

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for approval of territorial agreement in Sumter County by Peoples Gas System, The City of Leesburg and South Sumter Gas Company.

DOCKET NO. 20200085-GU
ORDER NO. PSC-2020-0221-PAA-GU
ISSUED: June 29, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

PROPOSED AGENCY ACTION
ORDER APPROVING JOINT TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

On March 11, 2020, Peoples Gas System (Peoples) and the City of Leesburg (Leesburg), collectively the joint petitioners, filed a petition seeking our approval of a Territorial Agreement delineating their respective service boundaries in Sumter County, Florida. We note that South Sumter Gas Company, LLC, although listed in the title of the petition, is not a party to the proposed Territorial Agreement. The proposed Territorial Agreement and a map depicting the current service territories and proposed changes, and boundary areas to be served by Peoples and Leesburg are provided in Attachment A to this Order.

On February 23, 2018, Peoples filed a petition in Docket No. 20180055-GU,¹ requesting that we resolve a territorial dispute between Peoples and Leesburg and/or South Sumter Gas Company, LLC. The Petition alleged that Peoples and Leesburg and/or South Sumter Gas Company, LLC were in a dispute as to the rights of each to provide natural gas services to the customers in Sumter County, including The Villages. The area in dispute is characterized by

¹ *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.*

residential areas of varying density, interspersed with commercial support areas, and is referred to as Bigham North, Bigham West, Bigham East (Bigham developments).

On August 21, 2018, we referred the dispute to the Division of Administrative Hearings (DOAH). DOAH assigned an Administrative Law Judge (ALJ) for the purpose of conducting an administrative hearing and issuing a Recommended Order² on the territorial dispute. The administrative hearing was held from June 24 to 27, 2019, and a Recommended Order was issued on September 30, 2019.³ In that Order, the ALJ awarded Peoples the disputed territory encompassing the Bigham North, Bigham East, and Bigham West developments in the Villages in Sumter County. The ALJ's Order did not award any other territory to any of the parties. At the January 14, 2020 Commission Conference, we adopted the ALJ's Recommended Order without modification by final Order No. PSC-2020-0052-FOF-GU.⁴

The proposed Territorial Agreement in the instant docket incorporates our decision in Order No. PSC-2020-0052-FOF-GU, a separate Settlement Agreement between the parties addressing the transfer of infrastructure from Leesburg to Peoples, and establishes new service boundary lines between the joint petitioners for the remaining portions of the county. The referenced Settlement Agreement is not subject to our approval, and hence was provided for informational purposes only. The joint petitioners believe the Territorial Agreement will avoid future litigation and territorial disputes in Sumter County and enhance natural gas service for customers.

We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Decision

Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, F.A.C., we have jurisdiction over territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved.⁵

Peoples and Leesburg Territorial Agreement

The proposed Territorial Agreement between Peoples and Leesburg was executed on March 9, 2020, and would continue to be in effect until modification by mutual agreement by the parties and approved by us or until termination or modification mandated by court order, as stated in Section 1.1 of the territorial agreement.

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

³ *Peoples Gas System vs. South Sumter Gas Company, LLC, and City of Leesburg*, DOAH Case No. 18-4422, Recommended Order issued on September 30, 2019.

⁴ Order No. PSC-2020-0052-FOF-GU, issued February 11, 2020, in Docket No. 20180055-GU, *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*.

⁵ *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

As a result of Order No. PSC-2020-0052-FOF-GU, 3,625 (includes 3,615 residential and 10 commercial customers) Leesburg service customers in Bigham North, Bigham West, and Bigham East were transferred to Peoples, effective June 1, 2020. Pursuant to the proposed Territorial Agreement in the instant docket, the joint petitioners will also transfer three additional customers (fire station, a district building, and The Villages Grown—a hydroponic and aeroponic farm) located adjacent to Bailey West Development to Peoples. Section 2.1 of the proposed Territorial Agreement also includes additional areas in Sumter County to be served by Peoples in the future. The joint petitioners stated that any new customers taking service within the areas contained in Article II – Boundary Provisions of the proposed Territorial Agreement will be served by either Peoples or Leesburg according to the future service areas identified in the map in Attachment A.

