

MESSER CAPARELLO & SELF, P.A.

Attorneys At Law
www.lawfla.com

October 15, 2008

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COMMISSION
CLERK

BY HAND DELIVERY

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

080642

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Public Utilities Company is an original and 15 copies of Florida Public Utilities Company's Petition to Resolve a Territorial Dispute.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

Norman H. Horton, Jr.

NHH:amb
Enclosures

cc: Mr. Marc S. Seagrave
Parties of Record

DOCUMENT NUMBER-DATE

09798 OCT 15 08

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities)
Company to resolve a territorial)
dispute with Peoples Gas System)
_____)

Docket No. 080642
Filed: October 15, 2008

**PETITION OF FLORIDA PUBLIC UTILITIES COMPANY
TO RESOLVE A TERRITORIAL DISPUTE**

Pursuant to Section 366.04(3)(b), Florida Statutes and Rule 25-7.0472, Florida Administrative Code, Florida Public Utilities Company ("FPUC") hereby requests the commission to resolve a territorial dispute between FPUC and Peoples Gas System, and states:

1. The Petitioner's name and address are:

Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395
Telephone: 561-832-2461

2. The names, addresses, and telephone numbers of the persons to whom all notices and other documents should be sent are:

Norman H. Horton, Jr.
Messer, Caparello & Self, P. A.
2618 Centennial Place
Tallahassee, FL 32308
Telephone: 850-222-0720

Marc Seagrave
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395

3. Section 366.04(3), Fla. Stats., confers on the Commission the jurisdiction to resolve territorial disputes between natural gas utilities. Specifically, Section 366.04(3) provides in relevant part:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

In the exercise of its jurisdiction, the commission shall have the authority over natural gas utilities for the following purposes:

* * *

(b) To resolve, upon petition for a utility or on its own motion, any territorial dispute involving service areas between and among natural gas utilities. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(c) For purposes of this subsection, “natural gas utility” means any utility which supplies natural gas or manufactured gas or liquefied gas with air admixture, or similar gaseous substance by pipeline, to or for the public and includes gas public utilities, gas districts, and natural gas utilities or municipalities or agencies thereof.

To implement this authority, the Commission has adopted Rule 25-7.0472, Florida Administrative Code, Territorial Disputes for Natural Gas Utilities.

4. FPUC and People’s Gas are natural gas utilities within the meaning of Section 366.04(3)(b) and as such, are subject to the Commission’s statutory jurisdiction to resolve territorial disputes.

FPUC owns and operates natural gas distribution systems and provides service to customers in portions of Volusia, Seminole, Marion, Palm Beach, Broward and Martin Counties Florida. Of specific application to this dispute is area served and to be served in Martin County.

5. Peoples Gas System (“Peoples Gas”) is a division of Tampa Electric Company and operates natural gas distribution systems in several areas of Florida, including Stuart in Martin County.

6. As will be described in this petition, a territorial dispute exists between FPUC and Peoples Gas regarding the intention and efforts of each to serve customers within Martin County. The Commission has jurisdiction to resolve the territorial dispute pursuant to Section 366.04(3)(b), Florida Statutes.

7. On November 13, 2006, in Order No. PSC-06-9948, the commission approved a territorial agreement between FPUC and Indiantown Gas Company (“IGC”). Pursuant to that agreement, FPUC is and will be serving customers in Martin County in the vicinity of Indiantown. Although this area is not part of the current dispute, the description for the communities served which was filed as part of that docket identified Indiantown and the unincorporated areas of Martin County as the service area for FPUC. The Commission subsequently approved a tariff sheet for FPUC specifically describing the territory within Martin County to be served with natural gas. *See*, FPUC, FPSC Gas Tariff, Second Revised Sheet, No. 5.1 effective May 1, 2008, attached as Exhibit A. Generally, the territory to be served consists of those portions of Martin County not served by ICG or the Stuart area served by Peoples. Pursuant to this authority, FPUC is currently serving customers in a portion of Martin County and has taken steps to expand to additional customers, either through conversion of existing propane customers and/or expansion of existing lines.

