BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System.	Docket No. 20180055-GU DOAH Case No. 18-04422

CITY OF LEESBURG'S RESPONSES TO PGS EXCEPTIONS

Respondent, City of Leesburg ("City"), pursuant to section 120.57(1)(k), Florida Statutes (2019), and Rule 28-106.217, Florida Administrative Code, hereby responds to the exceptions proposed by Peoples Gas System in the above-identified matter. In addition, City adopts and incorporates by reference herein the responses to PGS's exceptions submitted by Respondent, South Sumter Gas Company.

SCOPE OF AUTHORITY

The scope of the Commission's authority to reject or modify an ALJ's findings of fact and conclusions of law is established and limited by section 120.57(1)(*l*), Florida Statutes, as recently observed by the First District Court of Appeal:

> For factual findings, "[a]n agency must accept the administrative law judge's factual findings unless they are not supported by competent substantial evidence." *Stinson v. Winn*, 938 So.2d 554, 555 (Fla. 1st DCA 2006); *see also* § 120.57(1)(*l*), Fla. Stat. (declaring that an agency may not reject or modify an ALJ's findings of fact "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law"). In fact, "[i]f the ALJ's findings of fact are supported by competent, substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence." *Lantz v. Smith*, 106 So.3d 518, 521 (Fla. 1st DCA 2013). Likewise, an agency may not "reject a finding that is substantially one of fact simply by treating it as a legal

> conclusion." *Abrams v. Seminole Cty. Sch. Bd.*, 73 So.3d 285, 294 (Fla. 5th DCA 2011).
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> Moreover, an agency is not permitted to consider evidence outside the record when reviewing exceptions to a recommended order. *Walker v. Bd. of Prof'l Engineers*, 946 So.2d 604, 605 (Fla. 1st DCA 2006). In addition, an agency "may not base agency action that determines the substantial interests of a party on an unadopted rule ...." § 120.57(1)(e)1., Fla. Stat. (2018).

Kanter Real Estate, LLC v. Dep't of Envtl. Prot., 267 So. 3d 483, 487–88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-639, 2019 WL 2428577 (Fla. June 11, 2019). "Competent substantial evidence" is "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957).

RESPONSE TO PGS EXCEPTIONS

PGS's exceptions urge the Commission to reject two paragraphs of the ALJ's Recommended Order. Both paragraphs, contained within the ALJ's Conclusions of Law, consist of restatements of Findings of Fact made by the ALJ, to which PGS does not except. As shown below, the factual findings are supported by competent substantial evidence and may not be modified or rejected by the Commission. § 120.57(1)(*l*), Fla. Stat.

PGS appends additional argument to its exceptions, unauthorized by § 120.57(1), Fla. Stat., in which PGS improperly urges the Commission to substitute new findings for the factual findings made by the ALJ, and to make new findings rejected by the ALJ, which the Commission may not do. § 120.57(1)(*l*), Fla. Stat.; *Kanter Real Estate, supra.* Finally, PGS, through unauthorized additional argument, urges the Commission to impermissibly expand the

scope of this proceeding and to make new findings that were expressly rejected by the ALJ and new conclusions that exceed the Commission's statutory authority. The City of Leesburg responds specifically to PGS's exceptions and unauthorized argument as set forth below.

RESPONSE TO PGS EXCEPTION NO. 1

In its Exception No. 1, PGS excepts to paragraph 147 of the Recommended Order. Paragraph 147 of the Recommended Order is one of several of the ALJ's Conclusions of Law that restates the ALJ's factual findings. PGS does not contend that the factual finding in paragraph 147 is not supported by competent substantial evidence of record. Paragraph 147 is set forth below, along with Finding of Fact No. 63 which sets forth the ALJ's factual finding repeated by the ALJ in paragraph 147:

> Finding of Fact No. 63
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> 63. The evidence establishes that, under the terms of the Agreement, Leesburg is the "natural gas utility" as that term is defined by statute and rule. The evidence establishes that SSGC is, nominally, a gas system construction contractor building gas facilities for Leesburg's ownership and operation. The evidence does not establish that the Agreement creates a "hybrid" public utility.
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> Conclusion of Law 147
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> 147. The Agreement between Leesburg and SSGC does not confer duties on SSGC that would cause it to become a supplier of natural gas. Thus, SSGC is not a "natural gas utility" as defined in section 366.04(3)(c). Furthermore, the evidence establishes that the relationship between Leesburg and SSGC has not created a "hybrid utility" of which SSGC is a part.

