

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: April 22, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Ollila) *A.O.*
Office of the General Counsel (Villafrate) *E.D.*

RE: Docket No. 160050-GU – Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and the City of Clearwater, d/b/a Clearwater Gas System.

AGENDA: 05/05/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Patronis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 4, 2016, Peoples Gas System (Peoples) and the City of Clearwater, d/b/a/ Clearwater Gas System (Clearwater) filed a joint petition for approval of a third amendment to their territorial agreement in Pasco County. The territorial agreement was originally approved in 1995.¹ The first amendment, approved in 2005, allowed Clearwater to provide natural gas service to proposed developments adjacent to its territory in Pasco County.² The second amendment, approved in 2006, permitted Clearwater to provide service to a new development (Lakeshore

¹ Order No. PSC-95-0620-AS-GU, issued May 22, 1995, in Docket No. 940660-GU, *In re: Petition to resolve territorial dispute with Clearwater Gas System, a Division of the City of Clearwater, by Peoples Gas System, Inc.*

² Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, in Docket No. 041385-GU, *In re: Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.*

Docket No. 160050-GU

Date: April 22, 2016

Ranch and surrounding areas).³ The proposed third amendment would permit Clearwater to provide service to Asturia, a new mixed use development in Pasco County.

The proposed third amendment is contained in Attachment 1. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

³ Order No. PSC-06-0052-PAA-GU, issued January 20, 2006, in Docket No. 050877-GU, *In re: Joint petition for approval of amendment to territorial agreement in Pasco County by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed third amendment to the territorial agreement between Peoples and Clearwater?

Recommendation: Yes, the Commission should approve the proposed third amendment to the territorial agreement between Peoples and Clearwater. (Ollila)

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, states that in approving territorial agreements, the Commission shall consider:

- (a) The reasonableness of the purchase price of any facilities being transferred;
- (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of natural gas service to the existing or future ratepayers of any utility party to the agreement; and
- (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.
- (d) Other relevant factors that may arise from the circumstances of a particular case.

Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.⁴

In September 2014, Clearwater entered into an agreement with a developer, pursuant to which Clearwater agreed to install natural gas distribution facilities to provide natural gas service to Asturia. A portion of the Asturia development lies within an area reserved to Peoples under the original 1995 agreement, thus, according to the petitioners, creating a potential territorial dispute. The proposed third amendment would permit Clearwater to provide service to Asturia and resolve the potential territorial dispute. There are no customers or facilities to be transferred as a result of the third amendment, as the Asturia subdivision is still under development.

The petitioners represent that approval and implementation of the third amendment will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of Peoples or Clearwater. According to the petitioners, approval of the third amendment will permit Peoples and Clearwater to continue to avoid future uneconomic duplication of facilities, will permit the party best suited to provide service to Asturia, and, thus is in the public interest.

After review of the petition, staff believes that the proposed third amendment will enable Peoples and Clearwater to better serve their current and future customers. It appears that the proposed amendment will serve to eliminate any potential uneconomic duplication of facilities and will not

⁴ Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

cause a decrease in reliability of gas service. As such, staff believes that the proposed third amendment between Peoples and Clearwater will not cause a detriment to the public interest and recommends that the Commission approve it.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Villafrate)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

THIRD AMENDMENT TO AGREEMENT

This Third Amendment to Agreement (this "Third Amendment") is made and entered into as of this 18th day of February, 2016, by and between the City of Clearwater, a Florida municipality, d/b/a Clearwater Gas System ("Clearwater"), and Peoples Gas System, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.), a Florida corporation ("PGS"), to amend certain provisions of the Agreement dated March 17, 1995 between Clearwater and PGS (as heretofore amended, the "Agreement"). Clearwater and PGS are sometimes referred to singularly as "Party" and collectively referred to as "Parties."

W I T N E S S E I H:

WHEREAS, Clearwater and PGS have heretofore entered into the Agreement, a copy of which is attached hereto, for the purpose of avoiding uneconomic duplication of facilities used to provide natural gas service to the public within Pasco County, Florida;

WHEREAS, the Agreement was initially approved by Order No. PSC-95-0620-AS-GU (Docket No. 940660-GU), issued by the Florida Public Service Commission (the "PSC") on May 22, 1995;

WHEREAS, the PSC approved the First Amendment to Agreement dated December 2, 2004, by its Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, and the Second Amendment to Agreement dated November 4, 2005, by its Order No. PSC-06-0052-PAA-GU, issued January 20, 2006; and

WHEREAS, the Parties have determined it is desirable that Clearwater provide Natural Gas service to additional areas lying within a new subdivision to be known as Asturia heretofore designated in the Agreement as PGS Territorial Area.