8. Peoples Gas currently provides natural gas service to customers in portions of Stuart in Martin County.

9. This dispute arises because of actions undertaken by Peoples to expand their lines to areas served by FPUC and/or areas known to Peoples to be areas in the expansion plans of FPUC.

10. Within the area shown in Exhibit "A" FPUC has installed lines to provide service to customers in an area bordered on the south by SW Martin Highway, the west by SW Boatramp Avenue, the north by SW Busch Street and the east by SW 48th Avenue (See Ex. B). FPUC also currently serves propane customers in several areas between the St. Lucie Canal and the Turnpike with an underground system which it plans to convert to natural gas.

11. Subsequent to the installation of the FPUC lines and after approval of the FPUC territory, Peoples began construction of a line running east to west on SW Martin Highway. (See Ex. B) Construction began on the east side of the Florida Turnpike and, despite discussions with Peoples and an apparent understanding, Peoples continued construction to the west and bored under the Turnpike. This installation is not connected to any existing facility and is not located near any existing line of Peoples which would allow a supply of gas. The line is little more than a stranded piece of pipe.

12 FPUC and Peoples have had numerous conversations regarding the installation of the stranded main installed by Peoples. Representatives of both companies have met on-site and have jointly surveyed the surrounding area that is within FPUC's territory. Peoples is aware of certain customers that FPUC is currently serving to include those who have requested natural gas and those that are expecting to utilize FPUC's natural gas service. One of the customers that FPUC will serve in the near future was advised over a year ago by representatives of Peoples marketing affiliate, 'Teco Partners', that their company had surveyed the area and had no intent or plans to provide natural gas in the area. Despite efforts by FPUC to communicate and resolve the dispute with Peoples, Peoples continues to install pipe in the territory adjacent to FPUC's territory which appears to be for the purpose of linking up with this aforementioned stranded piece of pipe which is in FPUC's territory. Peoples is also installing lines to the South

of the St. Lucie Canal and I-95 (See Exhibit "B") which if continued would also encroach into FPUC's service territory. This line would have to cross a major waterway and extend Northward some distance and connect to the stranded line.

13. FPUC currently serves customers within the described service area who are being billed for natural gas and has plans for expansion of service within the area. FPUC has the capacity and capability to expand and the ability to provide efficient, reasonable service to customers within the service area described in Exhibit A. The actions of Peoples demonstrate an intent to expand into an area served by FPUC and under the circumstances creates a dispute between the parties which the Commission has the authority to resolve.

WHEREFORE, FPUC requests the Commission to enter its order resolving this dispute and directing Peoples Gas to cease and desist any construction or extension of natural gas distribution facilities within the service area of FPUC as described on Exhibit A.

Dated this 15th of October, 2008.

MESSER, CAPARELLO & SELF, P.A.
2618 Centennial Place (32308)
Post Office Box 15579
Tallahassee, FL 32317
(850) 222-0720

