correct?

5           A     Not necessarily.

6           Q     Explain that.

7           A     Well, in natural gas it's not -- we don't sort  
8 of require it. Right. If there -- if they're there,  
9 yes, but as a general rule, as sort of -- set up the  
10 scenario. If you're in my service territory, if you're  
11 in TECO service territory and Mr. Moyle is -- decides to  
12 move into the boonies, there is a general rule if it's  
13 within my service territory, we sort of obligate the  
14 utility that has that to provide, whether it's electric,  
15 in past it was phone service, we would require them to  
16 be there. We don't necessarily do the same thing with  
17 gas companies.

18          Q     But the gas company has its line there and  
19 somebody in that area wanted service and it's a  
20 regulated line, they're obligated to provide that  
21 service?

22          A     Yeah, if it's on the curve there. The  
23 difference is that the cost of natural gas and the  
24 return is a lot different than a standard customer would  
25 be. Right. The cost of building out infrastructure in

1 natural gas infrastructure, an example, to a sitting  
2 site that is not there is much higher and so we don't  
3 require -- for example, if you live in a neighborhood,  
4 let's say, in Tampa Bay, TECO service territory, that  
5 neighborhood was built 40 years ago and a -- someone  
6 like yourself decides that he wants a big -- natural gas  
7 equipment in his house and there's not -- there's not a  
8 system built out, we don't necessarily force TECO to  
9 build out that system to get it to you, because it's  
10 just super expensive after a neighborhood has been  
11 built, which is exactly the opposite of how natural gas  
12 companies tend to work it out. Right. That's why they  
13 have these relationships with developer, because when I  
14 put in natural gas, I can't run it on a wire, whether  
15 it's ugly or not, to your house. I've got to bury it.  
16 And when I start digging, that gets really expensive and  
17 so we don't require it in that way.

18 MR. KRUPPENBACHER: Your Honor, could I have a  
19 minute?

20 THE COURT: Yes.

21 MR. KRUPPENBACHER: No further questions, Your  
22 Honor.

23 THE COURT: All right. Mr. Moyle.

24 MR. MOYLE: Just a few on redirect.

25 REDIRECT EXAMINATION

1 BY MR. MOYLE:

2 Q Mr. Garcia, you were asked some questions  
3 about who the customer is, but you also were talking  
4 about developers and developers interacting with natural  
5 gas companies. Do you have an understanding that the  
6 developer serves as a proxy for the customer?

7 MR. KRUPPENBACHER: I'm going to object, Your  
8 Honor. He's leading him.

9 MR. MOYLE: It's a yes-no answer.

10 MR. KRUPPENBACHER: That's a leading question.

11 THE COURT: It's a little bit suggestive.

12 What do you view as the role of the developer in  
13 otherwise undeveloped --

14 THE WITNESS: Yeah, I'll take off where I left  
15 off. The reality is that the way that the natural  
16 gas system is created is a lot harder than running  
17 a wire to someone for cable service or for phone  
18 service or for electricity service because, you  
19 know, in an old community, you just you take  
20 existing infrastructure. Usually run it above --  
21 it doesn't matter that it's not particularly  
22 attractive, but you can't do that with natural gas.  
23 And so as a general rule what has happened is that  
24 a developer has come to agreements with the natural  
25 gas provider to provide that service. And in many

1 cases the developer stands instead of the customer  
2 because if he says, no, there's -- it's not going  
3 to be laid out there. Likewise, if they don't  
4 think there's a great interest in the community  
5 that's being built for natural gas, the gas company  
6 won't particularly reach out to that community. So  
7 it's something that they cooperate together on.

8 And, by the way, in most new developments,  
9 this is an agreement that the developer reaches  
10 early on with, even if it's a regulated utility,  
11 right. So when a developer is going to go out  
12 there, they'll come to an agreement because they  
13 want to bury the wires, bury the cable, bury the  
14 electricity, and so the gas company comes into  
15 that, but as you can imagine, no customer -- it's  
16 like making sausage. Nobody wants to look at  
17 what's in a joint trench, but the developer, of  
18 course, wants to put it there because sausage  
19 hanging from poles is not as pretty so they bury it  
20 and it's usually an agreement that is reached by a  
21 sophisticated party like a developer and it's  
22 very -- Your Honor, it's a very complex thing  
23 because developers are in a rush to lay this out,  
24 sell it because of their cost, and so they've got  
25 to coordinate all of these things together. That's

1           why I thought in this case it was pretty  
2           innovative, right, because you've got someone who's  
3           working with the developer to get this stuff done,  
4           make sure it gets done and on time so they get what  
5           they need out.

6       BY MR. MOYLE:

7           Q       There was some discussion about have you seen  
8           an agreement before, have you seen an agreement before,  
9           a new agreement. In your mind, the fact whether you've  
10          seen one or not, does that provide any qualitative -- is  
11          there any connection to a qualitative, is it good or  
12          bad, as to whether you've seen it or not?

13          A       No. No. In fact, I'll go further. I think  
14          what you're seeing in today's world is that the city  
15          managers, like in this case, the city in this case of  
16          Leesburg, have to find innovative ways to grow. Again,  
17          I'll talk about electricity, right. So I'll give you an  
18          example where investor-owned utilities in electricity  
19          have a distinctive advantage, right. They get all sorts  
20          of tax credits for green and renewable projects. If a  
21          city does that, they don't get the tax credits, right,  
22          unless they find innovative ways to find others to  
23          finance it so that they can do it. So there's all sorts  
24          of things that change and the city administrators have  
25          to find -- you know, I never thought I'd see private

1 roads in Florida. They happen. Right. There are ways  
2 of financing projects. And cities, if they're not quick  
3 on their feet, they get pushed out.

4 Q Let me ask you to assume that the contract  
5 provides limited circumstance in which the city has to  
6 go to The Villages to talk to them about a rate  
7 adjustment. If you assume that that is indeed the case,  
8 that doesn't change your opinion, does it, with respect  
9 to whether this agreement creates a hybrid utility?

10 MR. KRUPPENBACHER: I'm going to object, Your  
11 Honor. That's a leading question.

12 THE COURT: I'm sorry. My attention was  
13 averted. Can you read that back to me, please?

14 COURT REPORTER: Give me just a second, Judge.  
15 So the record is clear when somebody looks at this,  
16 I was looking at the joint pre-hearing stipulation.  
17 I wasn't idling my time.

18 (Whereupon, the court reporter read the  
19 requested portion of the record.)

20 THE COURT: Overruled. I think he's asking --  
21 he's just asking him a hypothetical.

22 THE WITNESS: No, it doesn't change -- it  
23 doesn't change my opinion at all. By the way, this  
24 happens in other contexts, right, the cost of fuel.  
25 Right. The cost of fuel varies. If you're going

1 to change -- you know, when the cost of fuel  
2 changes, the rate will invariably change. They  
3 have to come to the PSC to get that approved, to  
4 get that corrected. When it comes to cities,  
5 right, the natural gas price fluctuates, they  
6 decide how they're going to handle it, whether they  
7 true it up once a year or quarterly. These are --  
8 you know, it's an evolving market. I would assume  
9 this is typically of what happens with utilities  
10 and their pricing.

11 MR. MOYLE: That's all I have.

12 THE COURT: All right. I have a question.  
13 You may not be the right person. I don't want you  
14 to be stretching for the -- and I'm going to  
15 reference a little bit Commissioner Deason's  
16 testimony, but my understanding is that  
17 municipalities are not required -- their rate  
18 structure is not approved by the Commission.

19 THE WITNESS: Correct.

20 THE COURT: And my recollection, I don't  
21 recall if it was Commissioner Deason or somebody  
22 else, is basically the only thing municipalities  
23 report to the Commission for safety issues. Are  
24 there other reports that are filed by  
25 municipalities?

1 THE WITNESS: On natural gas. Other reports  
2 that are filed like --

3 THE COURT: Just regarding natural gas?

4 THE WITNESS: Natural gas, I think it's only  
5 safety. That's the only part that we --

6 THE COURT: All right. So I guess the  
7 question -- I've heard a lot of information. I'm  
8 going to give everybody an opportunity to explore  
9 this. If you have to re-call Commissioner Deason,  
10 I'm going to let you, because I'm kind of opening  
11 up something here. But if that's the case, and  
12 I've heard a lot of information that this agreement  
13 is unprecedented. How would the Commission know?