During the pendency of Docket No. 20180055-GU, Leesburg filed a territorial dispute petition in Docket No. 20180185-GU against Peoples regarding its natural gas service to Suwannee American Cement Company, LLC in Sumter County. This petition was still pending before us; however, pursuant to Section 2.1 of the proposed Territorial Agreement and pursuant to the Settlement Agreement, the Suwannee American Cement Company, LLC, will continue to be served by Peoples. The joint petitioners stated that the unresolved issues in Docket No. 20180185-GU will be resolved by our action to approve the proposed Territorial Agreement and Leesburg's petition in Docket No. 20180185-GU will be voluntarily dismissed.

Transfer of Assets

The joint petitioners, in paragraph 10 of the petition and in paragraph 9 of the Territorial Agreement, stated their intention to provide an orderly transfer of assets in the Bigham developments without the need for further litigation. Rule 25-7.0471(2)(a), F.A.C., requires us to consider the reasonableness of the purchase price of any facilities being transferred.

In accordance with the Territorial Agreement, the joint petitioners stated that Peoples will be paying for the infrastructure for the approximately 3,625 Bigham development customers transferred to Peoples. South Sumter Gas Company, LLC was retained by Leesburg to serve as the construction company for the infrastructure necessary to serve the Bigham developments. Peoples will pay \$5,000,000 to South Sumter Gas Company, LLC, with \$500,000 to be retained by Peoples to pay for warranty claims. The balance will be paid to South Sumter Gas Company, LLC, in one year less claims for warranty issues related to the infrastructure being transferred. This payment amount results in a per customer amount ranging between \$1,241 to \$1,379 depending on the reduction for warranty expenses. Through our adoption of the ALJ's Recommended Order, we concluded in Order No. PSC-2020-0052-FOF-GU that "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 evidence indicates that PGS cost-per-home is \$1,579."⁶

The per customer purchase price stated above is less than the cost determined by Order No. PSC-2020-0052-FOF-GU. The joint petitioners also stated that no purchase price has been

⁶ Order No. PSC-2020-0052-FOF-GU at p. 92 (Conclusion of Law 160).

affixed to Leesburg's transfer of its Bigham development infrastructure, as Leesburg did not incur significant costs in installing infrastructure in the Bigham developments. We find the negotiated infrastructure transfer cost is reasonable and approximates the cost established in Order No. PSC-2020-0052-FOF-GU.

Customer Deposits and Notification

Leesburg notified its affected natural gas customers via a letter dated April 1, 2020, which stated that their customer deposit will be applied towards the final bill or outstanding balance, and any remaining deposit amount will be directly refunded to the customer by check within 30 to 45 days of the date of transfer (June 1, 2020). Of the 3,625 Leesburg customers to be transferred to Peoples, per Order PSC-2020-0052-FOF-GU, 1,909 customers have a deposit on file with Leesburg. Leesburg's customer deposit is \$50.

Peoples proposed a \$50 deposit for Leesburg customers transferred to Peoples. After 12 months of service, Peoples will reassess the deposit amount in accordance with 366.05(1), F.S. According to Peoples' proposed customer notification, it will collect the deposit in its first bill in July 2020 and return the deposit with interest after 23 months of continuous service and no more than one late payment. Peoples' tariff allows transferred customers to request a credit check to evaluate if the customer would qualify to have the deposit waived. Peoples included information in its proposed customer notification on how customers can request the credit check to determine if the deposit can be waived.

