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October 18, 2018

VIA E-PORTAL FILING

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Docket No. 20180185-GU- Counter Petition of the City of Leesburg to
resolve a territorial dispute with Peoples Gas System**

Dear Ms. Stauffer:

Attached for electronic filing with the Commission on behalf of Peoples Gas System please find its Motion to Dismiss the City of Leesburg's Counter Petition.

Your assistance in this matter is greatly appreciated.

Sincerely,

Andrew M. Brown

AB/plb
Attachment

cc: Parties of Record
Ms. Kandi M. Floyd
Ansley Watson, Jr., Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Counter Petition of the City of Leesburg)
to resolve a territorial dispute with Peoples) Docket No. 20180185-GU
Gas System)
_____) Submitted for filing: 10/18/2018

**PEOPLES GAS SYSTEM'S MOTION TO DISMISS
THE CITY OF LEESBURG'S COUNTER PETITION**

COMES NOW PEOPLES GAS SYSTEM ("Peoples"), by and through its undersigned attorneys, and pursuant to Rule 28-106.204 of the Florida Administrative Code, hereby files its Motion to Dismiss ("Motion") the City of Leesburg's Counter Petition ("Leesburg" or "City") ("Counter Petition") regarding the American Cement Facility in Sumter County, Florida and in support thereof states:

STANDARD FOR REVIEW

1. Peoples recognizes that in order to sustain a Motion to Dismiss, all allegations in the Petition should be considered correct but that nonetheless the factual allegations are not sufficient to state a cause of action for which relief can be granted. Order Granting Request for Oral Argument, Denying Motion to Dismiss, and Denying Motion to Stay, Docket No. 941121-WS, Order No. PSC-95-0614-FOF-WS (May 22, 1995) and *Varnes v. Dawkins*, 624 So.2d 349 (Fla. 1st DCA 1993). However, even after applying the aforementioned legal concepts, Leesburg's Counter Petition fails to state a cause of action.

2. The nature of territorial disputes is set forth in Rule 25-7.0472, F.A.C. entitled "Territorial Disputes for Natural Gas Utilities." Rule 25-7.0472(1) provides that "each utility which is party to a territorial dispute shall provide a map and written description of the disputed

area, along with the conditions that caused the dispute.”¹ The section goes on to say that each utility party “shall also provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of natural gas facilities within the disputed area.

THE ALLEGATIONS

3. Leesburg’s Petition defines the territory that is at issue as the American Cement Plant. There is no other territory shown. In fact, the map does not show anything other than the location of American Cement with the allegation that Peoples’ nearest line is approximately 1.7 miles further away from American Cement than the nearest Leesburg line.

4. Leesburg’s description of the disputed area and the conditions that caused the dispute are not sufficient to give rise to a cause of action for which relief by the Florida Public Service Commission (“PSC”) should be granted. Leesburg’s allegation is essentially that Peoples is building a main from the west to reach American Cement. Leesburg then alleges that it is closer to American Cement than Peoples is and then concludes that Peoples efforts to reach American Cement would “uneconomically duplicate existing natural gas facilities currently operated by the City that are much closer to the American Cement Facility” (Leesburg Petition at paragraph 12). The description does not describe any duplication of facilities. Currently, there is no utility providing gas service to American Cement. The Petition does not allege that Peoples proposed main will be alongside of or crossing over any Leesburg natural gas infrastructure. And, a clear view of the map provided shows that there will be no such duplication. While

¹ The reference to “each utility” is because a territorial dispute proceeding maybe initiated by a party or by the Commission in which case presumably the Commission would require both parties to the dispute to respond to the Commission’s initiated proceeding. Logically, if we are addressing a dispute initiated by a utility, the utility filing the petition would have to include the information required under this subparagraph.

Leesburg concludes that there will be an uneconomic duplication, the alleged facts and the map provided do not show any such duplication.

5. In addition, Leesburg has failed to provide a description of the existing and planned load to be served in the area of dispute nor a description of the type, additional cost, and reliability of natural gas facilities within the disputed area. Peoples concedes that often in a territorial dispute where one is trying to assess the gas load for customers who do not presently exist but will exist into the future, such information can be difficult if not impossible to provide in an accurate form. However, in this case, the sole “territory” being disputed is a single customer already in operation for which the existing and future load should be easily calculable. Leesburg has failed to provide this information in its Petition and therefore the Petition should be dismissed.

6. Leesburg has also failed to provide “a description of the type, additional costs, and reliability of natural gas facilities” to be provided within the disputed area. Again, given that American Cement is a single customer rather than a series of developments for which the utility has limited knowledge about future load information, Leesburg should be able to provide a description of the cost and reliability of the natural gas facilities that it would provide to the customer. Leesburg has failed to state what the natural gas costs to the customer would be if Leesburg were to provide natural gas to meet the load requirements for that customer. Leesburg has also failed to allege its ability to provide natural gas service to American Cement at a price and at volumes that would be acceptable to American Cement. Leesburg’s failure to provide this information should result in the Counter Petition being dismissed.

7. In addition to the foregoing reasons for dismissal, Leesburg’s Counter Petition should also be dismissed because it appears to have been filed purely for harassment purposes

and as a way of delaying the adjudication of Peoples' Petition for territorial dispute filed in Docket No. 20180055-GU. Although Leesburg's Counter Petition does not allege how long American Cement has been in operation at the location in question, it is clear that despite Leesburg's assertion that its territory includes American Cement, Leesburg is not providing natural gas service there. This suggests that Leesburg has to this point been unwilling or unable to provide sufficient natural gas service to meet American Cements needs.

Leesburg's sudden interest in providing natural gas service to American Cement may relate more to the ongoing territorial dispute between Peoples, Leesburg and SSGC rather than a legitimate concern over whether Peoples would provide natural gas service to a customer that Leesburg has been unable or unwilling to serve for years. Peoples filed its Petition to resolve the territorial dispute on February 23, 2018. On July 5, 2018, Leesburg filed its Counter Petition in Docket No. 20180055-GU. On August 21, 2018, the PSC assigned the docket to be heard by an administrative law judge. That assignment only included Peoples' original Petition and not the Counter Petition. On September 7, 2018, Leesburg filed its Counter Petition in the DOAH action and on September 18, 2018, Peoples filed its Motion to Dismiss and/or Strike the Counter Petition. The administrative law judge issued an order dismissing the Petition on September 28, 2018, ruling that it had no jurisdiction to address the Counter Petition and that it should be properly before the PSC. The PSC issued a new docket number for the Counter Petition on October 8, 2018. Given this history, it would appear that the primary purpose of the Petition is to delay a final adjudication on the merits of Peoples' Petition to resolve the territorial dispute.

Respectfully submitted,



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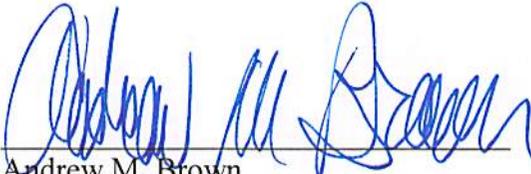
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss the City of Leesburg's Counter Petition has been furnished by electronic mail to the following, this 18th day of October, 2018:

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