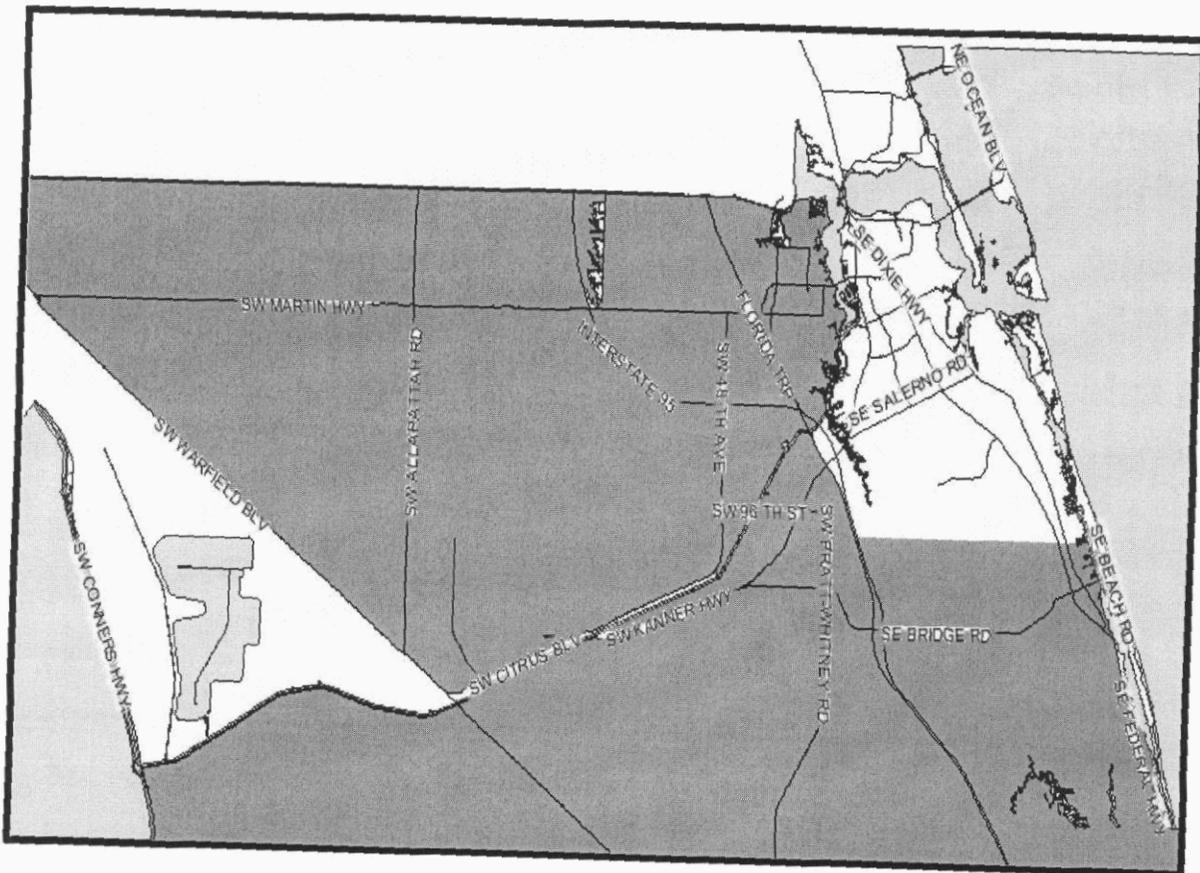

NORMAN H. HORTON, JR., ESQ.
Attorneys for Florida Public Utilities Company

COUNTIES AND COMMUNITIES SERVED

COUNTIES	COMMUNITIES	COUNTIES	COMMUNITIES
Broward	Deerfield Beach ¹	Seminole	Lake Mary ¹ Longwood ¹ Sanford ¹ Winter Springs ¹ Unincorporated Seminole County
Palm Beach	Atlantis ¹ Boca Raton ¹ Boynton Beach ¹ Briny Breezes Cloud Lake Delray Beach ¹ Glen Ridge Golf Greenacres ¹ Gulfstream ¹ Haverhill Highland Beach ¹ Hypoluxo Juno Beach Lake Clarke Shores ¹ Lake Park ¹ Lake Worth ¹ Lantana ¹ Manalapan ¹ Mangonia Park ¹ North Palm Beach ¹ Ocean Ridge Palm Beach ¹ Palm Beach Gardens Palm Beach Shores ¹ Palm Springs ¹ Riviera Beach ¹ Royal Palm Beach ¹ South Palm Beach ¹ Wellington ¹ West Palm Beach ¹ Unincorporated Palm Beach County	Volusia	DeBary ¹ DeLand ¹ Deltona ¹ Edgewater ¹ New Smyrna Beach ¹ Orange City ¹ Unincorporated Volusia County
Martin	Indiantown Unincorporated Martin County		

