## 11/20/20082:42:28 PM1age 1 of 1

### **Ruth Nettles**

From:

Ann Bassett [abassett@lawfla.com]

Sent:

Thursday, November 20, 2008 2:26 PM

To:

Filings@psc.state.fl.us

Subject:

Docket No. 080642-GU

Attachments: 2008-11-20, 080642, FPUC's Response to Peoples' Motion to Dismiss.pdf

The person responsible for this electronic filing is:

Norman H. Horton, Jr. Messer, Caparello & Self, P.A. P.O. Box 15579 Tallahassee, FL 32317 (850) 222-0720 nhorton@lawfla.com

The Docket No. is 080642-GU Petition of Florida Public Utilities Company to Resolve a Territorial Dispute with Peoples Gas System

This is being filed on behalf of Florida Public Utilities Company

Total Number of Pages is 4

Florida Public Utilities Company's Response to Motion to Dismiss or, in the Alternative, for More Definitie Statement.

Ann Bassett Messer, Caparello & Self, P.A. 2618 Centennial Place (32308) P.O. Box 15579 Tallahassee, FL 32317

Direct Phone: 850-201-5225

Fax No. 850-224-4359

Email Address: <a href="mailto:abassett@lawfla.com">abassett@lawfla.com</a>> Web Address: <www.lawfla.com>

DOCUMENT NUMBER-DATE

& S

Attorneys At Law

www.lawfla.com

November 20, 2008

## VIA ELECTRONIC MAIL

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

Re:

Docket No. 080642-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Public Utilities Company is an electronic version of Florida Public Utilities Company's Response to Motion to Dismiss or, in the Alternative, for More Definite Statement in the above referenced docket.

Thank you for your assistance in this matter.

Sincerely,

Jorman H Horton Ir

NHH:amb Enclosure

cc:

Mr. Marc S. Seagrave Parties of Record

DOCUMENT NUMBER-DATE

FPSC-COMMISSION CLERK

#### BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities	)	
Company to resolve a territorial	)	Docket No. 080642-GU
dispute with Peoples Gas System	)	Filed: November 20, 2008
- · · · · · · · · · · · · · · · · · · ·	ì	

# FLORIDA PUBLIC UTILITIES COMPANY'S RESPONSE TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT

Florida Public Utilities Company ("FPUC") pursuant to Rule 28-106.204, Florida Administrative Code, herewith files its Response to Peoples Gas System's ("Peoples") Motion to Dismiss or, in the Alternative, for More Definite Statement. As it response FPUC states:

- 1. On October 15, 2008, FPUC filed a Petition for Resolution of a Territorial Dispute with Peoples Gas System. On November 10, 2008, Peoples filed a Motion to Dismiss on the basis that FPUC had not described the territory in dispute. That is not correct.
- 2. Within the Petition, FPUC offered a description of the area at dispute and the actions of Peoples which give rise to the dispute. Further, FPUC attached maps which show the service area of FPUC in Martin County and the area where Peoples is constructing lines within that service area. There is ample description of the area at issue and the actions of Peoples to encroach into this area and create the dispute.
- 3. As has been frequently recognized by this Commission, in disposing of a Motion to Dismiss the factual allegations in the petition must be taken as true and construed in the light most favorable to the Petitioner, *Varnes v. Dawkins*, 624 So.2d 349 (1st DCA 1993). Peoples must show that even if all of the facts alleged in the petition are true there is no cause of action and they simply have not done so. FPUC has offered a description of the service area served by FPUC and acts of Peoples which create a dispute over which this Commission has jurisdiction.

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DOCUMENT NUMBER-DATE

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The petition contains sufficient allegations for Peoples to be able to respond and the Motion and Alternative Motion should be denied.

Dated this 20<sup>th</sup> of November, 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

## 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 20<sup>th</sup> day of November, 2008.

Keino Young, Esq. Office of General Counsel Florida Public Utilities Company 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850

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

Norman H. Horton, J