First and foremost, the factual finding set forth in Finding of Fact 63 and restated in Conclusion of Law 147 is supported by competent substantial evidence of record and may not be modified or rejected by the Commission. § 120.57(1)(*l*), Fla. Stat.; See Transcript, pp. 440-443, 547-548,

623-624, 545, l. 19 to 548, l. 22 (Q. And who provides the customers with natural gas? A. The City of Leesburg....Q. And who is the regulated natural gas utility in this case under the agreement? A. The City of Leesburg is.).

PGS incorrectly alleges that the Recommended Order is "devoid" of "specific factual findings" supporting the ALJ's determination that "the evidence establishes that the relationship between Leesburg and SSGC has not created a "hybrid utility" of which SSGC is a part." (Conclusion of Law No. 147). PGS further suggests that the ALJ did not consider the definition of "public utility," set forth in § 366.02(1), Florida Statutes. A review of the Recommended Order demonstrates that PGS is wrong.

Contrary to PGS's representation in its exceptions, the ALJ expressly acknowledges the definition of "public utility" set forth in section 366.02(1) and correctly determines, based on the competent substantial evidence of record, that the definition applies to PGS (Finding of Fact No. 8) and does not apply to the City of Leesburg as a municipal utility, or to SSGC. In Conclusions of Law Nos. 136, 137, and 138, the ALJ frames the applicable statutory definitions, including § 366.02(1), and the scope of the Commission's authority in the context of the facts of this proceeding:

> 136. The Commission regulates "public utilities," as that term is defined in section 366.02(1), which are entities that "supply" natural gas to or for the public.
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> 137. The Commission has "authority over natural gas utilities," pursuant to section 366.04(3), for the resolution of "any territorial dispute involving service areas between and among natural gas utilities."
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> 138. The Commission has certain additional authority over natural gas utilities under chapter 368 regarding gas transmission and distribution, as well as gas safety.

In pertinent part, the ALJ's Finding of Fact No. 9 recognizes that Leesburg is a municipal natural gas utility -- over which the Commission lacks jurisdiction with respect to the regulation and reporting of gas utility rates, conditions of service, rate-setting, but which, pursuant to section 366.04(3), is subject to the Commission's jurisdiction over territorial disputes:

> 9. Leesburg is a municipal natural gas utility. The Commission does not regulate, or require the reporting of municipal natural gas utility rates, conditions of service, rate-setting, or the billing, collection, or distribution of revenues. . . .

The ALJ's factual findings relating to the respective responsibilities of SSGC and the City of Leesburg, and related factual finding that the agreement between SSGC and the City of Leesburg "has not created a 'hybrid utility' of which SSGC is a part," are made within the context of both the definition of "public utility" set forth in section 366.02(1), and the definition of "natural gas utility," set forth in section 366.04(3), Florida Statutes. The ALJ notes in Conclusion of Law No. 136 that § 366.02(1) defines a "public utility" as "every person, corporation, partnership, association, or other legal entity . . . *supplying electricity or gas . . . to or for the public* within this state."[1]

The ALJ factually found, based on competent, substantial evidence as detailed above, that under the agreement between SSGC and the City of Leesburg, the City is the *supplier* of

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[1] 366.02 Definitions.—As used in this chapter:

(1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

natural gas to The Villages, and is a natural gas utility, and SSGC is not a *supplier* of natural gas to the public, and not a public utility, nor a natural gas utility, nor a "hybrid utility." These Findings are set forth in Findings of Fact Nos. 7, 57 and 63:

> 7. As a result of the Agreement to be discussed herein, SSGC has constructed residential gas infrastructure within Bigham, and has conveyed that infrastructure to Leesburg. *Leesburg supplies natural gas to Bigham*, bills and collects for gas service, and is responsible for upkeep, maintenance, and repair of the gas system. . . .
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> 57. Upon the conveyance of the system to Leesburg, Leesburg assumes responsibility for all operation, maintenance, repairs, and upkeep of the system. Leesburg is also responsible for all customer service, emergency and service calls, meter reading, billing, and collections. *Upon conveyance, Leesburg operates and provides natural gas service to Bigham through the system and through Leesburg's facilities "as an integrated part of [Leesburg's] natural gas utility operations."*
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> 63. The evidence establishes that, under the terms of the Agreement, Leesburg is the "natural gas utility" as that term is defined by statute and rule. *The evidence establishes that SSGC is, nominally, a gas system construction contractor building gas facilities for Leesburg's ownership and operation. The evidence does not establish that the Agreement creates a "hybrid" public utility.*

(emphasis added). The ALJ's Findings of Fact Nos. 7, 9, 57, and 63 are based on competent, substantial evidence of record and thus may not be modified or rejected by the Commission. See Transcript, pp. 440-443, 545-548, and 623-624. The remainder of PGS's Exception No. 1 repeats PGS's lengthy arguments, all of which were rejected by the ALJ, relating to the issue of whether the agreement between SSGC and the City gives rise to a "hybrid utility." The weight given to conflicting evidence is a matter reserved for the ALJ, as the trier of fact. *Fla. Chapter of Sierra Club v. Orlando Utilities Comm'n,* 436 So. 2d 383, 388-89; see also, *Cenac v. Fla. State Bd. of Accountancy*, 399 So. 2d 1013, 1016 (Fla. 1st DCA 1981) ("The hearing officer in an

administrative proceeding is the trier of fact, and he or she is privileged to weigh and reject conflicting evidence.").

The declaratory statements cited by PGS in its Exception No. 1 do not provide authority for the Commission to reject or modify the ALJ's findings of fact which are supported by competent substantial evidence. Section 120.57(1)(*l*), Fla. Stat. To the extent the declaratory statements have precedential value, they nevertheless may not be applied to a municipal utility that is not subject to regulation by the Commission with respect to the municipal utility's natural gas utility rates, conditions of service, rate-setting, or the billing, collection, or distribution of revenues. See § 366.02(1), Florida Statutes (excluding municipal utilities from the definition of "public utility"); see also ALJ's Finding of Fact No. 9. The declaratory statements also are not applicable to SSGC, as a factual matter, as the ALJ factually found that SSGC is not "supplying" natural gas "to the public" and is not a public utility nor a "hybrid utility." (Finding of Fact 63). Moreover, the PGS cited declaratory statements all relate to the specifics of leasing arrangements, some with cogenerators; this case at bar does not involve lease arrangements or cogeneration; it involves, as factually found by the ALJ in FOF 63, "a gas system construction contractor building gas facilities for Leesburg's ownership and operation." The regulated utility was properly factually found to be the City of Leesburg. The Commission dealt directly with the City of Leesburg regarding safety issues and otherwise treated Leesburg as the regulated utility, because Leesburg is and remains such as found by the ALJ. Here, specifically, the ALJ factually determined, based on competent substantial evidence, that under the agreement between SSGC and the City of Leesburg, only the City is *supplying natural gas services to the public*, as a municipal natural gas utility. (Findings of Fact No. 7, 57, 63). These factual findings are

supported by competent substantial evidence and may not be rejected or modified by the Commission. See Transcript pp. 440-443, 545-548, 623-624.

Finally, PGS's concern that the ALJ's factual findings in this case, supported by competent substantial evidence, will result "in the propagation of unregulated monopolies throughout Florida," is in essence a plea to subject either municipal utilities to further regulatory oversight by the Commission beyond its current statutory jurisdiction , or to declare that entities that are not supplying gas to the public "public utilities" (or to establish an extra-legal category of "hybrid utility" subject to PSC regulation) – none of which are authorized by Chapter 366. The Commission cannot alter its governing statutes nor act outside the bounds of its legislative authority. PGS urges the Commission to exceed the limits of its authority under Chapter 366 and section 120.57(1)(*k*) and(*l*), which the Commission cannot do. At bottom, PGS's complaint is that the Legislature has determined that PGS, an investor-owned monopoly that supplies natural gas to the public, is subject to broad regulatory oversight by the PSC, while entities that are not supplying natural gas to the public, and municipal entities that supply natural gas to the public, are not subject to similarly broad PSC oversight.

The ALJ factually found that "[t]he evidence does not establish that the Agreement creates a "hybrid" public utility." (Finding of Fact No. 63; Conclusion of Law 147). The ALJ's factual finding is supported by competent substantial evidence. See Transcript pp. 440-443, 547-548, 623-624. It is "a fundamental precept of the APA that an agency may not reject or modify a hearing officer's factual findings without first conducting a review of the entire record and then stating with particularity in its final order which findings of fact are being rejected and why those findings of fact were not based upon competent substantial evidence or why the proceedings did not comply with the essential requirements of law." *Florida Power & Light Co. v. State*, 693 So.

2d 1025, 1027-1028 (Fla. 1st DCA 1997) ("Except in the most extreme cases—those where 'the proceedings did not comply with essential requirements of law' —the Administrative Procedure Act (APA) precludes an agency's changing an ALJ's finding of fact on any basis other than the lack of substantial competent evidence to support it."). Accordingly, the Commission may not reject or modify the ALJ's Finding of Fact 63 or its restatement in Conclusion of Law 147 which are based on competent substantial evidence, nor may the Commission substitute new findings not made by the ALJ. § 120.57(1)(*l*), Fla. Stat. "If there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings." *Rogers v. Dep't of Health,* 920 So.2d 27, 30 (Fla. 1st DCA 2005). Accordingly, PGS's Exception No. 1 must be denied.

RESPONSE TO PGS EXCEPTION NO. 2

PGS excepts to the ALJ's Conclusion of Law No. 160, which is a restatement of the ALJ's Finding of Fact No. 118, as shown below:

> ALJ's Finding of Fact No. 118
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> 118. The cost-per-home for Leesburg and SSGC is $1,800 (see ruling on Motion to Strike). In addition, Leesburg will be installing automated meters at a cost of $72.80 per home.
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> ALJ's Conclusion of Law No. 160
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> 160. The cost-per-home for Leesburg and SSGC to provide service in Bigham is $1,800. In addition, Leesburg will be installing automated meters at a cost of $72.80 per home. The preponderance of the evidence indicates that the PGS cost-per-home is $1,579.

PGS argues in its Exception No. 2 that the ALJ's finding that SSGC's infrastructure installation cost ("cost-per-home") is not attributable to the City of Leesburg because the

installation costs are initially incurred by SSGC. It is well established that an infrastructure contractor's costs, invoiced to a utility, are attributable to the utility in determining the utility's cost-per-home to serve. PGS's own evidence of its cost-per-home in this case consisted of data reflecting invoices or contractor costs, which PGS compiled, aggregated, and put forward as evidence of its cost-per-home. See PGS Exhibits 11, 12 and 13.

PGS's argument in its exceptions that the Commission should modify Conclusion of Law No. 160 to reflect the City's cost-per-home as $1,200 is somewhat disingenuous in light of PGS's motion to strike the evidence that the City's cost-per-home is $1,219 (significantly lower than PGS's cost-per-home). PGS cannot both seek to strike the evidence of the City's cost-per-home and simultaneously seek to use the figure to its benefit, akin to impermissibly using the cost-per-home figure as both a sword and a shield. If put forward, PGS's argument that Conclusion of Law should be modified to reflect the City's cost-per-home at $1,200 is tantamount to PGS withdrawing its motion to strike. In that event, the evidence that was the subject of the motion to strike (reflecting that the City's actual cost-per-home is $1,219 plus $72.80 for installation of automated meters), should be admitted and applied as presented by Leesburg in its Exceptions to the Recommended Order. See City of Leesburg Exceptions No.1 and 2.