¹Franchise held by Florida Public Utilities Company

SOUTH FLORIDA DIVISION - MARTIN COUNTY TERRITORY



Issued by: J. T. English, President & CEO

Effective: May 1, 2008

Natural Gas Facilities - Palm City, Florida

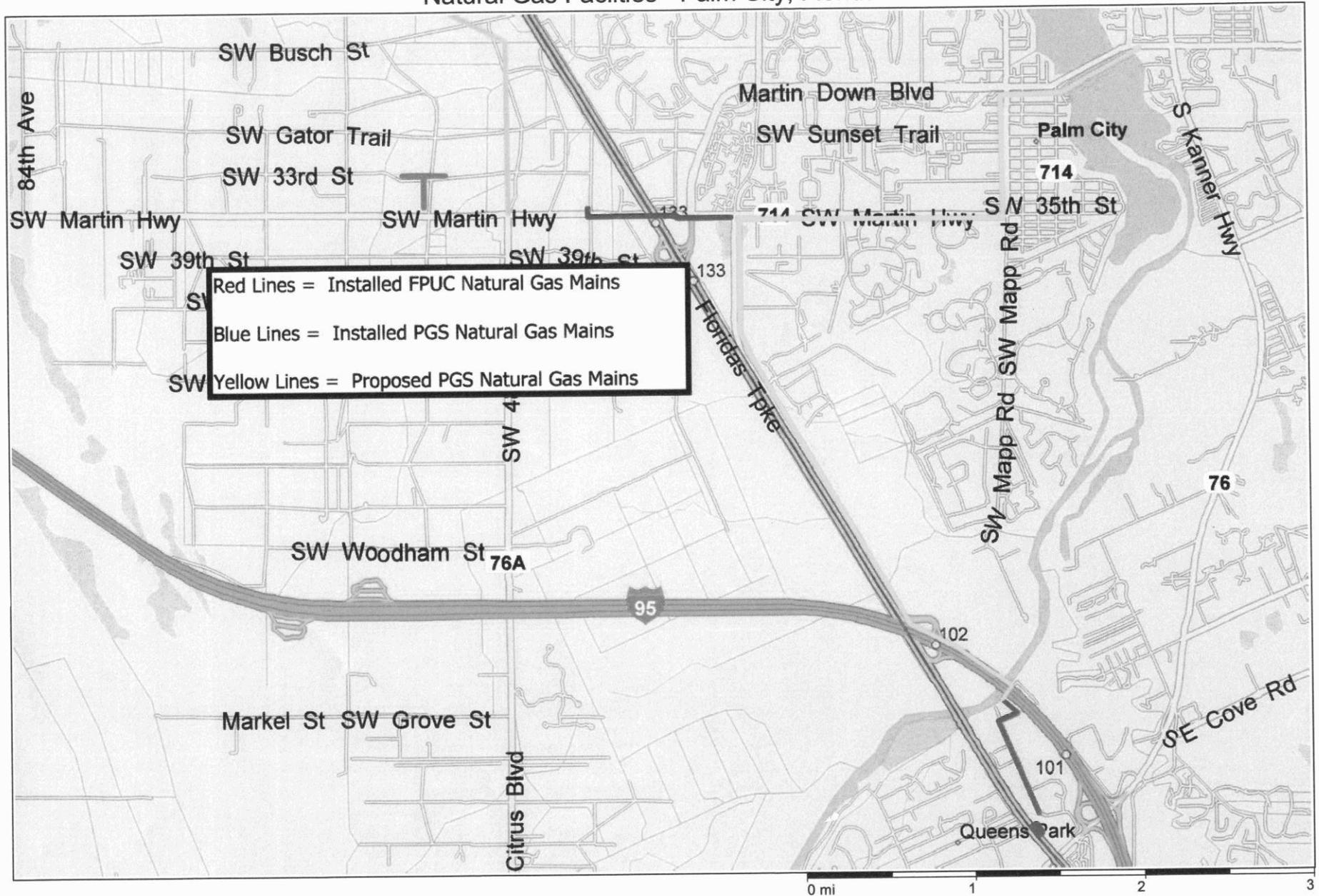


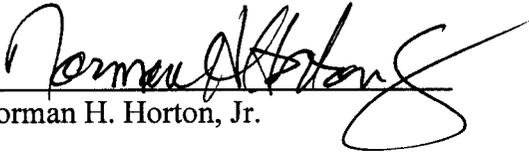
EXHIBIT "B"

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail this 15th day of October, 2008.

Ansley Watson, Jr.
Macfarlane Ferguson & McMullen
P.O. Box 1531
Tampa, Florida 33601-1531


Norman H. Horton, Jr.