Antonia Hover

From:	Office of Commissioner Fay
Sent:	Monday, August 3, 2020 8:12 AM
To:	Commissioner Correspondence
Subject:	FW: Eagle LNG filing in Docket 20200093, Petition for Approval of Tariff Modifications for Liquified Natural Gas Service by Peoples Gas System
Attachments:	Ltr.Commission.7.31.20.LNG.Tariff.Docket.20200093-GU.pdf

Please place the attached letter in Docket No. 20200093.

Thanks

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From: Jon Moyle [mailto:jmoyle@moylelaw.com]
Sent: Friday, July 31, 2020 7:09 PM
To: Office of Chairman Clark; Office of Commissioner Brown; Office of Commissioner Fay; Office of Commissioner Graham; Office of Commissioner Polmann
Cc: Braulio Baez; Keith Hetrick; Kurt Schrader; 'ab@macfar.com'; 'Paula K. Brown' (regdept@tecoenergy.com); JR Kelly; Morse, Stephanie
Subject: Eagle LNG filing in Docket 20200093, Petition for Approval of Tariff Modifications for Liquified Natural Gas Service by Peoples Gas System

Commissioners: Attached is a letter to each of you that was also filed and served on all parties and staff today in Docket No. 20200093, PGS's Petition for Approval of Tariff Modifications for Liquified Natural Gas Service. Regards, Jon

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July 31, 2020

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Re: **Petition for Approval of Tariff Modifications for Liquified Natural Gas Service by Peoples Gas System, Docket Number 20200093-GU**

Dear Commissioners:

Eagle LNG Partners ("Eagle LNG") is actively engaged in the liquefied natural gas ("LNG") business and is a customer of Peoples Gas System ("PGS"). Eagle LNG currently operates a state-of-the-art LNG liquefaction facility, with cryogenic LNG storage and will soon commence construction on a LNG export marine terminal in Jacksonville, Florida. Eagle LNG plans to establish LNG operations and facilities elsewhere in Florida and the country, as required. On behalf of Eagle LNG, please accept and consider these comments to the pending Petition for Approval of Tariff Modifications for Liquefied Natural Gas Service filed by PGS ("PGS Petition"), Docket Number 20200093-GU. Eagle LNG respectfully requests the Commission to not adopt the proposed PGS LNG tariff modifications, for the reasons set forth below.

LIQUEFIED NATURAL GAS FACTS

LNG is liquefied natural gas; when natural gas is cooled to -260 degrees Fahrenheit, it becomes a liquid rather than a gas. The volume of liquid natural gas is approximately 600 times less than the volume of equivalent gaseous natural gas. This cooling and liquefying process, properly performed, makes it possible to transport LNG by truck, rail or ship, and to store the LNG in containers, later warming or "vaporizing" the liquid back into a gaseous state for use. This process allows a third-party end user to obtain and use natural gas primarily when the fuel needs to be stored on board a transportation vehicle (similar to storing diesel on board a truck, ship or locomotive), and also when unable to access natural gas pipelines or Local Distribution Company ("LDC") distribution lines for receipt and use of beneficial natural gas.

Importantly, LNG production, infrastructure, and dispensing has no natural monopoly characteristics. A competitive market for LNG services currently exists in Florida and throughout the country. LNG services typically are acquired through a competitive solicitation process.

PGS asks the Florida Public Service Commission ("Commission" or "PSC") to approve a LNG tariff that PGS asserts "will provide customers with LNG Service, which may, depending on the specific customer as described in the proposed tariff, include all of the materials and equipment necessary to liquefy, store, and re-vaporize LNG." See paragraph 13 of PGS Petition.

PGS suggests, for example, that it may target the cruise line industry as a potential PGS LNG customer, an industry that is severely impacted by the COVID-19 pandemic. In 2016 Carnival Cruise Lines issued a LNG Request for Proposal ("RFP") and awarded a contract to Shell and Kinder Morgan-Elba; in 2018 Disney Cruise Lines issued a RFP that was awarded to a non-regulated entity; earlier this year Royal Caribbean issued a RFP that has been postponed due to the pandemic. These are some illustrations that make the point that the market for LNG services is by its nature competitive and is not characterized by physical constraints associated with a natural monopoly.