14 THE WITNESS: They wouldn't.

15 THE COURT: All right.

16 THE WITNESS: They wouldn't because it's just  
17 part of natural -- how these utilities work, so.

18 THE COURT: So there's not some kind of --  
19 even though the Commission doesn't regulate rates,  
20 there's not a report that's filed by municipalities  
21 to the Commission that says, here are our rates,  
22 here's how we set them, you know, do what you will,  
23 but you don't have authority --

24 THE WITNESS: I don't think so. I don't think  
25 so. And the one illusion I was going to make, just



1 for clarification's sake, I know for example when  
2 utilities build new generation for electricity, and  
3 the reason I'm just saying just so -- because it's  
4 different sort of, they have to let us know what  
5 their determination need. They come in and -- at  
6 least they used to be -- they come in in a ten-year  
7 site plan and tell us what they're going to be  
8 doing simply so we can make the broader system  
9 work, but when it comes to individual customers and  
10 the agreements they make, particularly with  
11 municipalities, we give broad latitude. Again,  
12 water companies are a classic example where a city  
13 usually bleeds out and then --

14 THE COURT: But my question was really more  
15 focused, is in terms of gas rates and how a city  
16 goes by setting those rates and whether or not the  
17 city shares revenues with somebody else, is there a  
18 mechanism that becomes publicly available other  
19 than through looking at the minutes of the city  
20 commission?

21 THE WITNESS: I don't think there's any report  
22 that would tell us. We may require them to report  
23 what their rates are for some book that we put out.  
24 Or something that the legislature gave us, a broad  
25 order, collect this information, because the PSC is

1 an arm of the legislature and so we respond to --  
2 when the legislature asks us, is there a subject  
3 matter expertise in these areas. So there are all  
4 sorts of reports that people have to file, but the  
5 idea, water, natural gas, electricity, we do not  
6 have -- we have no rate-making authority within the  
7 municipal boundaries specifically.

8 THE COURT: Does that cause questions?  
9 Anybody can ask about --

10 MR. KRUPPENBACHER: Your Honor, I'm going to  
11 give careful --

12 THE COURT: My question that just popped into  
13 my mind --

14 MR. KRUPPENBACHER: I'm going to give careful  
15 consideration to recalling Commissioner Deason,  
16 because if I do, you're going to need reserve  
17 Friday for the testimony.

18 THE COURT: We have Friday already reserved,  
19 so -- I just want to make sure that I'm not --  
20 because you guys have rested and I'm not trying  
21 to --

22 MR. KRUPPENBACHER: We appreciate that.

23 THE COURT: If you need to re-call somebody  
24 that will tell something, that will provide me with  
25 that information in more detail, I'm going to give

1           you the opportunity to do it.

2                   All right. Did that cause you to have any  
3 questions, Mr. Moyle?

4                   MR. MOYLE: Just I think -- I mean, I think I  
5 understood. Is it kind of a but-for. But for this  
6 territorial dispute being filed by PGS, who would  
7 know what municipalities do, you know, in their  
8 business and their deals that are public deals, but  
9 there's no requirement or reporting requirement  
10 that people have to provide to the Commission about  
11 those deals, I think for municipalities or for  
12 IOU's. IOU's don't have to show all their private  
13 deals, do they?

14                   MR. KRUPPENBACHER: I would move to strike the  
15 testimony just provided by Mr. Moyle and also  
16 object on the grounds it was a classic  
17 multiple-leading statement.

18                   THE COURT: I'm going to overrule. I  
19 understood the question and it seemed question-like  
20 to me. So, if you understand it, Commissioner.

21                   THE WITNESS: As a general rule, I have to  
22 disagree with you, if I understood the question,  
23 because to --

24                   MR. MOYLE: Should we hear from Mr. Deason's  
25 testimony?

1           THE WITNESS: No, as a general rule, these  
2           agreements that are gotten into by the company, and  
3           they are numerous and vast, that you could never  
4           imagine. In a rate case, a lot of that comes up,  
5           that we get to go through, right, and figure out if  
6           it's above the line. There was some testimony  
7           that -- I think Terry's was testifying -- above the  
8           line or not, whether it's business that the utility  
9           engages in that is not rate-of-return, which means  
10          we don't get to look at, at the Commission, but  
11          they sign all sorts of agreements and convenience  
12          and buying all these complexities that we generally  
13          don't look at unless you have a huge rate case and  
14          that's an issue that comes before us, but there are  
15          all sorts of agreements that are curious,  
16          interesting, but the Commission probably won't look  
17          at them as part of the course of business.

18          THE COURT: There's no corresponding mechanism  
19          with regard to municipalities?

20          THE WITNESS: There is not. And, Judge, we  
21          have cases, for example -- and I don't know if  
22          there's been substantial change --

23          THE COURT: That's all right. I'm done.  
24          Anything further, Mr. Moyle?

25          MR. MOYLE: No, that's it. Thank you.

1 THE COURT: All right. Thank you,  
2 Commissioner.

3 MR. KRUPPENBACHER: Your Honor.

4 THE COURT: Yes, sir.

5 MR. KRUPPENBACHER: I would ask that he not be  
6 released because I haven't had a chance to talk to  
7 Commissioner Deason.

8 THE COURT: All right. Are you planning on  
9 having Commissioner Garcia stick around for a  
10 while?

11 MR. MOYLE: I think he was headed back to  
12 Miami as soon as he could.

13 THE COURT: Do you have a flight?

14 THE WITNESS: Yeah.

15 THE COURT: What time's your flight?

16 THE WITNESS: 3:00.

17 THE COURT: All right. So 3:00 is your  
18 flight. So you'll need to be out of here by 1:30?  
19 All right. If we have to work through lunch to  
20 accommodate -- why don't we take a break now. You  
21 can talk to Commissioner Deason and we can --

22 MR. WHARTON: Because, Your Honor, we are --  
23 if Mr. Deason is going to be recalled, it will be  
24 now, is that what you're saying? I mean, let's try  
25 to put things back in order. We want --

1           THE COURT: I'm not going to be confused. If  
2 my question has caused the city to -- I mean, I'm  
3 sorry -- has caused Peoples to need to recall  
4 somebody to address my specific question, I think  
5 it's fair to have Commissioner Garcia here to hear  
6 it, so I would bring him in now. I'm not confused  
7 by order --

8           MR. WHARTON: I agree. I just was thinking if  
9 Mr. Deason is going to do this at the very end of  
10 the trial.

11           THE COURT: It would probably be now would be  
12 my guess. Mr. Kruppenbacher, is that your  
13 anticipation?

14           MR. KRUPPENBACHER: It is, Your Honor.

15           THE COURT: All right. Let's take 15 minutes  
16 to give them time and reconvene.

17           (Brief recess.)

18           THE COURT: Mr. Kruppenbacher, what's your  
19 pleasure?

20           MR. KRUPPENBACHER: Judge, after serious  
21 deliberation, we will not be calling Commissioner  
22 Deason back. So Mr. Garcia can be released.

23           THE COURT: All right. So, Mr. Garcia, have a  
24 good flight. I know it's a terrible ordeal to have  
25 to drive from here to the Tallahassee Airport in

1 all that traffic.

2 MR. KRUPPENBACHER: I guess, for the record,  
3 he could return to the barn.

4 THE COURT: Mr. Moyle, your next witness.

5 MR. MOYLE: Thank you. We call Tom Geoffroy  
6 to the stand, please.

7 Whereupon,

8 TOM GEOFFROY

9 was called as a witness, having been first duly sworn to  
10 speak the truth, the whole truth, and nothing but the  
11 truth, was examined and testified as follows:

12 EXAMINATION

13 THE WITNESS: I do. Thomas Geoffroy.

14 THE COURT: J-E-F-F --

15 THE WITNESS: Let me spell it for you.

16 THE COURT: Probably a good idea.

17 THE WITNESS: The spelling of my last name is  
18 G-E-O-F-F-R-O-Y, pronounced Geoffroy.

19 THE COURT: Mr. Moyle.

20 DIRECT EXAMINATION

21 BY MR. MOYLE:

22 Q Good morning, Mr. Geoffroy, please state your  
23 name and business address for the record.

24 A My name is Thomas Geoffroy. I'm the General  
25 Manager and Chief Executive Officer for Florida Gas

1 Utility. Business address, 4619 Northwest 53rd Avenue,  
2 Gainesville, Florida 32653.

3 Q All right. You identified a position that you  
4 are serving in with respect to Florida -- a utility  
5 company that you represent, right, FGU?

