

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 16, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (S. Brown, Broussard, Bulecza-Banks)
Office of the General Counsel (M. Brown)

RE: Docket No. 060073-GU – Petition for approval of tariff modifications related to alert days and unauthorized overruns, by Peoples Gas System.

AGENDA: 02/28/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/27/06 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060073.RCM.DOC

Case Background

On January 26, 2006, Peoples Gas System (“Peoples” or the “Company”) filed a petition to modify the sections of its Natural Gas Tariff relating to customer usage during times of operational difficulty, and a Pool Manager’s failure to deliver make-up gas after a force majeure event. Peoples is seeking approval to: modify its tariff to correct inconsistencies in penalty provisions that apply during interruption or curtailment; modify penalty provisions that apply when a customer consumes an amount different from what he delivers to Peoples for its use, and; modify penalty provisions that apply to force majeure situations.

With respect to the correction of inconsistencies, Peoples’ current tariff contains two different sets of penalty provisions that apply during times of interruption or curtailment. In

2003, Peoples implemented penalty provisions that would apply if a customer continued to use gas during times requiring interruption or curtailment. Peoples inserted the provisions into several rate schedules, but overlooked two schedules. Peoples now seeks to correct this oversight.

Peoples also seeks to modify the penalty provisions that apply during times of operational difficulties. Operational difficulties occur when there is either too much or too little gas in the physical transmission or distribution systems.

Some customers of Peoples buy their gas supply from a marketer or producer and then have the gas transported by an interstate pipeline to Peoples, which then delivers the gas to the customer. These customers are known as transportation customers. Each day, the transportation customers arrange for a specific quantity of gas to be put in the interstate pipeline for delivery to Peoples. At the end of the month, the total amount of gas delivered into the pipeline and the total gas consumed by the customer may or may not be equal. The customer is responsible for any costs involved in balancing the gas delivered with the gas consumed.

Some customers choose to use the services of a marketer who arranges for the purchase and transportation of natural gas on behalf of the customer. Marketers can qualify to be a Pool Manager under Peoples' tariff. A Pool Manager combines the total gas requirements for all of its customers and then purchases and arranges for delivery of the gas supply to Peoples on behalf of his customers.

During times of operational difficulties, Peoples may issue a notice (Alert Day Notice) instructing customers about the maximum or minimum amount of gas they must consume. The notice covers a set period of time. Customers who do not adhere to the notice may be subject to penalties. Peoples now seeks to modify the penalty provisions related to Alert Days to discourage transportation customers or Pool Managers from failing to comply with the Alert Day Notice.

Lastly, Peoples seeks to apply a more appropriate penalty when a Pool Manager or individual customer fails to deliver gas to Peoples after an event of force majeure. In Peoples' current tariff, a \$15.00 per unit of gas penalty is applied when a customer fails to deliver gas following a force majeure event. As gas prices have risen significantly since the time Peoples included this type of penalty in its tariff, the \$15.00 penalty may not be enough to cover the gas costs that Peoples would incur to purchase the gas needed to balance the system.

The pages of Peoples' proposed tariff are attached to this recommendation. The particular sections that have been modified have been highlighted on those pages.

The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Peoples Gas System's petition for approval of tariff modifications relating to alert days, unauthorized gas usage and penalties imposed for failure to deliver make-up gas after a force majeure event.

Recommendation: Yes. The Commission should grant Peoples Gas System's petition for approval of tariff modifications relating to correcting inconsistencies between various rate schedules, penalties applied for unauthorized gas usage, and penalties imposed for failure to deliver make-up gas after a force majeure event. (S. Brown, Broussard, Bulecza-Banks)

Staff Analysis: Peoples is seeking approval for certain tariff modifications designed to: correct inconsistencies in various rate schedules; modify provisions relating to projected and actual gas usage; modify the allocation of revenues resulting from penalty charges resulting from gas usage; and provide a more appropriate penalty when a Pool Manager fails to deliver gas to the Company after a force majeure event.