Pursuant to the proposed Territorial Agreement, three additional commercial customers will be transferred to Peoples. These three customers currently are being served by Leesburg and are located outside of the area ordered to be transferred to Peoples in Order No. PSC-2020-0052-FOF-GU. The parties have agreed to transfer these customers to Peoples in the proposed Territorial Agreement. Peoples stated that it will contact the three additional customers individually to discuss the transfer and applicable billing rates.

Conclusion

Through the proposed Territorial Agreement, the joint petitioners will be able to serve customers within clearly defined service areas, comport with the requirements of Order No. PSC-2020-0052-FOF-GU, resolve the dispute in Docket No. 20180185-GU, avoid future litigation, eliminate any potential uneconomic duplication of facilities, and serve current and future customers without service disruption.

After review of the joint petition and the petitioners' joint responses to Commission staff's data requests, we find that the proposed Territorial Agreement is in the public interest and will enable Peoples and Leesburg to serve their current and future customers efficiently. It appears that the proposed Territorial Agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in reliability of natural gas service. Pursuant to the joint petition, approval of this Territorial Agreement will establish definitive service boundaries and avoid future litigation. Additionally, Leesburg will withdraw its counter-petition in Docket No. 20180185-GU to resolve the territorial dispute related to the Suwannee American Cement, following our approval of this Territorial Agreement. Therefore, we find that the proposed

Territorial Agreement between Peoples and Leesburg will not cause a detriment to the public interest and hereby approve the Territorial Agreement.

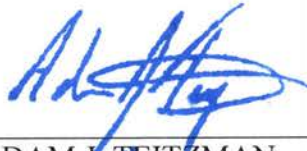
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the proposed Territorial Agreement between Peoples Gas Company and the City of Leesburg in Sumter County (Attachment A hereto) is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 29th day of June, 2020.



ADAM J. FEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 20, 2020.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

TERRITORIAL AGREEMENT

This Territorial Agreement (the "Agreement") is made and entered into this 9th day of March, 2020, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples") and the City of Leesburg, a municipal corporation organized and existing under the laws of the State of Florida ("Leesburg").

RECITALS

1. Leesburg and South Sumter Gas Company, a Florida corporation ("SSGC" or The Villages") have entered into an agreement for Leesburg to provide natural gas service to certain properties of The Villages community located in in Sumter County, Florida.
2. Peoples was serving The Villages Development known as Fenney when the agreement between Leesburg and SSGC was entered into. Peoples has existing infrastructure in Sumter County, Florida.
3. Peoples filed a territorial dispute with the Florida Public Service Commission ("Commission") on February 23, 2018 titled *Petition to resolve territorial dispute in Sumter County and/or Lake County with the City of Leesburg and/or South Sumter Gas Company*, Docket No. 20180055-GU. The case was referred to an administrative law judge and a final hearing was held from June 24, 2019 – June 27, 2019.
4. The administrative law judge issued a Recommended Order on September 30, 2019.
5. On January 14, 2020, the Commission adopted the Recommended Order as its Final Order (PSC-2020-0052-FOF-GU). That Order awarded Peoples the territory

encompassing three (3) Villages Developments known as Bigham North, Bigham East and Bigham West. Those developments were being served by Leesburg pursuant to its agreement with SSGC. The Order did not award any other territory to any of the parties.

6. During the pendency of Peoples' territorial dispute petition against Leesburg and SSGC, Leesburg filed a territorial dispute petition with the Commission against Peoples regarding service to Suwannee American Cement. That petition, Docket No. 20180185-GU, is still pending and has not been resolved.

7. The Villages and Leesburg desire to have Leesburg provide natural gas service in future Villages developments in Sumter County, Florida. Peoples does not object to Leesburg providing natural gas service to certain Villages developments as depicted on the attached map.

8. Peoples intends to file additional territorial disputes regarding Leesburg serving future developments in Sumter County, Florida, if this Agreement is not executed and approved by the Commission.

9. The parties wish to provide an orderly transfer of infrastructure in the Bigham developments without the need for further litigation.