NOW, THEREFORE, 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 conditions herein set forth, hereby agree as follows:

1. Section 1.2 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.2 Clearwater Territorial Area As used herein, the term "Clearwater Territorial Area" shall mean the areas labeled Clearwater Gas System Pasco County Service Area on Third Revised Exhibit "A" to this Agreement, which areas are more particularly described as follows:

The Original 1995 Clearwater Territory; Asturia Subdivision:

(a) Beginning at the Gulf of Mexico at the northwest corner of Section 30, Township 25 South, Range 16 East (POB) and then running easterly along the section lines approximately 0.5 mile north of Ridge Road to the westernmost property line of the frontage property along the western side of Little Road and then generally northerly along the westernmost property lines of the frontage properties along the western side of Little Road to the centerline of SR 52 and then generally easterly along the centerline of SR 52 to the easternmost boundary of the Serenova Development, intersecting at the centerline of SR 52. Then following the eastern and southern boundary lines of the Serenova Development (the legal description of such Development being attached hereto and made a part hereof as Exhibit "B") and then westerly along the southern boundary of the Serenova Development to the northeast corner of Section 2, Township 26 South, Range 17 East and then southerly along the east line of Section 2, 11, 14 and 23 of Township 26 South, Range 17 East to the northwest corner of Section 25, Township 26 South, Range 17 East; then easterly along the north line of said section for 1975.70 feet, thence South 00°23'37" West, for 2,656.48 feet; thence South 00°16'14" West, for 2,735.58 feet, then along the arc of a convex curve having a radius of 243.81 feet, a central angle of 61°41'15", an arc length of 262.50 feet and a chord bearing North 78°37'57" West, for 250.00 feet, then to a concave curve having a radius of 172.47 feet, a central angle of 77°43'55", an arc length of 233.99 feet and a chord bearing North 83°49'08" West, for 216.46 feet, then to a convex curve having a radius of 437.98 feet, a

central angle of 24°36'27", an arc length of 188.11 feet and a chord bearing South 83°44'27" West, for 186.66 feet; thence North 00°21'12" East, for 83.25 feet; thence North 89°02'24" West, for 256.03 feet to a point of intersection with the Northerly right of way line of State Road 54 as described in Official Records Book 4926, page 1228 of the public records of Pasco County Florida; thence North 48°21'18" West, for 261.60 feet; then North 41°38'42" East, for 314.09 feet to a concave curve having a radius of 375.00 feet, a central angle of 64°33'58", an arc length of 422.58 feet and a chord bearing North 09°21'43" East, for 400.57 feet; then North 22°55'16" West, for 335.02 feet to a concave curve having a radius of 670.00 feet, a central angle of 31°08'15", an arc length of 364.11 feet and a chord bearing North 38°29'24" West, for 359.65 feet; then North 54°03'32" West, for 716.06 feet; then South 32°12'18" West, for 800.51 feet to a concave curve having a radius of 2634.51 feet, a central angle of 02°32'31", an arc length of 116.89 feet and a chord bearing South 49°37'34" East, for 116.87 feet; thence South 48°21'18" East, for 185.29 feet to the intersection of the east line of Section 26, Township 26 South, Range 17 East; and then southerly along the east line of Section 26 and 35 of Township 26 South, Range 17 East to the Hillsborough/Pasco County line, then westerly along the Hillsborough/Pasco County line to the Gulf of Mexico (POE) (See Third Revised Exhibit A).

(b) All parcels of property adjacent to the western right of way of Little Road within the area described in paragraph (a) above.

The Added 2004 and 2005 Clearwater Territory:

(c) Beginning at the easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at the centerline of SR 52 near Hayes Road, then easterly along the centerline of SR 52 to the centerline of Ehren Cutoff Road (CR 583); then southerly along the centerline of Ehren Cutoff Road (CR 583) to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of Little Lake Thomas Road; then southwestery along the centerline of Little Lake Thomas Road to the centerline of Tower Road; then southwestery along the centerline of Tower Road to the east section line of Section 16, Township 26 South, Range 18 East; then south to the southeast corner of Section 16, Township 26 South, Range 18 East; then west to the northeast corner of Section 20, Township 26 South, Range 18 East; then south to the southeast corner of Section 20, Township 26 South, Range 18 East; then west to the northwest corner of Section 30, Township 26 South, Range 18 East; then continuing west to the easternmost boundary of the Original 1995 Clearwater Territory

described in paragraph (a) above at or near the northwest corner of Section 25, Township 26 South, Range 17 East; then north along the west section lines of Sections 24, 13, 12 and 1, Township 26 South, Range 17 East to the northwest corner of Section 1, Township 26 South, Range 17 East; then east along the southern boundary line of the Serenova Development (Exhibit "B"); then continuing north along the eastern boundary of the Serenova Development until intersecting the centerline of SR 52.