The main focus of PGS' Exception No. 2 (PGS Exceptions Paragraphs 17-28) consist of PGS urging the Commission to overrule the ALJ's factual findings relating to the City's cost to serve and to substitute new findings of fact based on PGS's irrelevant evidence excluded by the ALJ from consideration, including the testimony of PGS' witness Durham, which the ALJ expressly rejected as irrelevant:

> 123. There was considerable evidence and testimony as to the revenues that would flow to SSGC under the 30-year term of the

> Agreement. SSGC's revenues under the Agreement are not relevant as they are not identified as such in rule 25-7.0472, and are not directly related to the rates, which will likely not exceed PGS's regulated rate.

PGS does not except to the ALJ's Finding of Fact No. 123, but argues exhaustively in its Exception No. 2 that the evidence rejected by the ALJ nevertheless should be relied upon by the Commission and should form the basis for new or supplemental findings of fact. The Commission, however, has no authority to make independent or supplemental findings of fact to the Recommended Order. *Fla. Power & Light Co.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997) ("It is not proper for the agency to make supplemental findings of fact on an issue about which the hearing officer made no findings."); see also, *City of Northport v. Consolidated Minerals*, 645 So. 2d 485, 487 (Fla. 2nd DCA 1994) ("The agency makes no factual findings in reviewing the recommended order."). *Rogers v. Dep't of Health,* 920 So.2d 27, 30 (Fla. 1st DCA 2005) (If there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings.)

The remainder of PGS's Exception No. 2 similarly improperly urges the Commission to make additional findings of fact not supported by any evidentiary record and to issue an order summarily taking property for the benefit of PGS, a private party. PGS's request that the Commission enter a final order requiring "that the customers be transferred to PGS within 90 days of the Commission final order and that PGS pay SSGC or Leesburg no more than $1,200 per resident/customer within the Bigham Developments," is an attempt to circumvent constitutional and statutory protections relating to the taking of property, for which there is no legitimate authority. At minimum, the legal basis for any Commission order compelling the

transfer of property by a municipal utility, or by or a private party, as well as the valuation of such property and terms of any conveyance, are issues that are subject to due process and taking laws, and require the establishment of a record for review.

RESPONSE TO PGS's UNAUTHORIZED ARGUMENT SEEKING TO EXPAND THE GEOGRAPHICAL BOUNDARIES OF THE DISPUTED TERRITORY.

Paragraphs 29-33 of PGS's "exceptions" are not exceptions to any identifiable Finding of Fact or Conclusion of Law and thus should be rejected outright pursuant to § 120.57(1)(*k*), Florida Statutes. ("An agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.").

In this unauthorized portion of its Exceptions, PGS presents new arguments on issues that were not before the ALJ and impermissibly attempts to expand the scope of this proceeding beyond the scope of the evidentiary record. Specifically, PGS urges the Commission to issue a Final Order that effectively expands the geographical boundaries of the disputed area that is the subject of this territorial dispute to encompass any geographic area that the City of Leesburg would be capable of serving from its existing high pressure distribution lines along County Road 501, County Road 468 and State Road 44. The ALJ expressly rejected PGS's attempts to expand the geographic subject matter of this dispute to encompass any area outside the residential developments known as Bigham North, Bigham West, and Bigham East (the "Bigham Developments"), as set forth in the ALJ's Finding of Fact No. 6:

> 6. PGS argued that the dispute should be expanded to include areas not subject to current development, but that are within the scope of anticipated Villages expansion. The extension of this territorial dispute beyond the Bigham developments is not

> warranted or necessary, and would have the effect of establishing a territorial boundary in favor of one of the parties.