First, Peoples is seeking approval to modify rate schedule Contract Interruptible Service (CIS) and schedule Off-System Service (OSS) in order to make provisions consistent with provisions of the Company's other interruptible rate schedules. In 2002, Peoples modified the penalty provisions related to rate schedules for Small Interruptible Service (SIS); Interruptible Service (IS); and Interruptible Service - Large Volume (ISLV), but failed to make the same modifications to the its CIS and OSS rate schedules. Peoples now seeks to correct this oversight.

Second, Peoples seeks to modify the provisions that apply to the issuance of an Alert Day Notice along with the applicable penalties. Penalties apply when a transportation customer or Pool Manager fails to abide by an Alert Day notice issued by Peoples. The modifications Peoples seeks include:

- To require Peoples to specify in an alert day notice whether the notice applies to its entire transportation system, to a specific area on its transportation system, or to one or more individual customers.
- To set tolerance deviations between the gas scheduled and gas consumed at 6%.
- To establish the method to calculate penalties.
- To establish the method by which penalty revenues will be allocated between Peoples transportation and PGA customers.

The final modification Peoples seeks is modification of its Firm Delivery Agreement to address a Pool Manager's failure to deliver make-up gas after a force majeure event. Peoples seeks to increase the charge to the Pool Manager for any make-up quantities it fails to deliver from \$15.00 per MMBtu to five (5) times the highest price for that day of spot gas delivered to a Gulf Coast pipeline. This modification is being proposed because the current charge of \$15.00 per MMBtu may not allow Peoples to recover the costs it incurred to purchase the gas necessary to balance the system. As gas prices have risen significantly since the time the penalties were first implemented, Peoples needs to ensure that the penalty allows Peoples to recover its costs. Further, the purpose of the penalty is to discourage customers, marketers, or Pool Managers from failing to deliver gas they are obligated to provide.

The other aspect of the modification would clarify that a Pool Manager's obligation to deliver the gas it was prevented from delivering because of a force majeure event does not commence until after the force majeure event has ended. Currently the language in Peoples' tariff states that make-up gas must be provided within 30 days of the force majeure. The tariff is not clear that the 30 day time frame only applies after the force majeure situation has ended. This modification clarifies the customer's obligation to provide make-up gas.

Based on the above analysis, the Commission should grant Peoples Gas System's petition for approval of tariff modifications relating to correcting inconsistencies between various rate schedules, penalties applied for unauthorized gas usage, and penalties imposed for failure to deliver make-up gas after a force majeure event.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected, timely files a protest of the Commission's tariff Order, the docket may be closed upon the issuance of a Consummating Order. If a timely protest is filed, the tariff should remain in effect pending resolution of the protest, with revenues held subject to refund. (M. Carter-Brown)

Staff Analysis: If no person whose substantial interests are affected, timely files a protest of the Commission's tariff Order, the docket may be closed upon the issuance of a Consummating Order. If a timely protest is filed, the tariff should remain in effect pending resolution of the protest, with revenues held subject to refund.

**Peoples Gas System
a Division of Tampa Electric Company
Original Volume No. 3**

**Fourth Revised Sheet No. 7.607
Cancels Third Revised Sheet No. 7.607**

**CONTRACT INTERRUPTIBLE SERVICE
Rate Schedule CIS**

Availability:

Throughout the Service Areas of the Company.

Applicability:

Interruptible Gas for non-residential commercial or industrial use. Service under this schedule is subject to interruption or curtailment at the sole discretion of the Company at any time and is available to Customers using 100,000 Therms per year or more. A Customer eligible for service pursuant to this rate schedule is also eligible for transportation service under Rider ITS.

Service will be provided by the Company based on available pipeline capacity and the Customer delivering suitable Gas into the Company's distribution system.

Monthly Rate:

Customer Charge: Equal to the otherwise applicable Customer Charge based on annual consumption.

