

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: January 23, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Young) *Key*
Division of Economics (King) *King*

RE: Docket No. 130256-GU – Joint petition for approval of territorial agreement in Duval and St. Johns Counties between Peoples Gas System and the City of Jacksonville Beach d/b/a Beaches Energy Services.

AGENDA: 02/04/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On October 18, 2013, Peoples Gas System (Peoples) and the City of Jacksonville Beach d/b/a Beaches Energy Services (BES) filed a joint petition for approval of a territorial boundary agreement for portions of Duval and St. Johns Counties. The Petitioners own and operate natural gas distribution facilities in Duval and St. Johns Counties, and each is a natural gas utility subject to the Commission's jurisdiction under Section 366.04(3), Florida Statutes (F.S.), for the purposes of resolving territorial disputes and approving territorial agreements. Peoples provides natural gas service to approximately 20,000 customers in Duval and St. Johns Counties and plans to continue expanding its distribution system in those counties as provided for in its tariff on file with the Commission. BES also operates a natural gas distribution system in select locations in Duval and St. Johns Counties and plans to continue expanding its distribution system consistent with the demand for natural gas service within its service area. A copy of the complete

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Agreement is attached (Attachment A) as well as maps that show the service territory for BES (Attachment B).

Absent the Commission's approval of the agreement, the plans of Peoples and BES for providing retail natural gas service in Duval and St. Johns Counties might overlap. Therefore, the Agreement will assist in avoiding future disputes, uneconomic duplication of facilities, and will expedite the handling of applications for service by future potential natural gas customers. No customers will be transferred upon the approval of the Agreement. However, pursuant to Section 2.5 of the Agreement, a customer transfer from Peoples to BES may occur in the future. The Commission has jurisdiction over this matter pursuant to Section 366.04, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for approval of a territorial boundary agreement in portions of Duval and St. Johns Counties between Peoples and BES?

Recommendation: Yes. The territorial boundary agreement between Peoples and BES will not cause a detriment to the public interest and should be approved. (King)

Staff Analysis: Pursuant to Section 366.04(3)(a), F.S., the Commission has the jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471(2), Florida Administrative Code (F.A.C.), states that in approving territorial agreements, the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of gas service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

The Petitioners represent that approval and implementation of the agreement will not cause a decrease in the availability or reliability of natural gas service to the existing or future ratepayers. No customers of either party will be transferred upon the approval of the agreement. However, Peoples currently provides natural gas service to customers located in Neptune Beach, Florida, which is situated within BES territory according to the pending agreement. Provided the agreement is in effect, Section 2.5 states that Peoples shall transfer the Neptune Beach customers to BES within 90 days following receipt of written notice from BES that its natural gas distribution system is capable of providing natural gas service to these customers. At the time of such transfer, Peoples would also convey to BES the facilities necessary to serve Neptune Beach at the depreciated book value. Once approved, the Agreement will remain in effect until modifications are mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction.

If Section 2.5 was exercised today, approximately 20 customers (19 primarily small commercial customers and 1 residential customer) would be transferred from Peoples to BES. These customers were sent notice advising of the possible future transfer and were provided examples of monthly bill calculations under the current Peoples and BES rates. Customers were also notified that neither Peoples nor BES knows whether or when any such transfer may occur and the current differences in rates may or may not exist in the future. Since the notices have been sent, neither company has received any calls or inquiries from their customers about the possible transfer.

Peoples and BES represent that approval and implementation of the territorial agreement will not cause a decrease in the availability or reliability of natural gas service from either company, or to the existing or future ratepayers. In addition, they assert that approval of the territorial agreement by the Commission will assist in avoiding future uneconomic duplication of

facilities by the parties, and will expedite the handling of applications for service by future potential natural gas customers; therefore, the agreement is in the public interest.

It appears that the proposed agreement eliminates the potential uneconomic duplication of facilities and will not cause a decrease in the reliability of gas service. In addition, the purchase price of the facilities (at their depreciated book value), if transfer occurs in the future, appears reasonable. Therefore, based on the above, staff believes that the proposed territorial agreement will not cause a detriment to the public interest and recommends approval.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose interests are substantially affected timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order. (Young)

Staff Analysis: If no person whose interests are substantially affected by the Commission's decision timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order.

TERRITORIAL BOUNDARY AGREEMENT

THIS TERRITORIAL BOUNDARY AGREEMENT (this "Agreement") is made and entered into this 11 day of September, 2013, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("PGS"), and the City of Jacksonville Beach, Florida, a municipality organized and existing under the laws of the State of Florida ("City"). PGS and City are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

PGS is presently providing natural gas service throughout the State of Florida, including portions of Duval and St. Johns Counties near the City of Jacksonville Beach; and

City has constructed a natural gas distribution system within the service area in which City currently provides electric utility services, and provides natural gas service to its customers through such distribution system; and

There is a potential for disputes between PGS and City regarding service to potential natural gas customers located in Duval and St. Johns Counties; and

PGS and City desire to preclude any potential disputes between them in order that present and future applicants for natural gas service may expeditiously obtain such service from one or the other of them; and

The respective areas of service of the parties are contiguous in certain areas with the result that duplication of service facilities is likely to occur in the future unless such duplication is precluded by virtue of this Agreement; and

The parties recognize that any duplication of said service facilities may result in needless and wasteful expenditures and investments that are detrimental to the public interest; and

The parties desire to avoid and eliminate the circumstances giving rise to the aforesaid potential duplications and toward that end have entered into this Agreement to delineate their respective service areas in the localities where such potential duplications are likely; and

The Florida Public Service Commission (the "FPSC") is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities; and

The parties' execution of this Agreement is not conditioned upon the acceptance of, or agreement to, any other contractual arrangements pending or contemplated by or between the parties.

In fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, hereby agree as follows:

ARTICLE I
TERM OF AGREEMENT

Section 1.1 After this Agreement becomes effective pursuant to Sections 3.4 and Section 3.5 hereof, it shall continue in effect until modifications are mutually agreed upon by the parties and approved by the FPSC, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction.

ARTICLE II
BOUNDARY PROVISIONS

Section 2.1 The map attached hereto and labeled Exhibit A depicts boundary lines delineating, as between the parties, a natural gas service area reserved to the City with respect to service to natural gas customers. Said boundary lines are more specifically described as follows:

- Western Boundary:** Intracoastal Waterway
- Southern Boundary:** Guana Dam Drive
- Northern Boundary:** South side of Atlantic Boulevard (SR 10)
- Eastern Boundary:** Atlantic Ocean

That area in Duval and St. Johns Counties lying outside of the boundaries described in this Section 2.1 is reserved (as between PGS and the City) to PGS with respect to service to natural gas customers.

Section 2.2 Each of the parties agrees that it will not, except as provided in Section 2.3, provide or offer to provide natural gas service to customers within the territory herein reserved to the other party.

Section 2.3 To help facilitate the provision of natural gas service to customers and to minimize costs and delays in providing such service, a party to this Agreement which has a gas main installed on its side of a boundary line established in Section 2.1 of this Agreement may temporarily serve customers located on the other side of such boundary line in territory herein reserved to another party; provided, however, that when such temporary service is contemplated by a party, it shall give written notice, setting forth the details of such contemplated service, to the party in whose territory the customer is located under Section 2.1 of this Agreement, before installing any additional facilities needed for the provision of such temporary service. At such time as the party in whose territory such customers are located under Section 2.1 has a gas main available for providing natural gas service to such customers, the party providing temporary service pursuant to this section shall surrender any such customers upon the request of the party in whose territory such customers are located, and shall convey to such other party, at depreciated book value, such gas mains, service lines, and appurtenances thereto (previously used by the party in providing temporary service and located in the territory of the party which will provide service thereafter) as may be required by the party to serve such customers. Any customer who receives temporary natural gas service under the provisions of this section shall be notified in advance that when service is available from the party in whose territory such customer is located, the customer will be

required to receive service from such party at such party's then-current rates, and that such temporary service is provided only as a temporary convenience to the customer.

Section 2.4 Nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the senior management level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area of the other party except as may be necessary to implement the provisions of Section 2.3 hereof.

Section 2.5 PGS is currently providing natural gas service to customers located in Neptune Beach (the "Existing Customers"), which is situated within territory reserved under this Agreement to the City. Provided this Agreement has become effective pursuant to Section 3.4, PGS shall transfer such Existing Customers to the City within 90 days following receipt of written notice from the City that the City's natural gas distribution system is capable of providing natural gas service to the Existing Customers. At the time of such transfer, PGS shall also convey to the City such lateral gas mains (excluding mains used by PGS in providing natural gas service to customers other than the Existing Customers and customers located outside the territory herein reserved to the City), service lines and appurtenances thereto (the "Neptune Facilities") previously used by PGS in providing service to the Existing Customers. The Neptune Facilities shall be conveyed in total to the City, whether or not any particular part of the Neptune Facilities is necessary for the provision by the City of natural gas service to the Existing Customers. At the time of such conveyance, the City shall pay to PGS the depreciated book value of the Neptune Facilities for the Existing Customers.

ARTICLE III MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This Agreement shall be governed by the laws of the State of Florida.

Section 3.4 The parties hereto recognize and agree that each of them is subject to the jurisdiction of the FPSC with regard to the subject of their respective territories as set forth in this Agreement and further agree that this Agreement shall have no force or effect unless and until it is submitted to and approved by the FPSC in accordance with applicable procedures. The parties further agree that this Agreement, if and when approved by the FPSC, shall be subject to the continuing jurisdiction of the FPSC and may be terminated or modified only by order of the FPSC. No modification or termination of this Agreement by the parties hereto shall be effective unless and until approved by the FPSC (or any successor agency with power to consider approval or modification hereof). Each party agrees to promptly notify the other in writing of any petition, application or request for modification of this Agreement made to the FPSC and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 This Agreement shall be effective on the date it is approved by the FPSC in accordance with Section 3.4 hereof. As soon as practicable following the effective date of this Agreement, each party agrees to file any revisions to its tariffs (if any) on file with the FPSC which may be required as a result of the FPSC's approval hereof, and shall provide a copy of any such tariff revisions to the other party.

Section 3.6 Prior to the second anniversary of the effective date of this Agreement and no more than every fifth anniversary thereafter, the parties shall confer to review the status of this Agreement and shall submit a joint status report to the FPSC (or any successor agency with power to consider approval or modification hereof).

Section 3.7 This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

THE CITY OF JACKSONVILLE
BEACH, FLORIDA

By: 
William C. Latber
Mayor

PEOPLES GAS SYSTEM, a division
of Tampa Electric Company

By: 
Bruce Narzissenfeld
Vice President

By: 
George D. Forbes
City Manager