10. The parties wish to avoid and eliminate future territorial disputes in Sumter County arising out of Leesburg's providing natural gas service to the Villages Developments. The parties agree that this Agreement will resolve the ongoing issues among the parties in the subject area, Sumter County, Florida, and enhance the ability of customers to receive natural gas service.

NOW THEREFORE, in fulfillment of the purposes and desires described above,

and in consideration of the mutual covenants and agreements herein contained and referenced by attachment, the parties, subject to and upon the terms and conditions set forth hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1

After this Agreement becomes effective, pursuant to Section 2.1 hereof, it shall continue in effect until modification by mutual agreement by the parties and approval by the Commission or until termination or modification mandated by a court with appropriate jurisdiction.

ARTICLE II

BOUNDARY PROVISIONS

Section 2.1

The map attached hereto and labeled Exhibit A depicts boundary lines in Sumter County, Florida delineating the natural gas service area reserved to Peoples and the natural gas service area reserved to Leesburg with respect to service to natural gas customers. The boundary areas to be served by the respective parties are described as follows:

City of Leesburg

Leesburg will be the natural gas provider in the areas shown on the map in green which include:

- (a) Any area within the Leesburg city limits.

(b) Carter 5b1-4, 5c, and 5c1-4, and all commercial and recreational centers located therein.

(c) The Coleman Prison.

(d) All portions of future developments in areas shown in green on Exhibit B.

Peoples Gas System

Peoples shall serve all areas shaded in blue, including but not limited to the following Villages Developments:

(a) The Rick Scott Industrial Park and areas adjacent thereto.

(b) The developments known as Pinkstaff 10A and all areas west of Pinkstaff.

(c) Hickman 3D1 thru 3D3.

(d) Meggison 4A1 thru 4C2, including the four recreation centers and commercial development at State Road 44 and the north side of County Road 468.

(e) Bailey West, including the Villages Grown, the Fire Station, office complex and all commercial development along State Road 44 and County Road 468.

(f) Bailey East, including the recreation center and all commercial development along State Road 44.

(g) Portions of Carter at 5A1, 5D1, 5D2-3, including three recreation centers and commercial development along State Road 468.

(h) Suwanee American Cement Company, LLC

Section 2.2

Each of the parties agrees that it will not, except as provided under separate written agreement, provide or offer to provide natural gas service to customers within the territory herein reserved to the other party.

Section 2.3

Leesburg is currently providing natural gas service to customers located in Bigham North, Bigham East, Bigham West, and in portions of Bailey West and the fire station adjacent to Bailey West (the "Existing Customers"), which is situated within territory reserved under this Territorial Petition Peoples. Those approximately 3,625 existing customers shall be transferred to Peoples.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1

The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3

This Agreement shall be governed by the laws of the State of Florida.

Section 3.4

The parties hereto recognize and agree that each of them is subject to the jurisdiction of the Commission with regard to the subject of their respective territories as set forth in this Agreement and further agree that this Agreement shall have no force or effect unless and until it is approved by the Commission in accordance with applicable procedures. The parties further agree that this Agreement, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only mutual agreement of the parties and by order of the Commission. No modification or termination of this Agreement by the parties hereto shall be effective unless and until approved by the Commission (or any successor agency with power to consider approval or modification hereof). Each party agrees to promptly notify the other in writing of any petition, application or request for modification of this Agreement made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5


This Agreement shall be effective on the date it is approved by the Commission in accordance with Section 3.4 hereof.

Section 3.6

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one agreement.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.


PEOPLES GAS SYSTEM, a
division of Tampa Electric
Company

By: 
Print name: T.J. Seelinger
Its: President


Print Name: Kandi M. Boyd

Print Name: Richard F. Wall


Print Name: J. Andi Purvis

Print Name: Victoria Parks

CITY OF LEESBURG
By: 
Print name: Elise A. Dennison
Its: Mayor

