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January 13, 2000

Ms. Blanca S. Bayo
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-TPSC
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RECORDS AND
REPORTING

RE: Docket No. 991754-GP

Dear Ms. Bayo:

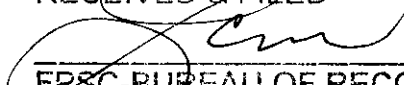
Enclosed for filing on behalf of Buccaneer Gas Pipeline Co., L.L.C., are the original and fifteen copies of its Response in Opposition to Amended Petition to Initiate Rulemaking.

By copy of this letter, this document is being furnished to the parties on the attached service list.

Sincerely,


Richard S. Brightman

AFA
APP Loore
CAF
CMU _____ RSB/df
CTR _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
00581 JAN 13 8
FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Friends of the
Aquifer, Inc., to adopt rules
necessary to establish safety
standards and a safety regulatory
program for intrastate and
interstate natural gas pipelines
and pipeline facilities located
in Florida.

Docket No. 991754-GP
Filed January 13, 2000

RESPONSE IN OPPOSITION TO
AMENDED PETITION TO INITIATE RULEMAKING

Intervener, Buccaneer Gas Pipeline Co., L.L.P. ("Buccaneer"), by and through its undersigned counsel, hereby respectfully responds in opposition to the AMENDED PETITION TO INITIATE RULEMAKING ("Amended Petition") filed in this matter on January 5, 2000, and states:

1. The Amended Petition should be denied primarily because it requests the Public Service Commission ("Commission") to adopt rules for which the Commission has no statutory authority. As a creature of statute, the Commission has only that rulemaking authority granted it by the Florida legislature. *Radio Telephone Communications, Inc. v. Southeastern Telephone Company*, 170 So.2d 577, 582 (Fla. 1965). As an agency subject to Chapter 120, Florida Statutes (1999) ("F.S."), the Commission may adopt "only rules that implement or interpret the specific powers and duties granted by the enabling statute." Section 120.536(1), F.S.

2. The Commission is authorized to adopt rules regulating certain aspects of the transmission of gas by pipeline under Section 368.03, F.S., This statute is specific as to the scope of the Commission's authority to adopt rules regulating natural gas pipelines, stating:

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FPSC-RECORDS/REPORTING

This law authorizes the establishment of rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains and gas services up to the outlet of the customer's meter set assembly, gas storage equipment of the closed-pipe type fabricated or forged from pipe or fabricated from pipe and fittings.

3. The Commission has adopted Chapter 25-12, Florida Administrative Code ("F.A.C."), pursuant to the grant of rulemaking authority in section 368.03, F.S. Chapter 25-12, F.A.C., either expressly or by incorporation by reference of federal regulations, addresses each and every topic upon which the Commission is authorized by statute to adopt rules.

4. The fact that federal law authorizes the Federal Department of Transportation to enter into agreements with, or delegate its authority to, states to implement federal pipeline regulatory authority does not empower the Commission to adopt any rule regarding such agreements or delegation. The Commission is a creature of state law and has only that authority granted to it by its authorizing state legislation.

5. The fact that other states have chosen to enter into agreements with or accept delegation from the Federal Department of Transportation to implement federal pipeline regulatory authority does not empower the Commission to do so. The Commission is a creature of Florida law and has only that authority granted to it by its authorizing Florida legislation.

6. The Commission has no specific statutory to adopt a rule accepting delegation of federal authority to regulate intrastate pipelines and pipeline facilities as requested by the Amended Petition.

7. The Commission has no specific statutory authority to adopt a rule accepting authority or agreeing to implement the Federal Hazardous Liquid Pipeline Safety Act with respect to

intrastate and interstate pipeline facilities located within the State of Florida as requested by the Amended Petition.

8. The Amended Petition recites Buccaneer's proposed natural gas pipeline project as demonstrating "the urgency with which new regulations are required." Amended Petition, Paragraph 10, at 11. Without attempting to correct the outdated and now extremely inaccurate description of Buccaneer's project contained in the Amended Petition, the record of this proceeding should at least reflect the actual level of regulation, including environmental regulation, to which the Buccaneer project is subject. The primary federal regulatory authority over the Buccaneer project is that of the Federal Energy Regulatory Authority ("FERC"). The FERC process is composed of two major components: a need determination and an environmental analysis. The environmental analysis undertaken by FERC is supported by a full Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.). Based upon this EIS, it is the FERC (not Buccaneer) which ultimately decides if and where the Buccaneer pipeline will be built. Also at the federal level, the U.S. Army Corps of Engineers ("Corps") is a cooperating agency with FERC on the EIS, and the Corps will ultimately have to issue a permit for the project under Section 404 of the Clean Water Act (dredge and fill impacts) and Section 10 of the River and Harbor Act (effects on navigation). At the state level, the Buccaneer project must be authorized by an Environmental Resource Permit ("ERP") issued by the Department of Environmental Protection ("DEP") pursuant to Part IV of Chapter 373, F.S., and permission from the Board of Trustees of the Internal Improvement Trust Fund (Governor and Cabinet) to cross state owned lands pursuant to Chapter 253, F.S. The ERP permit involves the full array of environmental issues, including but not limited to siting, water quality protection,

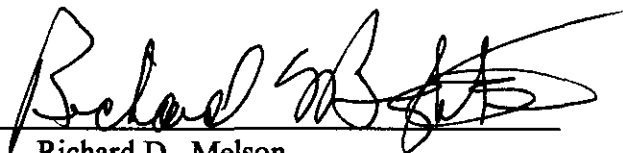
surface water and storm water management, wetland impacts and mitigation, threatened and endangered species protection, and archaeological and historic site protection. The ERP also includes a determination as to whether the Buccaneer project is consistent with Florida's federally approved Coastal Zone Management Plan. The approval to cross state lands involves a public interest test applicable to the entire project (not just the actual crossings), and Buccaneer will have to show that the project is clearly in the public interest. In addition, at the local level, Buccaneer will have to comply with the local government comprehensive plans and land development regulations of each and every local government jurisdiction through which the pipeline will pass. It is misleading to suggest that the Buccaneer project will somehow avoid regulation if the Commission does not grant the Amended Petition.

WHEREFORE, Buccaneer Gas Pipeline Co., L.L.P., respectfully requests that the **AMENDED PETITION TO INITIATE RULEMAKING** filed in this matter by Friends of the Aquifer, Inc., on January 5, 2000, be denied and this docket be closed.

Respectfully submitted this 13th day of January, 2000 in Tallahassee, Florida.

Hopping Green Sams & Smith, P.A.

BY:



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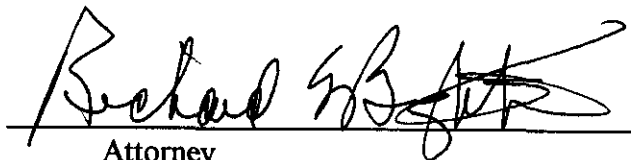
Attorneys for BUCCANEER GAS PIPELINE CO., INC.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing RESPONSE IN OPPOSITION TO AMENDED PETITION TO INITIATE RULEMAKING was **hand delivered** this 13th day of January, 2000, to the following:

Christiana Moore
Division of Appeals
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

John Folsom
122 S. Calhoun St.
Tallahassee, FL 32301



Attorney