

MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

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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

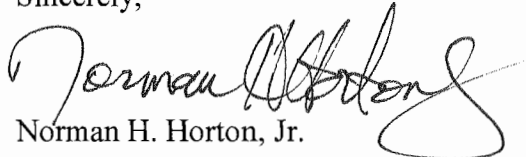
Re: Docket No. 080642-GU

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,

  
Norman H. Horton, Jr.

NHH:amb

Enclosure

cc: Mr. Marc S. Seagrave  
Parties of Record

**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-GU Filed: November 20, 2008
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**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.

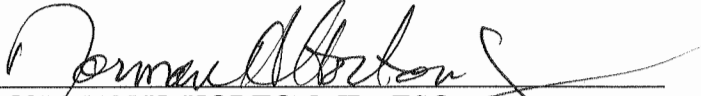
2. Within the Petition, FPUC offered a description of the area at dispute and the actions of Peoples which give rise to the dispute. Further, FPUC attached maps which show the service area of FPUC in Martin County and the area where Peoples is constructing lines within that service area. There is ample 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.

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.

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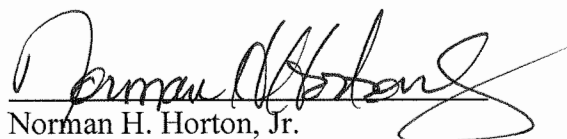
  
NORMAN H. HORTON, JR., ESQ.  
Attorneys for Florida Public Utilities Company

## 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.

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