Distribution Charge:

An amount not less than \$.01 per Therm nor greater than 90 percent of the currently applicable firm rate; provided however, that at any time during which the cumulative surpluses determined for all prior determination periods under the Competitive Rate Adjustment Clause (Non-West Florida Region) (see Sheet No. 7.101-5) equal or exceed the cumulative shortfalls determined for all prior determination periods under such clause, the distribution charge shall not exceed the distribution charge established for service under Rate Schedule IS in Company's last base rate proceeding. Unless changed by Company pursuant to this Rate Schedule, the distribution charge shall be equal to the applicable interruptible rate.

The "currently applicable firm rate" as used herein means the distribution charge prescribed in the otherwise applicable rate schedule, adjusted pursuant to the Competitive Rate Adjustment Clause (Non-West Florida Region) set forth on Sheet No. 7.101-5.

The distribution charge to Customer shall be determined by Company based upon Company's evaluation of competitive conditions. Such conditions may include, but are not necessarily limited to: the cost of Gas which is available to serve Customer; the delivered price and availability of Customer's designated alternate fuel; bypass opportunities; and the nature of Customer's operations (such as load factor, fuel efficiency, alternate fuel capacity, etc.). Company may from time to time increase or reduce the distribution charge as it deems necessary or appropriate to meet competition

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
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**Fourth Revised Sheet No. 7.607-1
Cancels Third Revised Sheet No. 7.607-1**

CONTRACT INTERRUPTIBLE SERVICE (Continued)

or remain competitive, but shall have no obligation to do so; provided, however, that the distribution charge shall at all times remain within the limits set forth above. Company will notify Customer at least 48 hours in advance of any change in the distribution charge under this rate schedule.

Customer may at any time request reduction in its distribution charge by completing the form which appears on Sheet No. 8.111 and submitting the same to Company.

The bill for the Therms billed at the above rates shall be increased in accordance with the provisions of the Company's Purchased Gas Adjustment Clause set forth on Sheet No. 7.101-1, unless Customer receives transportation service under the Company's Rider ITS.

Minimum Bill: The Customer charge.

Special Conditions:

1. As a condition for receiving service pursuant to this rate schedule Customer must agree that, on termination of service hereunder, Customer will pay to Company the amount, if any, by which (A) Customer's consumption (in Therms) during the twelve (12) months immediately preceding the date on which service hereunder is terminated, times the applicable interruptible rate, exceeds (B) Customer's consumption (in Therms) during said period, times the distribution charges actually paid for such consumption by Customer.
2. A service agreement accepted by the Company is a condition precedent for service under this schedule. The term of such agreement shall be set forth therein but shall not be less than one year.
3. If the Customer's requirements for Gas change, the Customer shall notify the Company so that the daily and annual quantities in the service agreement may be changed. If the Customer's usage indicates that the amounts set forth in the then existing agreement are not applicable, the Company may require that the daily and annual estimates be changed to reflect the existing conditions.
4. Interruption and curtailment:
The Company may notify the Customer at any time to reduce or cease using Gas. The Company will endeavor to give as much notice as possible to the Customer. Any gas taken in excess of the volume allocated to the Customer in an interruption or curtailment order shall be considered unauthorized overrun gas. Company may bill and Customer shall pay for such unauthorized overrun gas at the greater of (i) five (5) times the highest Gas Daily mid-point price for gas delivered to a Gulf Coast pipeline plus FGT's FTS-2 reservation, usage, fuel and applicable surcharges or (ii) five (5) times the Gas Daily FGT Florida City gate price for gas for the calendar day on which such unauthorized overrun gas was taken.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
a Division of Tampa Electric Company
Original Volume No. 3**

**Third Revised Sheet No. 7.607-2
Cancels Second Revised Sheet No. 7.607-2**

CONTRACT INTERRUPTIBLE SERVICE (Continued)

5. Service under this schedule shall be subject to the Rules and Regulations set forth in this tariff.
6. In instances where the Customer is able to demonstrate the ability and intent to bypass the Company's distribution system and purchase Gas or another source of energy from an alternate supplier, the distribution charge shall, in the discretion of the Company, be the rate per Therm necessary to retain the Customer on the Company's distribution system, provided that such rate is demonstrated to be in the long-term best interests of both the Company and its ratepayers.
7. The rates set forth in this schedule shall be subject to the operation of the Company's Tax and Fee Adjustment Clause set forth on Sheet No. 7.101-5.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
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Original Volume No. 3**