(d) A corridor in Section 30, Township 26 South, Range 18 East from the intersection of the centerline of SR 54 and the centerline of the future entrance road to the Bexley Ranch property, northerly along the centerline of the future entrance road to the Bexley Ranch property to the northern boundary of Section 30, Township 26 South, Range 18 East. Said corridor shall include all parcels on the easterly side of the future entrance road to the Bexley Ranch property and all parcels on the westerly side of said entrance road, but excluding all parcels adjacent to SR 54.

(e) When reference is made in paragraphs (a) and (c) above to the centerline" of a boundary line road between the Clearwater and PGS Territorial Areas, it is intended that adjacent parcels on both sides of that road be included within the Clearwater Territorial Area provided that Clearwater has extended its main along the subject boundary line road; however, (i) if Clearwater has not extended main along a boundary line road and (ii) service is requested by a potential customer lying on the PGS side of a road serving as such a boundary line, and (iii) PGS's facilities for the provision of such service are more proximate to such customer than are those of Clearwater, then PGS shall have the right to serve such customer.

If there is a conflict between the boundaries of the Clearwater Territorial Area set forth in this Section 1.2 and the boundaries of the Clearwater Territorial Area as depicted on Third Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.2 shall govern.

2. Section 1.3 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.3 PGS Territorial Area As used herein, the term "PGS Territorial Area" shall mean the areas labeled Peoples Gas System Pasco County Service Area on Third Revised Exhibit "A" to this Agreement, such areas consisting of all areas within Pasco County which are not located within the Clearwater Territorial Area described in Section 1.2 of this Agreement. If there is a conflict between the boundaries of the PGS Territorial Area set forth in this Section 1.3 and the boundaries of the PGS Territorial Area as depicted on Third Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.3 shall govern.

3. Section 1.8 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.8 Territorial Boundary Line As used herein, the term "Territorial Boundary Line" shall mean each of the boundary lines so labeled, designating the dividing line between the areas shown on Third Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.

4. Second Revised Exhibit "A" to the Agreement is hereby deleted, and Third Revised Exhibit "A" attached hereto is hereby substituted therefor.

5. Except as modified by this Third Amendment, the Agreement shall continue in full force and effect.

6. The provisions and the Parties' performance of the Agreement, as hereby amended, are subject to the regulatory authority of the PSC, whose approval of the

Agreement, as hereby amended, shall be an absolute condition precedent to the validity, enforceability and applicability of this Third Amendment and of the Agreement as hereby amended. This Third Amendment shall have no force or effect whatsoever until such approval has been obtained, and the Parties hereby agree to jointly petition the PSC for such approval. This Third Amendment shall become effective on the date of expiration of the appeal period following the issuance by the PSC of an order approving this Third Amendment and the Agreement as hereby amended. In the event the PSC declines to approve this Third Amendment, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this Third Amendment.

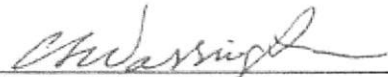
[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Third Amendment to be executed by their respective duly authorized officers as of the date first written above.

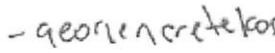
**PEOPLES GAS SYSTEM, a division
of Tampa Electric Company**


By: 
Gordon L. Gillette
President

Countersigned:

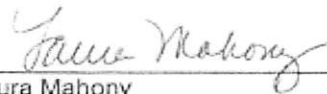

Charles S. Warrington, Jr.
Managing Director
Clearwater Gas System

CITY OF CLEARWATER, FLORIDA



George N. Cretekos
Mayor

By: 
William B. Horne II
City Manager

Approved as to form:


Laura Mahony
Assistant City Attorney

Attest:


Rosemarie Call
City Clerk



THIRD REVISED EXHIBIT A
Clearwater Gas System/Peoples Gas System Pasco County Territorial Map