The ALJ considered evidence and limited his recommendation in this case to the "disputed territory," i.e., the geographic area limited to the Bigham Developments as expressly factually found. The Commission has no authority to make independent or supplemental findings of fact on an issue about which the ALJ made no findings. *Fla. Power & Light Co.*, *supra*; *City of Northport v. Consolidated Minerals*, *supra*. After rejecting PGS's request to expand the geographical boundaries of the disputed area at the outset of the evidentiary proceeding, the ALJ considered and based his Recommended Order on evidence relating to the Bigham Development, not a more expansive geographic area. The Commission has no authority to make independent or supplemental findings of fact on an issue about which the ALJ made no findings. *Fla. Power & Light Co.*, *supra*; *City of Northport v. Consolidated Minerals*, *supra*. There is no legal authority or evidentiary basis upon which the Commission may issue a Final Order addressing the entitlement or ability of any party to serve any area other than the disputed area addressed in this proceeding and expressly found and defined by the ALJ as limited to the Bigham Developments. PGS's urging of the Commission to issue a Final Order addressing any geographic area outside the Bigham Developments area exceeds the Commission's jurisdiction in this case, and the area of dispute as factually found by the ALJ.

Finally, PGS argues that the PSC should preclude City from using its high pressure distribution lines to serve future growth outside the Bigham Developments because City "raced to serve." Neither Chapter 366 nor the PSC's rules authorize the overreaching action that PGS requests, which is essentially a repeated attempt by PGS to expand the geographic boundaries of the disputed area beyond the boundaries established and addressed by the ALJ. The Commission orders from 1984 and 1986 cited by PGS are limited to the facts of those proceedings; moreover,

both cases involved facilities established by a "public utility" subject to broad regulation by the PSC. PGS's unauthorized argument and attempt to expand the disputed area beyond the boundaries established by the evidentiary record in this proceeding should be rejected by the Commission. (See Finding of Fact No. 6).

Additionally, the PSC's regulatory power in this proceeding does not authorize the Commission to enter a Final Order precluding City from utilizing its State Road 44, County Road 501 and County Road 468 distribution lines to serve future growth outside the Bigham Developments, as urged by PGS. Article I, Section 18, of the Florida Constitution precludes an administrative agency from imposing any penalty or sanction "except as provided by law." *Crary v. Tri-Par Estates Park & Recreation Dist.*, 267 So. 3d 530, 533 (Fla. 2d DCA 2019) ("the term 'by law' means a legislative enactment"); *Beacon Fin., Inc. v. Dep't of Ins., State of Fla.*, 656 So. 2d 197, 199 (Fla. 1st DCA 1995) ("Pertinent case law reveals that an agency possesses no inherent power to impose sanctions, and that any such power must be expressly delegated by statute.").

Finally, PGS's overreaching request urges the Commission to circumvent constitutional and statutory protections relating to the taking of property, for which there is no legitimate authority. See, e.g., Article X, Section 6 of the Florida Constitution; 5th Amendment of the U.S. Constitution; *State ex rel. Davis v. City of Stuart*, 97 Fla. 69 (Fla. 1929) ("Constitutional prohibition against taking private property without just compensation is not limited to taking in exercise of eminent domain."). These principles equally apply to PGS's request that property of the City or of SSGC within the Bigham developments be summarily transferred to PGS. At minimum, the legal basis for any Commission order compelling the transfer of property by a municipal utility, or by or a private party, as well as the valuation of such property and terms of

any conveyance, are matters subject to due process, including a full compensation and takings analysis and other matters which would require the establishment of a record for review.

CONCLUSION

For the above and foregoing reasons, PGS's Exceptions should be denied. If PGS's Exception No. 2 is deemed to comprise a withdrawal of PGS's Motion to Strike, then the evidence of the City's cost-per-home, as set forth the City of Leesburg's Exceptions, should be admitted, and the remainder of PGS's Exception No. 2 which seeks impermissible new or supplemental findings of fact, along with PGS's other exceptions, must be denied.

DATED THIS 25th day of October 2019.

RESPECTFULLY SUBMITTED,

/s/ Jon C. Moyle

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing was served on the following counsel this 25th day of October via email transmission to:

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