**Third Revised Sheet No. 7.702-1
Cancels Second Revised Sheet No. 7.702-1**

OFF-SYSTEM SERVICE (Continued)

Purchased Gas Adjustment Clause, Energy Conservation Cost Recovery Clause and Competitive Rate Adjustment Clause shall not apply to purchases of Gas made by Customer pursuant to this rate schedule.

Special Conditions:

1. Neither Customer nor Company shall have any obligation to the other for any specific minimum quantity of Gas or pipeline capacity on any day or during any month, and deliveries pursuant to this rate schedule shall be subject to curtailment or interruption at any time in the sole discretion of Company.
2. Amounts payable to Company pursuant to this rate schedule shall be subject to the operation of the Company's Tax and Fee Adjustment Clause set forth on Sheet No. 7.101-4.
3. Disposition of Net Revenues and Transaction Charges. For purposes of this paragraph 3, "net revenues" shall mean the total Distribution Charges received by Company for service pursuant to this rate schedule. Twenty-five percent (25%) of all net revenues shall be retained by Company above the line as regulated revenues, and the remaining seventy-five percent (75%) of such net revenues (and all Transaction Charges) shall be used to reduce Company's cost of Gas recovered through the Purchased Gas Adjustment Clause.
4. Interruption and Curtailment. Company may notify Customer at any time to reduce or cease using Gas. Company will endeavor to give as much notice as possible to Customer.

Any gas taken in excess of the volume allocated to the Customer in an interruption or curtailment order shall be considered unauthorized overrun gas. Company may bill and Customer shall pay for such unauthorized overrun gas at the greater of (i) five (5) times the highest Gas Daily mid-point price for gas delivered to a Gulf Coast pipeline plus FGT's FTS-2 reservation, usage, fuel and applicable surcharges or (ii) five (5) times the Gas Daily FGT Florida City gate price for gas for the calendar day on which such unauthorized overrun gas was taken.

5. For each day on which Customer desires to receive service pursuant to this rate schedule, Customer shall provide a nomination to Company specifying the quantity of Gas it desires to receive at the specified point of delivery pursuant to this Agreement. Following receipt of a timely and complete nomination from Customer, Company will confirm the quantities of Gas to be made available for delivery to Customer at such point of delivery. Quantities confirmed by PGS for delivery shall be "Scheduled Quantities".
6. The point of delivery for all Gas sold pursuant to this rate schedule shall be the delivery point of the delivering Pipeline specified by Customer.
7. Except as modified by the provisions set forth above, service under this rate schedule shall be subject to the Rules and Regulations set forth in this tariff.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

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**First Revised Sheet No. 8.103-4
Cancels Original Sheet No. 8.103-4**

An appropriate billing adjustment shall be made for such period during which Seller's meter was defective or failed to register.

Seller will maintain its meter or meters in good order and to this end will make periodic tests of its meter or meters at intervals of one (1) year or at such shorter intervals as Seller may desire. If Buyer is dissatisfied with the accuracy of a meter at any time, it may call upon Seller to have the meter tested, and if a test has not been made within one (1) year, Seller will make such test without charge. If the meter has been tested within one (1) year, Seller will nevertheless make the test required, but if the meter when tested is proved to be accurate within plus or minus two percent ($\pm 2\%$) or less, Buyer will pay Seller for the costs incurred in the conduct of such test.

ARTICLE IX - DELIVERY PRESSURES

Buyer and Seller agree that the pressure at which Seller shall be obligated to deliver the gas sold hereunder shall not exceed _____ pounds per square inch gauge.