REASONS WHY THE COMMISSION SHOULD DENY PGS' PETITION

1. No natural monopoly exists and the LNG market is competitive. A fundamental tenet of Commission regulation is that it regulates natural monopolies and provides a surrogate for competitive market forces in the absence of competitive market forces. When no natural monopoly exists, the Commission's regulatory oversight does not need to be present. It follows that if a product or service is available in a well-functioning competitive marketplace, free enterprise and market forces should be allowed to operate without Commission regulation. This Commission tellingly has stated that when competition is functioning as an effective regulator in a public market, further regulation is both redundant and unnecessary. See In Re Pub. Facsimile Providers, 193 WL 563060, at *1 (Aug. 2, 1993) Order No. PSC-93-1120-FOF-TP. See also, In Re: Investigation into the Application of the Flexible Pricing Provision of Indus. Interruptible Serv. Rate Schedule of Florida Div. of Chesapeake Utilities Corp. 91 FPSC 10:347 (October 21, 1991) (Commission regulation serves as a surrogate for competition where no competition exists.). The LNG market in Florida is a competitive market and the provision of LNG services has no characteristics of a physically constrained natural monopoly subject to regulation by the PSC.

2. The Granting of LNG Tariffs and Commission Regulation of LNG Places PGS Ratepayers at Risk. PGS is concurrently seeking both LNG tariff approval in Docket 20200093-GU and also approval for a new LNG facility to be placed into the PGS rate base in the pending PGS rate case, Docket 20200051. The requested tariff approval is tantamount to providing a ratepayer financial backstop if the PGS venture into the competitive LNG marketplace does not work out. If prospective LNG customers do not materialize, or choose another provider, or contract with PGS but default on the agreement, or declare bankruptcy, nothing prevents PGS from seeking ratepayer monies to cover PGS' operating losses or stranded assets. Put simply, this ratepayer risk is not warranted or justified in the existing competitive market. No reasonable person would suggest that a regulated utility enter into the crude oil refining, gas station or marine bunkering market; approving this PGS tariff, however, would be the equivalent doing so.

3. Permitting PGS to Provide Competitive LNG Service through Tariffs Rather than Through a Separate, Non-Regulated Company Providing Competitive LNG Services Presents Possible Cross-Subsidization and Regulatory Inefficiency. The Commission previously has directed that certain programs, like certain electric surge protection programs, be operated by separate, stand-alone companies rather than by a regulated utility. See, generally, Commission Order Number PSC-11-0378-PAA-EI, Docket Number 100077-EI. This corporate separation makes sense for the following reasons and should be used here: (a) it is not in the public interest to allow LNG competitive services (or any other competitive goods or services) to be intermingled with PGS monopoly regulated services as opportunities exist for cross-subsidization, i.e., ratepayer funds being used to provide a competitive advantage to PGS' LNG services; (b) requiring that LNG services be conducted by a separate Emera[1] subsidiary

[1] Emera is the corporate parent of PGS as well as other regulated and unregulated companies.

corporate entity rather than allowing PGS to compete in the competitive LNG market helps ensure distinct accounting separation and saves Commission resources from delving into how matters such as general and administrative expenses are allocated between certain personnel and services; stated differently, requiring that competitive LNG services be provided by a separate, non-regulated corporate entity enhances regulatory efficiency as cross-subsidization inquiries should be limited; and (c) PGS has offered insufficient reasons or evidence to support its burden to demonstrate that competitive LNG services should be integrated with monopolistic regulated services.

4. Approving the PGS LNG Tariff Sends the Wrong Signal to the Competitive Florida LNG Market. Commission approval of the proposed PGS LNG tariff will send a troublesome signal about the competitive nature of Florida's LNG industry. The number of LNG interested parties in this docket – 5 – is telling and undoubtedly other existing and potential market participants are closely watching the Commission's decision. Investors with private capital to invest in the LNG arena in Florida seek a level playing field devoid/free of a regulated utility being positioned to potentially get a competitive leg up. Approving the PGS requested LNG tariff and allowing PGS to use its regulated monopoly to venture into the competitive LNG Florida marketplace potentially will suppress competition and divert capital investment from the Florida LNG market.

Eagle LNG appreciates your consideration of these points and looks forward to addressing the Commission at the Commission's August 18, 2020 Agenda Conference. Eagle LNG respectfully asks the Commission to refrain from approving PGS's Petition for Approval of Tariff Modifications for Liquefied Natural Gas Service.

Sincerely,

Jon C. Moyle

cc: Bralio Baez, PSC Executive Director
Keith Hetrick, PSC General Counsel
Kent Schrader, Esq. PSC Staff Attorney
Andrew Brown, Esq., Counsel to PGS
Paula Brown, Regulatory Affairs, PGS
J.R. Kelly, Esq., Public Counsel
Stephanie Morse, Esq., Associate Public Counsel