6 A Florida Gas Utility. Yes. I'm the General  
7 Manager and Chief Executive Officer.

8 Q I would like to ask you to walk through your  
9 professional background. Would you tell the  
10 administrative law judge about your professional  
11 background, if you would?

12 A Certainly. I've been in the natural gas  
13 industry virtually my entire career. After I graduated  
14 from the University of Florida with an accounting  
15 degree, I briefly worked for a CPA firm in Gainesville  
16 for about three months, and then I got an opportunity to  
17 join Gainesville Gas Company, which was an  
18 investor-owned gas utility at the time in 1983, as an  
19 accountant. I worked my way up in the organization and  
20 in 1990 I was an officer of the company.

21 In 1990, the City of Gainesville purchased  
22 Gainesville Gas Company at the franchise agreement  
23 termination, and I went to work for Gainesville Regional  
24 Utilities. I was the Director of the Gas Operations  
25 Department for six years for Gainesville Regional



1 Utilities. I left there to take a position with  
2 Chesapeake Utilities Corporation, which is an  
3 investor-owned natural gas utility, locally known as  
4 Central Florida Gas Company, and I was the Florida  
5 Regional Manager and Assistant Vice President.  
6 Ultimately became the Vice President and my duties were  
7 to -- I was in charge of all of the Florida operations  
8 for Chesapeake Utilities. I worked there for  
9 approximately 16 years. When I left Chesapeake, I did  
10 some consulting work in the natural gas industry for a  
11 couple of years and then I took the position I currently  
12 hold about six years ago with Florida Gas Utility.

13 Q Thank you. With respect to Florida Gas  
14 Utility, that's the position you're in currently, would  
15 you tell the judge about Florida Gas Utility?

16 A Certainly. Florida Gas Utility is what's  
17 known as a joint action agency. That's a fancy name for  
18 a co-op. So we exist to serve our members. We're a  
19 governmental entity so we're not-for-profit, and we  
20 provide services to our members. Our members, in order  
21 to be qualified as a member, they have to be a city-owned  
22 or government-owned system that uses natural gas either  
23 to generate electricity, and then that electricity is  
24 sold to municipal ratepayers, on the electric side, or  
25 distributed directly to residential, commercial and

1 industrial customers.

2 We have 23 members spanning the entire state  
3 from the town of Century and the town of Jay up in the  
4 northwest corner of Florida, all the way down to  
5 Homestead, Florida. And we provide -- our primary  
6 duties are to provide gas supply and managed pipeline --  
7 interstate pipeline capacity for our members. We are --  
8 we aggregate all of our members together. We have one  
9 contract for each service that we have with Florida Gas  
10 Transmission. And so we have great flexibility in our  
11 ability to serve natural gas to all of our members.

12 Q I'm going to ask you about that specifically,  
13 but with respect to -- I want to just have you, if you  
14 would, spend just a brief minute and talk about the  
15 members. Tell the Judge a little more about who the  
16 members are. And then also, if you would, the split  
17 between natural gas companies and then electric  
18 companies.

19 A Right. So, as I said, our primary job is to  
20 provide gas supply to all our members. We have 16  
21 what's called local distribution system members. In  
22 other words, they are the ones that take the gas and  
23 distribute it directly to residential, commercial and  
24 industrial accounts, much like Peoples Gas does in the  
25 investor-owned world, and we have seven members that are

1 electric generation members. So we supply the gas to  
2 their power plants. They turn it into electricity and  
3 then they re-sell it to their customers,  
4 municipally-owned customers.

5 The City of Leesburg is one of our members and  
6 we provide, in addition to gas supply and pipeline  
7 management, capacity management services. We provide a  
8 host of other services, primarily to the LBC members,  
9 including rate studies, sales and marketing program  
10 assistance, project management. So if they have a  
11 project that they need to run a new pipe that needs to  
12 be installed, we can manage that from start to end.

13 We have operational assistance. We provide  
14 regulatory assistance to our members and a variety of  
15 other tasks.

16 Q And in terms of those things that you  
17 described, at the core of it, is it making sure that all  
18 of your members have enough natural gas to meet their  
19 needs?

20 A That is why we exist, is primarily to make  
21 sure that all of our members who want to us to purchase  
22 the gas on their behalf, we have some members that do  
23 not, that we do that reliably and at a competitive price  
24 for it.

25 Q And you -- there's two components to natural

1 gas that you deal with, is that right, in terms of  
2 capacity and transportation?

3 A Yes. So one is the gas supply, which is  
4 molecules of natural gas. So we go out and we acquire  
5 that from the producers or marketers, and then they  
6 deliver that into the interstate pipeline system.  
7 Primarily in Florida that's Florida Gas Transmission,  
8 although there are two other pipelines, Gulf Stream  
9 Pipeline and Sabal Trail Pipeline, as well.

10 And then the -- what happens is the people  
11 that want to use that gas, our members, they own  
12 contract -- or they have contracts with Florida Gas  
13 Transmission to reserve space in the pipeline to be able  
14 to move the molecules of gas through. And so we manage  
15 that on behalf of all of our members. And, as I said  
16 earlier, we aggregate all of our members' capacity  
17 together and we're able to utilize that capacity to  
18 benefit all members.

19 Q And how long has FGU been in existence?

20 A Thirty years. They were founded in 1989.

21 THE COURT: Let me ask you; so the individual  
22 members actually reserve the space directly with  
23 the pipeline and then you manage the contracts and  
24 make sure they're --

25 THE WITNESS: They have the underlying

1 contract with the pipeline. We then aggregate all  
2 of our members' contracts together into one  
3 contract, in Florida Gas Utility's name, with the  
4 pipeline and we manage all of our members through  
5 that one contract.

6 THE COURT: Okay.

7 MR. MOYLE: Your Honor, I'd like to tender Mr.  
8 Geoffroy as an expert in natural gas supply and  
9 operations.

10 MR. BROWN: I'm not sure what operations mean.  
11 I didn't have a problem with him knowing about  
12 natural gas supply, but --

13 THE COURT: Well, I'm going to assume  
14 operations is probably roughly the same as it was  
15 in Mr. McGee's deposition, where he described what  
16 he did. That's kind of just sort of understanding  
17 the gas system and the various components. In Mr.  
18 McGee's case, safety is one them. I'm sure  
19 somebody will direct me to some subset of that Mr.  
20 Geoffroy will be --

21 MR. BROWN: I understand.

22 THE COURT: All right. Any objection as I've  
23 described it?

24 MR. BROWN: No.

25 THE COURT: All right. So I do find that Mr.

1           Geoffroy meets the qualifications under 90.702 and  
2           will receive him as an expert as proffered.

3       BY MR. MOYLE:

4           Q     Mr. Geoffroy, could you please share with the  
5       Judge your opinion as to whether Leesburg would be able  
6       to supply natural gas to the area that is up on the map  
7       there in the, what we call, the area in dispute?  It's  
8       colored in a certain -- I guess it's peach color up  
9       there.  But you're familiar with the dispute that we've  
10      been having, is that right?

11          A     Yes, I am.

12          Q     Okay.  So just tell the Judge, if you would,  
13      your view and your professional opinion as to whether  
14      Leesburg is going to be able to supply its current  
15      customers and its future customers?

16          A     Yes.  So Leesburg has contracts, as I said,  
17      with the pipeline for capacity -- pipeline capacity.  
18      They hold in total, approximately 7,000 decatherms a day  
19      of capacity in the winter months, and then the summer  
20      months it's approximately 2,800 decatherms a day.  And I  
21      think October it's 3,300 decatherms a day in total.

22                    We have analyzed that capacity and the  
23      Leesburg lateral, because we maintain all the data on  
24      behalf of Leesburg for purchases and whatnot, because we  
25      do all that work, and the capacity that they hold on

1 Florida Gas Transmission, we look at their native  
2 customers, their existing customers, and how much they  
3 have used maximum amount each month over the last five  
4 years and determined that -- subtracted from the  
5 capacity contracts that they hold, the amount that their  
6 customers -- current customers use to see how much is  
7 left for growth. In my opinion, in every month, they  
8 have sufficient capacity on Florida Gas Transmission, to  
9 supply The Villages, the area in dispute.

10 Q And there is an exhibit. There should be a  
11 book up there that has the exhibit in it. City No. 8,  
12 if you could turn to that.

13 A Yes.

14 THE COURT: Let me ask you a question real  
15 quick before we start. So I note that Exhibit 8  
16 was received in evidence, but it said attachments  
17 only, but what I have is a one-page document,  
18 because this was in -- I'm not sure what the  
19 attachments-only describes.

20 MR. BROWN: It's also our 32, Your Honor. It  
21 was in.

22 MR. MOYLE: I think the attachments-only was  
23 for the one above. That was the --

24 THE COURT: Thirty-two.

25 MR. MOYLE: -- expert discussion, but it

1           should be -- it's just a one-page document entitled  
2           gas transportation --

3                   THE COURT: That's what I have. Okay. That's  
4           in evidence twice, apparently, so.

5 BY MR. MOYLE:

6           Q       We would ask you, if you would, to identify  
7           City Exhibit No. 8 and tell the Judge about this  
8           exhibit, what it depicts, and kind of walk him through  
9           it, if you would.

10          A       Certainly. So there's two parts to this  
11         chart. The top part is -- and this is entitled gas  
12         transportation capacity summary for Leesburg, and I  
13         prepared this document. So this is looking at the level  
14         of capacity that Leesburg has on the interstate pipeline  
15         system, Florida Gas Transmission, and their people  
16         that -- this is what I just described.

17                   So the -- you have each month going across the  
18         right-hand side and below that you have FGT, FTS-1  
19         total. So that's one of the capacity contracts that  
20         they have with the pipeline. Generally it's 6,500  
21         decatherms per day in the winter months, about 2,295 a  
22         day in the summer months, with October being 2,800 a  
23         day. They also hold a FTS-2 contract with Florida Gas  
24         Transmission. That is 500 decatherms a day year-round,  
25         every month. Those two added together is that fourth



1 row down called total firm capacity, it's bold, and  
2 those are the numbers that I just recited earlier.

3 The line below that is max native burn, prior  
4 five years. And that's what I said. We looked back  
5 over the last five years at the maximum day in each  
6 month for the existing customers. We subtracted that  
7 from the total firm capacity and that becomes the bottom  
8 row available capacity for growth. The line above that  
9 is the year in which that native -- or max native burn  
10 took place over the last five years.

11 And so what it shows is, for example, in  
12 January, they have 7,000 decatherms a day of firm  
13 capacity. Their current customers on the peak day, this  
14 is not an average day, but this is the peak day in  
15 January over the last five years, used 4,892 decatherms  
16 on that day and that left 2,108 decatherms a day  
17 available for growth in that month. And it works  
18 consistently for the 12 months in that fashion.

19 The bottom part of this is some information  
20 that we got off the Sabal Trail Pipeline website,  
21 indicating that they have -- that the total peak day  
22 capacity of Sabal Trail Pipeline is 830,000 decatherms a  
23 day and only 720,000 decatherms a day that is subscribed  
24 by firm shippers. So that leaves 110,000 decatherms per  
25 day of available capacity for purchase by anybody on

1 Sabal Trail.

2           And then the bottom part just talks about some  
3 additional information about the expansion that Sabal  
4 Trail is faced to expansion. Went into service -- two  
5 compressor stations that went into service -- will go  
6 into service next year, adding another 169,000  
7 decatherms per day of additional firm capacity.

8           Florida Power and Light already has the  
9 subscription for 200,000 decatherms a day. That will  
10 start in May 1, 2020. So they use some of that new  
11 capacity. And then as of May 1st, 2021, Sabal Trail  
12 indicates that they have 99,000 decatherms a day of  
13 unsubscribed capacity that can be sold to other  
14 shippers.

15           So, in addition to the capacity that Leesburg  
16 has, they do have the ability to contract for additional  
17 if they were to need it in the future for other reasons  
18 on Sabal Trail for --

19           THE COURT: So it looks like FPL will take up  
20 all of the phase-two capacity -- if that's where  
21 they were getting -- they would take up all of that  
22 and you'd have to get more somewhere else.

23           THE WITNESS: Some of the existing  
24 unsubscribed capacity, the 830 less 720. So  
25 there's still 110,000 existing, plus another 169,

1           and they're going to take 200, a combined amount.

2           BY MR. MOYLE:

3           Q       Can you just explain, maybe in layman's terms  
4           if you can, what that 110,000 equates to and what it  
5           could serve as available?

6           A       Well, for all 23 members, including Florida  
7           Municipal Power Agency's power plants, we typically  
8           schedule on a day about 150,000 decatherms every day for  
9           all of our members. It's a lot of gas.

10          Q       A lot of gas. And, to be clear, you put  
11          information in about Sabal Trail, but not because it's  
12          needed to serve any of the area of dispute, is that  
13          correct?

14          A       No, just to demonstrate that there is  
15          additional capacity available for future growth beyond  
16          what is needed.

17          Q       Right. And so, to be clear, you don't need  
18          Sabal Trail?

19          A       No. Sabal Trail is not required, nor any  
20          capacity on Sabal Trail required to serve The Villages,  
21          the area in dispute. They have sufficient Florida Gas  
22          Transmission capacity rights to be able to serve the  
23          growth in The Villages.

24          Q       Do you have information about the cost of  
25          Leesburg present and in future with respect to PGS you

1     could share?

2             A     You're referring to costs of the gas supply?

3             Q     That's right.

4             A     Yes.  So as I said, we are a not-for-profit  
5     organization.  So all of the costs that we incur to  
6     procure the gas supply is passed through to each member.  
7     Currently, the gas supply, I think the market this week  
8     is about \$2.30 per decatherm.  I think at the last 12  
9     months the -- Leesburg's average cost of gas was in the  
10    neighborhood of all in, including the commodity, the  
11    pipeline capacity and all other related costs, including  
12    our service charges, was in the 3.50-to-4-dollar-per  
13    decatherm range.  When I looked out at the Peoples Gas  
14    website and looked at their purchased gas adjustment,  
15    and they have a history of that, they reported in  
16    therms, but when you convert that to per decatherm cost,  
17    compare it to the 3.50-to-4-dollar cost that Leesburg  
18    has incurred, their website shows that they're just  
19    about at \$10 per decatherm for their gas supply cost.  
20    So they charge their sales customers.

21            Q     Has FGU ever not been able to provide any of  
22    its customers with gas as needed?

23            A     The only event that occurred was a curtailment  
24    event, force majeure, that the pipeline called, when a  
25    lightening strike back in the late '90s severed all of

1 the pipeline coming into the state. And so they ordered  
2 everyone except for residential and commercial customers  
3 off the line. We were able to serve all the residential  
4 and commercial customers, but were not allowed to serve  
5 anything else, but, other than that event, we have had  
6 continuous reliable supplies to all of our members  
7 everyday.

8 Q And that event, that was the Perry lightening  
9 strike?

10 A That is correct.

11 Q And that affected --

12 A Everyone in the state.

13 Q There was no distinction between municipal  
14 members and --

15 A No. Everyone was curtailed, down to  
16 residential and commercial customers.

17 Q And the State of Florida, since that period  
18 lightening strike, has added how many new interstate  
19 pipelines into the state?

20 A At least two.

21 Q The person who handles gas for Tampa Electric  
22 has testified previously, I don't think you were here,  
23 but I'll just let you know that he had talked about  
24 something called Section 11 Rights and ask you, are you  
25 familiar with Section 11 Rights?

1           A     Yes, I am.

2           Q     Tell the Court what they are.

3           A     So Florida Gas Transmission's Tariff, approved  
4     tariff by FERC, Federal Energy Regulation Commission, in  
5     their general terms and conditions they have Section 11,  
6     which allows entities such as Peoples Gas who have  
7     multiple divisions throughout the state, multiple  
8     take-off points if you will, they're called city gate  
9     stations, to be able to aggregate all of those together  
10    and be able to schedule and flow gas to any of those  
11    points as an aggregated basis.

12                    So that's the rights that Peoples Gas and  
13    other entities have who have multiple divisions within  
14    the state. That is not the Section 11 Rights that  
15    Florida Gas Utility enjoys. In the FTS-1 and FTS-2 rate  
16    schedules, there's Paragraph 11 that specifically grants  
17    public agencies the aggregation rates that we enjoy that  
18    are virtually identical to what Peoples Gas and others  
19    enjoy under the general terms and conditions Section 11  
20    Rights, allows to aggregate and to treat all of your  
21    aggregation basically, one entity rather than multiple  
22    individual entities.

23           Q     So chief distinction between PGS and your  
24    company is paragraph versus section?

25           A     Yes. It's just where on their tariff you find

1 their aggregation rights.

2 Q And why is that a valuable tool, if it is?

3 A That's very valuable because on any particular  
4 day, in our case, for example, as a cold front comes  
5 through, our members up in the panhandle will get the  
6 cold front sooner. So they'll use a lot more gas than  
7 people -- our members further down in the state. Having  
8 this aggregation allows us to use pipeline capacity from  
9 one member to benefit another member. So when one  
10 member needs more capacity, we can get it from the other  
11 member. When one member has excess capacity, we sell it  
12 for them easily.

13 Q Okay. Does that section also address  
14 interruptible customers?

15 A Not that I'm aware of.

16 Q Do you have the ability to manage gas through  
17 certain customers that are interruptible?

18 A We have the ability with our members, with the  
19 electric generation members in particular, to ask them  
20 to move to an alternate fuel so we can use the gas that  
21 would otherwise have gone to their power plant for other  
22 needs and we would just pay the incremental cost, if  
23 any, of the alternate fuel.

24 Q And that kind of works as a safety valve?

25 THE COURT: We being Florida Gas Transmission,

1 or we being members?

2 THE WITNESS: Florida Gas Utility manages that  
3 process. So we would reach out to the electric  
4 generator and ask them, we need additional gas  
5 today, can you switch to oil, and they would do  
6 that and we would use gas and deliver -- redeliver  
7 it to the member that needed that gas.

8 THE COURT: And then FGU would pay the utility  
9 any increased cost of using the alternate fuel?

10 THE WITNESS: And charge it to the member that  
11 got the benefit of using the gas.

12 THE COURT: Okay. Got you.

13 BY MR. MOYLE:

14 Q And I was going to ask, my term of safety  
15 valve, but is that used infrequently or how often is it  
16 used?

17 A Well, Leesburg, in addition to what I just  
18 described, Leesburg has an interruptible customer on  
19 their system, the Cutrale Juice Plant. So they also  
20 have the ability to recall the capacity from that juice  
21 plant. And, yes, that's exactly what these customers  
22 are designed for. They're great customers to have  
23 because they use a lot of gas when nobody else needs to  
24 use it, but they have alternate fuel requirement -- or  
25 abilities. So when you do need their gas, they can



1 switch to an alternate fuel and you can use their gas  
2 for other purposes.

3 Q Back on the chart, if I could for a minute, in  
4 terms of the differing amounts on the total firm  
5 capacity line, do you see that?

6 A Yes.

7 Q Why are there differing amounts there? Can  
8 you explain that to the Court?

9 A Yes. So utilities tend to subscribe for the  
10 amount of capacity to meet the peak needs of their  
11 current customers and some for future growth. And so  
12 winter time tends to generate more usage as customers  
13 who have furnaces in their homes can use those furnaces  
14 when it gets cold. And so they tend to create, what's  
15 called a needle peak. In other words, when it's really  
16 cold, there's a lot of usage, but when it's normal,  
17 there's not as much usage.

18 So, to be prudent, utilities typically reserve  
19 enough pipeline capacity to serve those peak days and  
20 that's what Leesburg has done in the winter months.  
21 Now, the pipeline has restrictions so you can't just  
22 necessarily tailor in every month what you want. You  
23 have to do it seasonally. They have -- for FTS-1 they  
24 have four different seasons, a summer season, a winter  
25 season. April was its own season and October was its

1 own season, as well. So you could do those months  
2 different than the others, but you had to have the same  
3 quantity within the season.

4 And so because in the summer months, the load  
5 tends to be less, because water heaters and whatnot, the  
6 peak days are a lot less. You can see that in the max  
7 native burn line item there. And so utilities tended to  
8 subscribe for less capacity and pay for that in the  
9 summer than they do in winter months.

10 Q Just because there's somebody subscribed to a  
11 pipe, there's a secondary market, is there not, in  
12 capacity?

13 A Yes.

14 Q Could you describe that to the Judge?

15 A Sure. So when -- not like today where it's  
16 really hot, but on a day where it's 70 degrees or so,  
17 and not when it's really using a lot of gas, there is a  
18 lot of excess pipeline capacity that's not being used.  
19 People aren't putting the molecules of gas in there.  
20 And so that -- the owner of that has the ability to  
21 re-sell the space in that pipeline on the open market  
22 for a market price, not a tariff rate price, but a  
23 market price. That price could be higher than tariff,  
24 or it could be lower than tariff rate, depending upon  
25 the conditions of the pipeline.

1           And so that secondary capacity is almost  
2 always available on the system and is -- can be acquired  
3 and utilized to deliver gas to various places on the  
4 pipeline. And you pay a market price for that, not a  
5 tariff rate price for that.

6           Q     So, at the end of the day, kind of bottom line  
7 as you sit here today, you don't have any concerns about  
8 Leesburg's ability to supply natural gas to its  
9 existing -- or future customers, is that correct?

10          A     Not off of using an FGT system. They have  
11 plenty of capacity there to serve their existing  
12 customers and the area in dispute here, every month.

13          MR. MOYLE: All right. Thank you. Could I  
14 have a minute, Your Honor?

15          THE COURT: Yes.

16          MR. MOYLE: Those are all the questions that I  
17 have.

18          MR. WHARTON: The only thing I have, Your  
19 Honor, is that I don't think we identified that  
20 this is Leesburg Exhibit 2, that the witness has  
21 been referring to.

22          THE COURT: The one where he talked about the  
23 peach area, I presume that's the area west of the  
24 county line, excluding the brown area that's  
25 current service area. Is that what you were

1 talking about?

2 THE WITNESS: That's my understanding, yeah.

3 THE COURT: The peach area is what you were  
4 referring to?

5 THE WITNESS: I think he referred to it as  
6 peach. I was referring to it as the area in  
7 dispute.

8 MR. WHARTON: That's all I have.

9 THE COURT: All right. Mr. Brown.

10 CROSS EXAMINATION

11 BY MR. BROWN:

12 Q What's the current price for transportation on  
13 Sabal Trail?

14 A Market price?

15 Q Sure. Yeah, the market price.

16 A I don't know what the market price is. That  
17 changes minute by minute.

18 Q What's the general range of transportation out  
19 here to sign up for firm service on Sabal Trail?

20 A My understanding is that all of their rates  
21 are -- all of their contracts are negotiated. My  
22 understanding is the tariff rate is in the \$1.57 range  
23 or so.

24 Q Now, if I understand what you're saying,  
25 you're telling me that in terms of the overall gas

1 supply, in other words the molecules, that Leesburg  
2 doesn't need to tie into Sabal Trail in order to get  
3 enough gas, correct?

4 A That is correct.

5 Q All right. But -- and you said that Sabal  
6 Trail is needed primarily for redundancy?

7 A Yes.

8 Q And backfeed?

9 A That is -- yes.

10 Q Okay. So, in other words, if I understand,  
11 the issue is FGT has got their two gate stations -- or  
12 Leesburg has their two gate stations at FGT up in these  
13 two dots here, the purple dots up in the northeast part  
14 of the county and the city, correct?

15 A That is correct.

16 Q All right. And so, all the gas that comes in  
17 currently has to flow all through this entire system,  
18 through this entire system, through this on the line  
19 down at the prison, and then they use the line on 501 to  
20 feed these areas up here that we've been talking about,  
21 correct?

22 A That is correct.

23 Q And so the problem for Leesburg is that they  
24 don't have enough -- they have problems getting enough  
25 pressure down at this end, in the south end, and that's

1 why they've got to have Sabal Trail?

2 A I'm not aware of that being an issue for that.

3 Q Well, do they have enough -- okay. All of the  
4 future growth, however, is going to be down in this  
5 area. That's been the testimony. I want you to assume  
6 that's the case.

7 A Okay.

8 Q And so in order to have enough pressure to  
9 feed that --

10 THE COURT: Let's make sure we're clear. I  
11 don't -- I can always remember Fenney for some  
12 reason. I can never remember the new one. What's  
13 the --

14 MR. BROWN: The various Bighams. The Bighams.

15 THE COURT: Okay. When you're saying this  
16 area, you're talking about the three Bigham --

17 MR. BROWN: Yeah.

18 BY MR. BROWN:

19 Q Is it your understanding from the Bighams and  
20 then the area to the southeast of that is where The  
21 Villages growth is going to be?

22 A That is my understanding.

23 Q And I think you testified earlier in the  
24 deposition that that's pretty much the primary driver  
25 for growth for the City of Leesburg?

1           A     That's my understanding, yes.

2           Q     And so it would be a benefit to Leesburg in  
3 terms of pressure, in terms of piping capacity, to have  
4 a tie-in to Sabal Trail to be able to more efficiently  
5 serve that area as the growth comes along; would you  
6 agree?

7           A     It would be a benefit, but not a requirement.

8           Q     Well, would it be a requirement at some point  
9 in time as that growth expanded?

10          A     That's speculative. Yes.

11          Q     Okay. I'm going to put a book up here, some  
12 exhibits. There's a couple things I want to ask you  
13 about.

14                   THE COURT: Peoples exhibits?

15                   MR. BROWN: Peoples exhibits, yes, Your Honor.

16                   And I want to direct you to Exhibit 34.

17 BY MR. BROWN:

18          Q     Do you see that, sir?

19          A     Yes, I do.

20          Q     And that's an email that you wrote to Jack  
21 Rogers on August 17th of 2018, is that correct?

22          A     Yes, it is.

23          Q     And it contains a draft article for, I guess,  
24 an FGU newsletter?

25          A     That is correct.

1 Q And did you draft that article?

2 MR. MOYLE: Your Honor, I want to register an  
3 objection. This is beyond the scope of direct.  
4 Asked him about the gas supply for the area, and  
5 this is talking about the contractual arrangement  
6 deal. We didn't get into that with him.

7 MR. WHARTON: Object to the relevance, too.

8 THE COURT: It has enough in that potential  
9 article that ties in with some of his testimony  
10 regarding Sabal Trail and other issues that it's  
11 fairly within the scope. So overruled.

12 BY MR. BROWN:

13 Q All right, sir. Did you write this article?

14 A I don't believe I did write it, but I directed  
15 it to be written.

16 Q And you looked at it at some point, I assume,  
17 and approved it?

18 A This is a draft.

19 Q Right, but it's a draft that you would have  
20 looked at and you were sending on to Jack Rogers for  
21 approval?

22 A Correct.

23 Q And so I assume you at least looked at it  
24 initially before sending it on to Mr. Rogers?

25 A Yes.



1 Q And you were asking Mr. Rogers for approval.  
2 And did he ever send back any changes to this draft  
3 article?

4 A No.

5 Q Okay. So as far as you were concerned, at  
6 least he did not register that he disagreed with  
7 anything that was in the article in terms of sending  
8 that information to you?

9 MR. WHARTON: Objection; calls for  
10 speculation.

11 THE COURT: Well, I think the question is, did  
12 he ever send him anything that registered a  
13 disapproval? The fact that he did or didn't isn't  
14 necessarily going to drive my finding, but I think  
15 that's a fair question, whether he received  
16 anything.

17 THE WITNESS: I did not ask him to review it.  
18 I asked him if he was okay with us publishing it,  
19 which means he would have had to review it. He  
20 indicated to me that he would prefer it be delayed.  
21 We did not get into the content of the draft.

22 BY MR. BROWN:

23 Q And if we look at the draft itself, it says  
24 that, in the second paragraph, it says that the contract  
25 specifies that Leesburg will provide service to an

1 estimated 14,000 residential units, which will more than  
2 double the number of customers served by Leesburg, and  
3 it talks about doing that over the next five to six  
4 years. Do you see that?

5 A Yes.

6 Q And I think when we talked at your deposition  
7 the first time, I think you said that would create a 700  
8 decatherm roughly -- that an additional initial 14,000  
9 homes would create a 700-decatherm-per-day additional  
10 load on the system?

11 A 767, I believe I said. Yes.

12 Q Okay. And so if we say 767 -- and let me  
13 direct you back to exhibit -- it's Exhibit 5, your chart  
14 there.

15 A Exhibit 8?

16 Q Eight. Yes. I don't know why I said --

17 A City Exhibit 8?

18 Q City Exhibit 8 or --

19 THE COURT: Let's stick with City Exhibit 8.

20 BY MR. BROWN:

21 Q All right. And this is your chart, correct?

22 A Yes, it is.

23 Q All right. And so if we add -- what was --

24 767?

25 A Yes, sir.

1 Q And if we look at the 767 under, say, June  
2 of -- for the year of June, and you subtract that from  
3 the 808 available capacity for growth, that doesn't  
4 leave very much capacity for growth at that point,  
5 correct?

6 A Does not leave -- right. For that amount of  
7 firm capacity that they have contracted for in the  
8 summer, that's correct.

9 Q All right. And so once we hit those -- hit  
10 that number, we have the 14,000 homes, for example, you  
11 would agree they've got to tie into Sabal Trail being  
12 the most likely tie-in to get more gas?

13 A No, I would not agree.

14 Q Okay. And, at the same time, when these  
15 developments get filled in and people start living in  
16 them, is it generally your experience that you start to  
17 get commercial load all in this year?

18 A Yes.

19 Q And the commercial load would be a bigger draw  
20 off of the gas than the residential load?

21 A It is typically, yes.

22 Q Okay. So when we just talk about the number  
23 of homes that are coming in, that's really the smaller  
24 item in terms of what the overall gas usage is, correct?

25 A I would have to speculate because I don't know

1 the type of commercial specifically.

2 Q But in general terms, generally the commercial  
3 is going to a bigger driver of use?

4 A Yes, that's correct.

5 Q So when we talk about the 700 decatherms for  
6 the 14,000 homes, that doesn't include what the  
7 commercial growth at that point is going to be?

8 A That's correct.

9 Q And if we saw -- let's say that there was  
10 something like a -- well, what does a restaurant, for  
11 example, draw on?

12 A On a daily basis?

13 Q Yeah.

14 A It depends on the type of restaurant. Are you  
15 talking about a Burger King or a Red Lobster or a  
16 Charlie's Steakhouse? They're all restaurants. They  
17 all use different amounts.

18 Q Well, I think there's been a lot of discussion  
19 about -- what would you say is the average residential  
20 use?

21 A Per day?

22 Q Yes -- or per year. Per year.

23 A For these Villages customers?

24 Q Yeah.

25 A My understanding is they don't have furnaces

1 in there. So I would say that their average typical use  
2 would be about 200 therms or 20 decatherms a year.

3 Q And in general what is -- I mean, just give me  
4 an idea what a Burger King uses per year?

5 A They use about 5,000 therms or 500 decatherms  
6 per year.

7 Q All right. And so if, in other words -- let  
8 me try to get this down here. Okay. And then what  
9 would be other commercial-type establishments that would  
10 use a lot of gas?

11 A Beside restaurants?

12 Q Yeah.

13 A Hotels, hospitals, you know, those types of  
14 entities, dry cleaners.

15 Q And what does a typical hotel use?

16 A I don't know that there is a typical hotel,  
17 but they probably would use in the neighborhood of 1,000  
18 decatherms a year.

19 Q All right. 1,000 decatherms?

20 A Correct.

21 Q Not 200 therms, 1,000 decatherms?

22 A Right. I'm trying to keep it all in  
23 decatherms. Residential is 20 decatherms. The Burger  
24 King is 500 decatherms, because the pipeline capacity is  
25 in decatherms.

1 Q Okay. All right. So, in other words, if we  
2 add -- so if we add a couple hotels, we add a few Burger  
3 Kings, we're now equal to the amount of potential demand  
4 that's equal to hundreds of houses?

5 A Correct.

6 Q So when we talk about the 700 decatherms of --  
7 for the 14,000 homes, that's really the smaller number  
8 in terms of what the overall demand in that area is  
9 going to be?

10 A That could be very true.

11 THE COURT: Let me make sure I have this -- I  
12 have the numbers straight. So a home, 20  
13 decatherms?

14 THE WITNESS: Correct.

15 THE COURT: Fast food restaurant, 500 or  
16 5,000?

17 THE WITNESS: 500 decatherms per year.

18 THE COURT: So Burger King is equal to 25  
19 houses?

20 THE WITNESS: Correct.

21 THE COURT: Hotel 1,000 decatherms a year.  
22 That's 50 houses.

23 THE WITNESS: Fifty.

24 THE COURT: So it will be 25 -- okay.

25 BY MR. BROWN:

1           Q     And so if we, for example, we had 14,000 homes  
2 and we had, you know, ten fast food restaurants and a  
3 couple hotels, we're well above the amount of available  
4 capacity for growth, certainly in the summer on your  
5 chart, correct?

6           A     We're above the firm capacity contracted for  
7 by Leesburg in the summer months. That is correct.

8           Q     And so somewhere they have to get more gas  
9 from somewhere, whether it's Sabal Trail or FGT or  
10 whomever.

11          A     Yes.

12          Q     Okay. Now, let me go on to this article and  
13 let me go down further where it says -- the third  
14 paragraph. It says the contract specifies that The  
15 Villages is responsible for the construction of all  
16 components of the natural gas infrastructure at their  
17 cost, including setting the meter and regulator. And  
18 then it says, well, once completed and tested, The  
19 Villages then turns the system over to Leesburg to  
20 operate and maintain in exchange for part of the  
21 revenues generated by customers within The Villages  
22 community.

23                   So, in other words, is what you're saying that  
24 The Villages turns this over to Leesburg for a time and  
25 then essentially they're contracting out the O&M?

1           MR. WHARTON:  Objection.  Your Honor, you said  
2           the connection was enough, but we've established  
3           this article wasn't even written by him and now  
4           we're using it to back --

5           THE COURT:  I don't need a speaking objection.  
6           I'm going to sustain the objection.  I think  
7           we're -- again, the agreement's going to speak for  
8           itself unless I have more information about this.

9  BY MR. BROWN:

10          Q       Let me go to the next paragraph.  It says, in  
11          order to ensure a reliable and safe service to the  
12          customers within The Villages, Leesburg is constructing  
13          a new interconnect to the city gate station with the  
14          Sabal Trail pipeline.

15                 So the article, at least that you approved and  
16          sent to Mr. Rogers, says that the interconnect with  
17          Sabal Trail is to be able to serve the customers in The  
18          Villages, correct?

19          A       It says in order to ensure reliability.  It  
20          doesn't say to provide reliability.  To ensure.  It  
21          already exists.  This isn't -- this just would ensure  
22          it.

23          Q       Let me go to Exhibit 37, sir.  And if you  
24          could see that, this is an email that looks like that  
25          you sent to Jack Rogers and it includes an updated



1 spreadsheet. Do you see that on the first page?

2 A Yes.

3 Q Was this one of the analysis that was done --  
4 was this one of the analysis that was done by you to  
5 kind of analyze what the cost would be and what the rate  
6 structures would be?

7 A Yes, it is.

8 MR. MOYLE: I renew my objection. It's beyond  
9 the scope of the direct. And I asked this witness  
10 here, I brought him here, and he's talking about  
11 the capacity of gas can serve the load. And now  
12 Mr. Brown wants to get into business terms and all  
13 kinds of --

14 MR. BROWN: Well this is --

15 MR. MOYLE: -- beyond the scope of direct.

16 THE COURT: Hang on a second.

17 MR. WHARTON: We join.

18 MR. BROWN: He talked about the difference --  
19 I'm sorry.

20 THE COURT: All right. Mr. Brown, you want  
21 to -- I have an objection. Do you want to add  
22 anything to the -- you sound like you're ready  
23 to --

24 MR. BROWN: Yeah. He talked about comparing  
25 rates and this simply -- all I'm pointing out is

1           that this was a comparison. I just want to move  
2           this in -- I'm not going to ask him anything  
3           further about it.

4           THE COURT: Well, I don't think he actually  
5           talked about rates. The only thing he talked about  
6           was the bare cost of gas supply of Leesburg, 354  
7           decatherms, PGC, 10 bucks. That's the only thing I  
8           have in my notes, and I try to be comprehensive,  
9           that talks at all about cost. And this was clearly  
10          a rate-cost analysis. So I'm going to sustain the  
11          objection. It's beyond the scope of direct.

12 BY MR. BROWN:

13          Q       Let me direct you, sir, to Exhibit 30. And  
14          this is an email chain between -- I think it starts with  
15          Jack Rogers. It goes to Fred Morrison and then goes to  
16          you. I think you're copied on all of these. And let me  
17          just direct you to the -- your response to Mr. Morrison  
18          on January 3rd, 2018. And if I go No. 4 and go to last  
19          couple of sentences there. It says: Because Peoples  
20          Gas distribution system is so close and The Villages has  
21          used them previously, it would be relatively easy for  
22          The Villages to connect to Peoples and disconnect from  
23          the city at any point in the future. In order to get  
24          and retain the contract, this is what the city has to  
25          agree to, to win the deal.

1                   And this discussion, if you go through the  
2 email, is a discussion about the fact that there is  
3 concerns that Leesburg is going to be paying money over  
4 and above what it costs for the value of the  
5 infrastructure. And so my question is, when you said  
6 this, is what you were saying to Mr. Morrison, the  
7 outside counsel for the city, that they were going to  
8 have to pay more than the investment amount, because  
9 that was only way to get the business with The Villages?

10                   MR. MOYLE: Object; beyond the scope of  
11 direct.

12                   MR. WHARTON: Same objection.

13                   THE COURT: Mr. Brown, how does this tie  
14 into -- because, as I heard, this witness'  
15 testimony, he was testifying as capacity and  
16 reliability of service and not to cost. So how  
17 does this tie into anything I heard on direct?

18                   MR. BROWN: It ties in in the sense that he  
19 has -- this man was intimately involved in this  
20 whole negotiation.

21                   THE COURT: I understand he was in -- he may  
22 have been involved, but he was asked specific  
23 questions on -- he's not your witness. Had you  
24 listed him as your witness, you could have asked  
25 him a lot of different questions, but you didn't.



1 same pressure year-round and so the total amount of  
2 capacity in that line is 7,000 -- firm capacity, 7,000  
3 decatherms a day year-round. The city is only  
4 contracted for 2,795 decatherms a day of that capacity  
5 in the summer months, but they have full utilization,  
6 all the way up to 7,000. All I have to do is move  
7 capacity from another member to Leesburg's point in  
8 those months and it's there and I can -- Leesburg can  
9 use up to a full 7,000 decatherms a day every day of the  
10 year off of FGT, regardless of what they've contracted  
11 for. And that's more than enough to serve any potential  
12 load that's under discussion here today.

13 Q And that assumes the discussion here today,  
14 Mr. Brown's hypothetical, right?

15 A Yes. It would cover anything completed by The  
16 Villages in this section that's in dispute.

17 Q All right. And then The Villages is served by  
18 a lateral, correct?

19 A Correct.

20 Q Tell the Judge what a lateral is.

21 A So Florida Gas Transmission has what they call  
22 mainline facilities. These are big diameter pipes,  
23 36-inch, 42-inch, 30-inch pipes that carry the bulk of  
24 the gas into the state. To get it from the mainline to  
25 where it needs to be delivered to, i.e., Leesburg, or

1 any other city, they run a smaller diameter pipe,  
2 usually at a little bit lower pressure. The mainline  
3 pipes run about 1,200 pounds per square inch of  
4 pressure. These laterals tend to run, some of them, as  
5 high as 900 pounds, some of them 763 pounds, because  
6 they're smaller diameter, they want in more populated  
7 areas, et cetera. And so the -- while the mainline for  
8 Florida Gas Transmission is fully subscribed, not every  
9 lateral is fully subscribed for these kinds of reasons.  
10 And so even though Leesburg doesn't contract for all of  
11 the capacity on that lateral in the summer months, it  
12 has access and sole access to that capacity in those  
13 months. No one else can use it.

14 Q And when you say sole access, why is that?

15 A There are no other customers on that lateral,  
16 so there are no reason and no ability for anyone else to  
17 schedule gas there, because they have no customer to  
18 serve. If they attempted to, the pipeline would say,  
19 wait a minute, you can't schedule there, you don't have  
20 any customers.

21 Q And doesn't that work to the economic benefit  
22 of Leesburg, because you got to pay more for firm  
23 capacity?

24 MR. BROWN: Leading.

25 THE COURT: Overruled.

1 THE WITNESS: Yes. In essence what --  
2 Leesburg has made a very smart business decision  
3 here and only contracting and paying for a portion  
4 of the capacity in the summer months when it, in  
5 fact, has access to all of that capacity on the  
6 lateral summer months.

7 MR. MOYLE: Thank you. That's all I have.

8 THE COURT: All right. Thank you, Mr.  
9 Geoffroy.

10 All right. It's ten after 12:00. What's your  
11 pleasure? Do you have one more witness?

12 MR. MOYLE: We have one more witness today,  
13 Mr. Dismukes. I think he'll be pretty lengthy.  
14 I'd prefer that we take a break and continue after  
15 lunch. And also I have Mr. Moses. We've already  
16 agreed he'll be taken out of order.

17 MR. BROWN: I would have a motion about Mr.  
18 Dismukes, but I don't know if you want to take them  
19 up now or after lunch.

20 THE COURT: Well, let's take them up when he  
21 walks in the door -- well, no. Let's take them up  
22 now and see if -- what's the motion, Mr. Brown?

23 MR. BROWN: Your Honor, we had filed  
24 previously in this case, we had filed a motion to  
25 strike experts on the grounds of being redundant.

1           And Mr. Dismukes is going to be completely  
2           redundant to all the testimony of Mr. Garcia. They  
3           are both listed as experts and I -- well, let me  
4           back up.

5           THE COURT: I think I read Mr. Dismukes' name  
6           in Mr. McGee's deposition, as well.

7           MR. BROWN: Yes. And you'll hear Mr. McGee's  
8           name if Mr. Dismukes testifies, but, beyond that,  
9           Your Honor -- and I don't -- Your Honor is well  
10          aware of the cases talking about redundant experts,  
11          and they were in our motion and I don't want to  
12          have to necessarily go through those, unless Your  
13          Honor wants to see some, but what we have is -- is  
14          that Mr. Dismukes, when I took his deposition --  
15          this is on Page 17, said line -- it's around 9.

16          Are you essentially offering -- going to offer  
17          opinions as to how the Judge or the PSC should  
18          interpret these statutes and rules in order to  
19          adjudicate the territorial dispute? Answer: I  
20          will from a policy perspective, not from a legal  
21          perspective.

22          Question: When you say from a legal  
23          perspective, what do you mean by that?

24          Answer: Just based on my professional  
25          experience offering advice as a policy expert and



1 as an expert witness in regulatory matters that  
2 require me to offer, often offer, policy positions  
3 on laws and statutes, both at the state and federal  
4 level.

5 Question: So when we talk about when you say  
6 you're going to do it from a policy perspective and  
7 not a legal perspective, are you saying that you're  
8 not going to attempt to determine what factors that  
9 are set forth in Florida Statute and regulations  
10 that should be applied to the case?

11 Answer: I'm going to outline the ones  
12 associated with the statutes that are relevant to  
13 the dispute and the analysis I've done relative to  
14 how they've been addressed.

15 That's essentially what Mr. Garcia just did.  
16 I mean, he got up here and talked about what the  
17 policy should be. He talked about the nature of  
18 competition, the nature of regulation, how  
19 municipals are dealt with.

20 THE COURT: I heard it.

21 MR. BROWN: And that's what Mr. Dismukes is  
22 going to cover.

23 THE COURT: Let me hear from Mr. Moyle.

24 Mr. Moyle, how does Mr. Dismukes there --  
25 either intrude into my ability to apply the law,

1           which, as I said -- I mean, I've allowed some of it  
2           to go. I understand experts have the ability to  
3           kind of cross over that divider, but it does sound  
4           from that description that it would be somewhat  
5           similar to Commissioner's Garcia's testimony.  
6           Where is he going to differ?

7                   MR. MOYLE: Well, I think -- he's done a  
8           report. I mean, I think you would be benefited by  
9           taking a look at the table of contents, like you  
10          did with Mr. McGee, what Mr. Dismukes has done.

11                   THE COURT: Which it says -- is this his  
12          report?

13                   MR. WHARTON: While they're looking for that,  
14          Judge, is this a motion to dismiss all of his  
15          testimony?

16                   THE COURT: I think this is a motion to strike  
17          the --

18                   MR. WHARTON: The witness?

19                   THE COURT: The witness as being redundant,  
20          not as being --

21                   MR. WHARTON: Just that part of it?

22                   THE COURT: -- on purposes of lack of  
23          expertise or anything else, but just as cumulative.  
24          And there is language in 120 that --

25                   MR. WHARTON: And I don't disagree with that,

1 but it's not -- it's not about part of the  
2 testimony, apparently it's about all of it?

3 MR. MOYLE: So what Mr. Dismukes has done, he  
4 has -- his expertise. He's worked for the PSC.  
5 He's been around the block a long time. With  
6 respect to the criteria that are in the rule and  
7 that are in statute, he's gone through and looked  
8 at them in a compare-contrast manner. And Mr.  
9 Garcia got up here and said, I'm not a fact guy,  
10 I'm not a fact witness.

11 What Mr. Dismukes has done is he's looked at  
12 facts and gone through -- he has exhibits that Mr.  
13 Brown has not objected to. Those are already in  
14 the record, the exhibits are in the record, and now  
15 you have a report where he's gone through and  
16 saying, here's what I did to aid the Court with  
17 respect to an analysis. If you have the criteria,  
18 it goes through --

19 THE COURT: Here's what I'm going to do. I'm  
20 going to -- I take it there was a motion in limine,  
21 which I'm not --

22 MR. BROWN: We filed a motion to strike  
23 expert -- at one point they had three policy  
24 experts. We're also going to hear another from  
25 SSGC. I mean, there's going to be no shortage of

1           these.

2           THE COURT: All right. I'm doing to deny the  
3 motion, but I will, on my own volition, make my own  
4 motion if I start hearing stuff that I've heard  
5 before. So maybe over lunch you can speak with  
6 your witness and focus your questioning to things  
7 that are -- that I haven't already heard. We're  
8 really getting solidly into policy that I already  
9 heard from both Commissioner Deason and  
10 Commissioner Garcia. I'm satisfied with the  
11 various policy ramifications on -- from both sides.  
12 So I don't really need to hear that again. So if  
13 it gets to be cumulative, I'm going to jump in at  
14 some point. As long as we keep it fresh, I'm for  
15 it.

16           All right. It's a quarter after 12:00. You  
17 all looking for an hour and fifteen minutes? That  
18 seems to be standard at this point.

19           All right. We'll reconvene at 1:30.

20           (Whereupon, the proceedings were recessed for  
21 the lunch hour and resume in Volume 6.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, DANA W. REEVES, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 600 through 716, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 24th day of July, 2019.



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DANA W. REEVES  
NOTARY PUBLIC  
COMMISSION #FF968527  
EXPIRES MARCH 22, 2020