ARTICLE X - DELIVERY POINT

The point of delivery shall be as set forth in Seller's tariff, as Seller shall determine (any meter or meters and other facilities of Seller, if located on property of Buyer, to be on an easement furnished to Seller by Buyer). Buyer shall install and maintain at its expense its facilities from the point of delivery of the gas delivered hereunder to the point of use in good condition at all times. Seller shall be deemed to be in control and possession of the gas up to such point of delivery, after which Buyer shall be deemed to be in control and possession thereof, and Seller shall have no responsibility with respect thereto or on account of said delivery, and Buyer shall indemnify and hold harmless Seller from any and all loss or damage in this connection. Buyer shall have no responsibility with respect thereto or on account of anything which may be done, happen or arise with respect to said gas before said delivery, and Seller shall indemnify and hold harmless Buyer from any and all loss or damage in this connection.

ARTICLE XI - CURTAILMENT AND/OR INTERRUPTION

It is specifically agreed that delivery of gas by Seller hereunder is subject to curtailment and/or interruption in accordance with Seller's tariff and Seller's curtailment plan on file with the FPSC. In the event the FPSC or other government agency or department having jurisdiction orders a change in Seller's curtailment plan or Seller changes the plan or its tariff, curtailment and/or interruption of service shall be made on whatever basis or priority is so ordered or established, and Seller shall be relieved from any and all liabilities, penalties, alternate fuel subsidies, price adjustments and claims of whatever kind or type, resulting from or arising out of Seller's interruption or curtailment of deliveries thereunder. Seller agrees to provide Buyer, if reasonably practicable, with at least two (2) hours' notice of curtailment or interruption of service, either orally or in writing, provided that Seller shall not be so obligated when interruption or curtailment of service is caused by conditions of force majeure.

Any gas taken by Buyer in excess of the volume allocated to Buyer in an interruption or curtailment order from Seller shall be considered to be unauthorized overrun gas. Seller shall bill and Buyer shall pay for such unauthorized overrun gas at a rate which is the greater of (i) five (5) times the highest Gas Daily mid-point price for gas delivered to a Gulf Coast pipeline plus FGT's FTS-2 reservation, usage, fuel and applicable surcharges or (ii) five (5) times the Gas Daily FGT Florida City gate price for gas for the calendar day on which such unauthorized overrun gas was taken.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

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**First Revised Sheet No. 8.103-5
Cancels Original Sheet No. 8.103-5**

ARTICLE XII - FORCE MAJEURE

In the event of either party hereto being rendered unable, wholly or in part, by reason of force majeure, to carry out its obligations under this Agreement including, but not limited to, the inability of Buyer to use the gas as herein contemplated, other than to make payment then due hereunder, it is agreed that on such party giving written or telegraphic notice with full particulars of such force majeure event to the other party as soon as reasonably possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure event, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, temporary or permanent failure of source of supply, and any other causes not within the control of the party claiming suspension and which by the exercise of due diligence, such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either party hereto is required to obtain servitudes, rights-of-way, grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way, grants, permits or licenses; and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure grants or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or delays on the part of such party in acquiring, after the exercise of reasonable diligence, such materials and supplies, permits and permissions. It is understood and agreed that the settlement of strikes, lockouts or other labor difficulties shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other labor difficulties by acceding to the demands of an opposing party when such course is inadvisable in the discretion of the party having the difficulty.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
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**Second Revised Sheet No. 7.805-7
Cancels First Revised Sheet No. 7.805-7**

INDIVIDUAL TRANSPORTATION SERVICE Rider ITS (Continued)

Transporter shall be conclusive for all purposes under the Gas Transportation Agreement, including without limitation, determining daily quantities actually delivered at the PGS Receipt Point(s) for Customer's account; provided, however, that in the case of any discrepancy between allocation statements, Customer and Company will cooperate to determine which statement is correct; and provided further, however, that unless such discrepancy is resolved to the satisfaction of Company and Transporter, as between Company and Customer, Transporter's allocation statement shall control and shall provide the quantity to be used for all calculations and adjustments under the Gas Transportation Agreement.

9. Inspection. Both Customer and Company shall have the right during the term of the Gas Transportation Agreement and for a period of three (3) years thereafter, upon reasonable prior notice and during normal business hours, to examine the records and documents of the other party to such agreement to the extent necessary to verify the accuracy of any statement or charge made thereunder. Each party to such agreement shall keep each such record and document for a period of three (3) years from the date the same is created or any entry or adjustment thereto is made.
10. Nominations required by the Gas Transportation Agreement shall be submitted electronically in accordance with instructions furnished by the Company, or in the form set forth on Sheet No. 8.115.
11. If a Customer takes service under (a) an interruptible rate schedule or (b) this Rider, then the Company will install and maintain equipment for the monitoring of the Customer's hourly Gas flow. Customer shall reimburse the Company for the expense incurred for the investment in and installation of such equipment.
12. Allocations and Penalties. Company may, in its sole discretion and with at least 12 hours notice within a Day, post a notice on its Internet web site or give notice by e-mail to any Customer receiving service pursuant to this Rider that the Alert Day provisions of this Special Condition 12 are in effect, whether the Alert Day is an Overage Alert Day or an Underage Alert Day, whether the notice applies system-wide, to an affected area, or to one or more individual Customers, and the tolerance percentage applicable to the Alert Day; provided, however, that such tolerance percentage shall not be less than 6%. The following provisions of this Special Condition shall apply on any such Day.
 - (a) On an Overage Alert Day, to the extent a Customer's Actual Takes exceed the Customer's Scheduled Quantities, such overages shall be recorded in an Alert Day Account specific to the particular Alert Day and shall be subject to the Alert Day Charges set forth in paragraph (c) below.
 - (b) On an Underage Alert Day, to the extent a Customer's Actual Takes are less than the Customer's Scheduled Quantities, such underages shall be recorded in an Alert Day Account specific to the particular Alert Day and shall be subject to the Alert Day Charges set forth in paragraph (c) below.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
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**Third Revised Sheet No. 7.805-8
Cancels Second Revised Sheet No. 7.805-8**

INDIVIDUAL TRANSPORTATION SERVICE Rider ITS (Continued)

- (c) Alert Day Charges. For each Alert Day Account established during the preceding Month, Company shall bill to Customer, and Customer shall pay to Company, in addition to any other amounts payable pursuant to Customer's Gas Transportation Agreement or this tariff, an Alert Day Charge per MMBtu equal to two times the higher of (i) the highest Daily Midpoint price for Gas in any FGT Zone as published in *Gas Daily* for the Day on which the Alert Day Account was established, plus FGT's FTS-2 100% load factor rate, or (ii) FGT's City Gate Delivered price for Gas as published in *Gas Daily* for the Day on which the Alert Day Account was established.

The Overage/Underage Level for each Customer's Alert Day Account shall be calculated by dividing the Customer's overage or underage (as the case may be) for such Day by the Scheduled Quantities for the Day on which the Alert Day Account was established. A Customer's failure to receive notice pursuant to this Special Condition 12 shall not excuse Customer from any Alert Day Charges assessed hereunder.

- (d) Revenues derived from Alert Day Charges imposed by Company pursuant to this Special Condition 12 on any Day shall be netted against any FGT penalty charges incurred by Company for the same Day. If there is any remaining revenue, (i) twenty-five percent (25%) thereof (less Regulatory Assessment Fees attributable thereto) shall be credited back on a pro rata basis to (A) all Customers subject to the Alert Day whose Actual Takes were less than their Scheduled Quantities for such Day when the Alert Day was an Overage Alert Day or (B) all Customers subject to the Alert Day whose Actual Takes exceeded their Scheduled Quantities for such Day when the Alert Day was an Underage Alert Day, and (ii) seventy-five percent (75%) thereof shall be credited to the Purchased Gas Adjustment Clause. If, (i) on an Overage Alert Day, the Actual Takes of no Customer subject to the Alert Day were less than such Customer's Scheduled Quantities for such Day, or (ii) on an Underage Alert Day, the Actual Takes of no Customer subject to the Alert Day exceeded such Customer's Scheduled Quantities for such Day, revenues derived from Alert Day Charges for such Day (less Regulatory Assessment Fees attributable thereto) shall be credited to the Purchased Gas Adjustment Clause.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

**Peoples Gas System
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**First Revised Sheet No. 7.805-9
Cancels Original Sheet No. 7.805-9**

INDIVIDUAL TRANSPORTATION SERVICE Rider ITS (Continued)

- (e) No penalty debits will be assessed if they are less than \$5.00 in value.
 - (f) If, on a Day on which a Customer is subject to an Alert Day Notice issued pursuant to this Special Condition 12, Company orders such Customer to curtail or interrupt pursuant to Special Condition 3, such Customer shall be subject to the greater of (i) any Alert Day Charges incurred by Customer pursuant to this Special Condition 12 or (ii) any penalty payable by Customer for unauthorized overrun Gas pursuant to Special Condition 3.
13. A Customer which provides a written request to discontinue service hereunder to return to sales service (if such service is then available from Company) will be required to remain on sales service for a period of not less than twelve (12) Months.
14. It is the Customer's obligation to make payments to the Company (or to an Authorized Payment Agent of the Company) of all bills rendered. Payment by a Customer to a third party (including a Third Party Gas Supplier) which has not been designated by Company as an Authorized Payment Agent will not satisfy the Customer's obligation to make payment of Company's bill for Gas Service.

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective:

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**Third Revised Sheet No. 7.805-4
Cancels Second Revised Sheet No. 7.805-4**

INDIVIDUAL TRANSPORTATION SERVICE Rider ITS (Continued)

- (d) Company agrees to give Customer as much advance notice of a curtailment or interruption of service as is reasonably practicable, which notice shall, in non-emergency circumstances, be at least four (4) hours.
4. Customer's Responsibilities. Company has no responsibility in connection with Customer's arrangements with its supplier(s). Customer shall timely provide to Company (i) good faith estimates of the daily quantities it is likely to nominate for purchase or transportation as far in advance as reasonably practicable and (ii) all information requested by Company in order to comply with Transporter's FERC Tariff and determine Scheduled Quantities. Customer shall designate in writing an individual, who is duly authorized to act for Customer with respect to all operational matters arising under the Gas Transportation Agreement and accessible to Company at all times each Day during the term of the Gas Transportation Agreement, to act as Customer's "Contact Person". In performing under the Gas Transportation Agreement, Company shall be entitled to rely upon any instruction or consent given by such Contact Person with respect to operational matters arising under the Gas Transportation Agreement or under the Transporter Agreement (as defined in the Gas Transportation Agreement).
5. Warranty of Title. As between Customer and Company, Customer warrants that it will have good title to all Gas delivered to Company for the account of Customer for transportation on Company's system, that such Gas will be free and clear of all liens, encumbrances and claims whatsoever, and that it will indemnify and save Company harmless from any suit, action, debt, account, damage, cost, loss and expense arising from or out of adverse claims of any person to said Gas.
6. Deliveries of Gas. All Gas delivered under the Gas Transportation Agreement shall be delivered at rates of flow as constant as operationally feasible throughout each Day. Company has no obligation on any Day to deliver on other than a uniform hourly basis in relation to the Scheduled Quantities. The point of delivery for all Gas confirmed by Company for delivery under the Gas Transportation Agreement shall be at the outlet side of such billing meter(s) as shall be installed at the PGS Delivery Point(s). Measurement of the Gas delivered shall be in accordance with Section V of Company's Rules and Regulations.
7. Correction of Imbalances. Company intends that Gas delivered to a Customer receiving service pursuant to this Rider on a daily basis will equal such Customer's consumption for that Day. All Daily Imbalance Amounts arising under a Gas Transportation Agreement shall be resolved as of the end of each Month. The sum of all Daily Imbalance Amounts incurred during a Month (excluding any Daily Imbalance Amount recorded in an Alert Day Account) (the "Monthly Imbalance Amount") shall be resolved in accordance with this Special Condition 7 each Month. Company will post a list of Monthly Imbalance Amounts on its Internet web site by

Issued By: William N. Cantrell, President
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Effective:

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**Second Revised Sheet No. 8.119-7
Cancels First Revised Sheet No. 8.119-7**

Section 6.2 Amounts Due Pool Manager. Any amounts due Pool Manager from PGS pursuant to Section 4.2(b) shall be paid to Pool Manager on or before the 20th Day of the Month following the Month in which PGS purchased any Excess Quantity from Pool Manager pursuant to Section 4.2(b). If PGS fails to make any payment to Pool Manager when due and such failure is not remedied by or on behalf of PGS within five (5) Days after written notice by Pool Manager of such default in payment, then Pool Manager, in addition to any other remedy it may have, may, without incurring any liability to PGS and without terminating this Agreement, suspend payment of any amounts due PGS pursuant to this Agreement until such amount is paid; provided, however, that Pool Manager shall not do so if (i) PGS's failure to pay is the result of a bona fide billing dispute, (ii) PGS has paid all amounts not in dispute, and (iii) the parties are negotiating in good faith to resolve the dispute.

ARTICLE VII - FORCE MAJEURE

To the extent provided in this article, Pool Manager shall be excused from delivering, on any Day, the amount of Gas required under Article IV, if (and only to the extent) such delivery is prevented by a Force Majeure event. For purposes of this Agreement, "Force Majeure" events shall be limited to those which directly cause the failure of Firm transportation of Gas to the Primary FGT Delivery Point(s), where the cause of such failure constitutes an event of force majeure pursuant to the terms of FGT's FERC Tariff. If, at the time of any such failure, Pool Manager is delivering Gas to or for the account of persons other than the Customer Accounts in the Customer Pool, the quantity of Gas as to which Pool Manager shall be excused from delivering pursuant to Article IV will be no more than a proportionate amount of the total deliveries curtailed by FGT due to the Force Majeure event. Pool Manager is responsible for establishing, to the reasonable satisfaction of PGS, Pool Manager's entitlement to the excuse from performance provided by this article. Any quantities of Gas which Pool Manager is excused from delivering pursuant to this article shall be made up by Pool Manager as soon as possible at a rate of delivery reasonably established by PGS, and Pool Manager shall pay to PGS, for any such quantities which have not been made-up by Pool Manager within thirty (30) Days following the Day on which they were to have been delivered by Pool Manager pursuant to Article IV (as such Day may have been extended by Force Majeure), an amount per MMBtu equal to five (5) times the highest price, during such 30-Day period, for spot gas delivered to a Gulf Coast pipeline, as published in *Gas Daily*. Billing and payment of any amounts payable by Pool Manager to PGS pursuant to this article shall be in accordance with Article VI.

ARTICLE VIII - MISCELLANEOUS

Except for Gas purchased by PGS from Pool Manager pursuant to Section 5.5(a), nothing in this Agreement shall be construed as vesting in PGS title to any Gas delivered by Pool Manager hereunder.

Neither PGS nor Pool Manager is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venture, agent, employer or employee of the other. Nothing in this Agreement is intended to be for the benefit of, or to create any duty or liability to, any person not a party hereto.

This Agreement may not be assigned by Pool Manager without the prior written consent of PGS.

Performance of this Agreement and the interpretation thereof shall be in accordance with the laws of the State of Florida.

Venue for any action between the parties hereto arising out of this Agreement shall be in a court, located in the State of Florida, having jurisdiction. In any such action, the reasonable attorneys' fees and costs of the party prevailing in such action shall be recovered by such party from the other party. Neither PGS nor Pool Manager shall be liable to the other or to any person claiming through the other for special, indirect, punitive or consequential damages, lost profits or lost opportunity costs relating to any matter covered by this Agreement.

Any notice concerning this Agreement, except for those specifically required or permitted to be provided by facsimile, shall be given in writing and mailed by first-class mail to the party being notified at the address for such party stated below:

Issued By: William N. Cantrell, President
Issued On: January 25, 2006

Effective: