

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180055-GU

PETITION TO RESOLVE  
TERRITORIAL DISPUTE IN  
SUMTER COUNTY AND/OR LAKE  
COUNTY WITH CITY OF  
LEESBURG AND/OR SOUTH  
SUMTER GAS COMPANY, LLC,  
BY PEOPLES GAS SYSTEM.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 2

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, June 5, 2018

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
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1 PROCEEDINGS

2 CHAIRMAN GRAHAM: Okay. Let's go back around  
3 and see what's not on move staff.

4 Item No. 2.

5 MR. TRIERWEILER: Morning, Commissioners.  
6 Walt Trierweiler on behalf of Commission staff.

7 Item No. 2, Docket 20180055-GU, Peoples'  
8 petition for -- to resolve a territorial dispute  
9 with the City of Leesburg and South Sumter Gas  
10 Company. Before you today, the two issues are the  
11 parties' request for oral argument; and second, two  
12 motions to dismiss filed by City Gas and South  
13 Sumter Gas.

14 And just a -- these are very interesting  
15 issues, and a lot of different issues may come up;  
16 however, staff would like to remind the Commission  
17 that all inferences drawn from the petition must be  
18 made in favor of the petitioner.

19 And your consideration as to the sufficiency  
20 of the petition may not properly go beyond the four  
21 corners of the petition to determine if the  
22 petition states a cause of action and is  
23 sufficiently detailed to permit the Commission to  
24 grant the relief requested.

25 Those are the two issues. Our recommendation

1 is five minutes per side for oral argument and  
2 dismissal of the motion to dismiss.

3 Subject to your questions, staff is prepared  
4 ask any -- answer any that you ask.

5 CHAIRMAN GRAHAM: All right. So, I guess the  
6 first question is: Do we give them the oral  
7 argument? I think we should grant them the five  
8 minutes to -- to make their argument.

9 And since Sumter Gas is the petitioner here, I  
10 guess you guys are up first.

11 MR. SELF: Thank you, Mr. Chairman. Mr. Moyle  
12 and I will split our five minutes, two-and-a-half  
13 each. I'm Floyd Self, of the Berger Singerman law  
14 firm, appearing on behalf of South Sumter Gas.

15 The bottom line here today is there is not and  
16 will not ever be a territorial dispute regarding  
17 the present or future development within the  
18 Villages.

19 If you accept every fact as true within the  
20 four corners of the Peoples' petition -- and we  
21 note that there are some factually-incorrect  
22 statements in that petition, such as the conclusion  
23 that this area that's currently in dispute is  
24 within their service area, which is not true  
25 because there's no Commission order that grants

1           this territory to Peoples.

2                   And even if you ignore the Gulf Coast Gulf  
3 Power case and its discussion about commingled or  
4 joining facilities and that territorial boundaries  
5 should not be established when it's unclear where  
6 future growth is going to occur, the only thing --  
7 the only thing that you need to know is that  
8 Peoples Gas will never invest a single penny in the  
9 Villages unless and until they have a signed  
10 development agreement with the Villages, much like  
11 Leesburg currently has with the Villages.

12                   You see, natural-gas service is a little  
13 different than electric service when it comes to  
14 the business decisions that must be made for large-  
15 scale developments like the Villages because,  
16 without that development agreement with the  
17 developer, the Villages will build all-electric  
18 homes and businesses, without any natural-gas  
19 appliances, which is their right and which is what  
20 the Villages has done over the last several years,  
21 with the exception of -- of the adjoining  
22 neighborhood being -- in terms of recent time.

23                   And without natural-gas appliances, there's no  
24 need for Peoples to invest in transmission and  
25 distribution pipes to serve because there will not

1           be any customers to serve. So, there is no dispute  
2           here.

3           If we waste the next year litigating this, and  
4           hypothetically, at the end of the day, you assign  
5           this area to Peoples Gas, Peoples is never going to  
6           put in the first piece of pipe, make the first  
7           dollar of investment because the Villages will  
8           build homes and business that are all-electric.  
9           And since Peoples is never going to serve, that  
10          means that, today, Peoples cannot claim that there  
11          is a territorial dispute.

12          So, to solve this problem, there is a very  
13          easy business de- -- business solution for you; and  
14          that is, you should approve the motion to dismiss  
15          and direct the parties to solve this situation  
16          because there is a business solution out there that  
17          can mutually benefit the Villages, Leesburg, and  
18          Peoples Gas.

19                 Thank you.

20                 CHAIRMAN GRAHAM: Mr. Moyle.

21                 MR. MOYLE: Thank you, Mr. Chairman. Jon  
22                 Moyle on behalf of the City of Leesburg. It's my  
23                 privilege to represent the City of Leesburg.  
24                 They've been supplying natural gas to customers in  
25                 their area since 1959.

1           Your staff correctly informed you with respect  
2           to what's before you on a motion to dismiss. You  
3           do have to take allegations within the petition as  
4           true and make inferences in favor of the  
5           petitioner. And -- and that's the legal standard.

6           But we contend, even with that legal standard,  
7           this petition should be dismissed. What they  
8           allege is they allege that a Leesburg line and a  
9           Peoples gas line crosses. And we think more is  
10          needed than a crossing of lines.

11          And we think that is quite instructive. The  
12          case that -- that Mr. Floyd Self rep- --  
13          referenced, the Gulf Coast Corporation vs. Florida  
14          Power, is very instructive. And that case was  
15          decided by -- by three Commissioners who were very  
16          well-regarded: Commissioner Johnson, Commissioner  
17          Deason, and Commissioner Clark.

18          And it -- it went through and looked and --  
19          and came to the conclusion that the commingling of  
20          some facilities doesn't necessarily mean that you  
21          have a territorial dispute.

22          And there's a particular quote that I found  
23          instructive. And it said -- it said, quote,  
24          unquote, from the order: Carving up the two  
25          counties, in this instance, will not result in the

1 most-economic provision of electric service;  
2 rather, drawing lines on the ground would result in  
3 centralized planning, which is not the most-  
4 economic way to determine the service area because  
5 it does not take into account market forces, which  
6 will dictate the manner in which some of the  
7 expansion of facilities is going to take place.

8 This excerpt is -- is quite important to this  
9 case because, as you heard, the Villages is a -- is  
10 a large market force in Sumter County. There's a  
11 lot of -- of information about the role the  
12 Villages plays in driving the economics in Central  
13 Florida. They're in three counties.

14 And they have -- have made a decision -- they  
15 represent a significant market force that the way  
16 they're growing -- they're growing toward -- toward  
17 Leesburg. And right now, the facilities are not  
18 intermingled in a way that -- that constitutes a  
19 territorial dispute.

20 So, respectfully, Peoples is -- is -- they did  
21 some development. It didn't go well for -- for  
22 them. It didn't go well for the Villages. And the  
23 Villages said, we're not really interested in doing  
24 business for you.

25 And it shouldn't be, respectfully, the role of

1 the regulator to cram down the Villages the choice  
2 of Peoples, particularly when there's not  
3 intermingling of -- of natural-gas assets.

4 We're ready, willing, and able to serve. We  
5 serve a facility nearby, a prison. And -- and  
6 respectfully, you should let, as -- as  
7 Commissioners -- Former Commissioners Deason,  
8 Clark, and Johnson did, let the market forces work  
9 here.

10 They are working. And let -- let the facts  
11 develop on the ground rather than getting involved  
12 and having all these people spend a lot of time,  
13 energy, effort, and money to resolve something that  
14 really is not a dispute.

15 Thank you.

16 CHAIRMAN GRAHAM: Thank you, Mr. Moyle.

17 Peoples, you have six-and-a-half minutes.

18 MR. BROWN: Thank you. Andy Brown for  
19 Macfarlane Ferguson in Tampa, representing Peoples.

20 I think it's important when we -- I think  
21 everyone has already mentioned the fact that the  
22 allegations taken in the petition must be  
23 considered to be true for purposes of a motion to  
24 dismiss. And that's very important.

25 You've heard a lot of discussion about a lot



1 of issues that are outside the pleadings in this  
2 case, a lot of issues that are not in the motions  
3 to -- motions to dismiss. But it's important that  
4 the allegations in the pleadings -- in the petition  
5 are to be considered as true.

6 The second thing to keep in mind is that a  
7 definition of a territorial dispute is rather  
8 broad. In Regulation 25-7.047, it says:  
9 Territorial dispute means a disagreement as to  
10 which utility has the right and obli- -- and the  
11 obligation to serve a particular geographical area.

12 That is all it takes for a territorial dispute  
13 to be established is that one party simply says, we  
14 have the right to be in this area. And that is  
15 what has happened here.

16 Now, Mr. -- Mr. Moyle, on behalf of SSGC,  
17 says, well, Peoples is never going to get to serve  
18 these areas. Well, that may be true, as far as the  
19 developmental phase when they're putting in -- in  
20 their houses, they're not going to be putting in  
21 the lines, but Peop- -- the Villages does not get  
22 to choose whether gas service is ever coming into  
23 that area.

24 The Villages does not get to choose which  
25 entities come into that area without -- without

1           regard to the -- to where people are already  
2           located, without regard to where  
3           established ter- -- where established pipes have  
4           already been put in with the reasonable expectation  
5           that People will be able to serve off of the  
6           existing lines. So, that is the first thing.

7           The second thing is that, under the 25-7.0472,  
8           mere- -- what has to be done for a pleading  
9           purpose -- and keep in mind, what they are arguing  
10          is that the pleading -- that the petition, itself,  
11          is not sufficient.

12          What has to be done is that there has to be a  
13          petition by the company identifying the dispute.  
14          That is clearly done within this petition. It  
15          tells you who the dispute is with. It goes into  
16          why the dispute exists. It talks about the fact  
17          that the Villages and SSGC are installing lines  
18          immediately adjacent to and, in some cases,  
19          crossing over already-existing Peoples'  
20          infrastructure in that area.

21          It, then, says that you have to have a map and  
22          a written description of the disputed area. That  
23          has been provided. There is a map in the petition.  
24          And frankly, if you look at the map, it -- it very-  
25          well outlines what the situation is on the ground

1           currently, based on the construction notices that  
2           have been filed by the Villages and based on  
3           already-ongoing construction in the -- in both  
4           cases.

5           What the -- what the petition alleges is that  
6           infrastructure is being put in the Villages'  
7           development immediately adjacent to and crossing  
8           over Peoples' infrastructure.

9           It also alleges that none of this gas can be  
10          provided unless Leesburg runs a two-and-a-half mile  
11          six-inch main to get to this area, whereas Peoples  
12          can serve this area within a matter of -- of a --  
13          literally a few feet. We're talking terms of feet  
14          to run a gas line to put gas into this area.

15          As Mr. Moyle mentioned, Peoples has -- is  
16          serving an immediately-adjacent development in the  
17          Villages. They are already present. And they are  
18          very close to all of these areas. Frankly, that is  
19          enough -- that's sufficient, in and of itself, to  
20          get you to a territorial dispute in a petition.

21          The rest of the petition goes into the details  
22          of that dispute. And it talks about the history of  
23          how we've gotten to this point. It talks about the  
24          City of Wildwood granting a petition to Peoples,  
25          and now in the process of granting a -- not a

1 petition -- granting a -- a franchise agreement to  
2 Peoples and, subsequently, in the process of  
3 granting a franchise agreement to Leesburg.

4 So, all of these pleading requirements -- the  
5 pleading requirements have been met, without  
6 question. A dispute has been alleged and there is  
7 no reason to dismiss this petition.

8 Let me talk a little bit about the Gulf Coast  
9 case because I think it's -- it is an important  
10 case. The Gulf Coast case is not a pleading case.  
11 It is not a case where the Commission looked at a  
12 petition and determined that the petition was  
13 insufficient as a matter of law.

14 In Gulf Coast, it talks about the fact that  
15 there were -- was a two-day hearing. There was  
16 visits by the Commissioners to 15 locations in the  
17 areas in question, the consideration of multiple  
18 witnesses exhibits and witnesses. And in fact, if  
19 you -- if you read the decision -- I don't think  
20 the word "dismiss" is mentioned in the decision.

21 What happens is -- what happened in that case  
22 is the Commission heard an entire dispute. We went  
23 through the whole process. They had hearings.  
24 They held witnesses. And at the end of the day,  
25 they said, based on the specific facts in this

1 case, we are not going to grant the petition for  
2 the territorial dispute.

3 That is far different than what the case is  
4 being used for -- attempted to be used for in -- by  
5 the opposition in this case.

6 CHAIRMAN GRAHAM: You've got about 90 more  
7 seconds.

8 MR. BROWN: Okay. If -- there is -- in  
9 that -- in the Gulf Coast case, they talk about the  
10 fact that there were no existing customers or  
11 future identifiable customers. That's not the  
12 case.

13 Here, we know where the customers are.  
14 They're right in those three developments that the  
15 Villages is currently doing. So, right away, it's  
16 a different situation.

17 So, I -- I think there is no -- there's no  
18 reason for the -- this petition to be dismissed.  
19 It has clearly -- states a cause of action for a  
20 territorial dispute, which, remember, is simply a  
21 disagreement as to which utility has the right --  
22 again, not whether -- not whether the developer is  
23 going to keep them out. That doesn't go to whether  
24 Peoples has the right to serve.

25 If gas is ever going to be served in that

1 area, the -- our position -- Peoples' position is  
2 that Peoples is the one who will be providing gas  
3 there and that you -- you don't get to ignore the  
4 fact that they're 10, 20 feet away, and somebody  
5 else has to go two miles to -- to grant -- to get  
6 gas to the site.

7 So, we believe that the -- that the -- that  
8 the staff recommendation should be followed and  
9 that the motions to dismiss should be denied.

10 CHAIRMAN GRAHAM: Thank you.

11 Okay. Commissioners, I have to tell you I, in  
12 reading this rec, had all kinds of questions. And  
13 I think I spent most of my staff time -- a great  
14 deal of my staff time talking about the issues -- I  
15 mean, Items No. 3 and 4 -- I'm sorry -- 2 and 3.

16 Not to get into all the many, many questions I  
17 had and many, many answers that staff still doesn't  
18 have, I -- I think that we should grant -- I'm  
19 sorry. I'm sure -- I think we should deny the  
20 petition to deny the motion, but I'm up --  
21 listening to Commissioner Brown.

22 COMMISSIONER BROWN: Thank you. I would agree  
23 with you, Mr. Chairman, and I -- I will be prepared  
24 to make a motion to this Issue 2 when you are  
25 prepared.

1           I just have a question, though, for the  
2 parties because I have a ton of questions here.  
3 There -- the petition is very thorough and has a  
4 lot of information here. I do think you --  
5 clearly, the pleading is sufficient to state a  
6 cause of action, but what is a non-exclusive  
7 franchise agreement?

8           MR. BROWN: It's a non-exclusive franchise  
9 agreement. It -- it allows -- Wildwood did not  
10 give a -- an exclusive franchise agreement to  
11 either ent- -- to either Peoples or to Leesburg.

12           And so, to some degree, that's helped create  
13 this situation because they granted two franchise  
14 agreements and -- without delineating any  
15 territories when they granted the franchise  
16 agreements.

17           So, arguably, both entities can serve in the  
18 City of Wildwood. And there's no guidance from  
19 Wildwood as to any geographic boundaries for  
20 anybody.

21           COMMISSIONER BROWN: Very interesting. I'm  
22 sensitive to the fact that, as Mr. Moyle put it,  
23 this litigation may very well go on for a year, but  
24 I also understand your rights here.

25           And Mr. Moyle pointed out there -- there may

1 be a solution that can benefit all parties. And  
2 with that, I would also encourage the parties to  
3 work together, but we'll get into more specific  
4 facts here when we get to Item 3.

5 If there are no other questions,  
6 Mr. Chairman --

7 CHAIRMAN GRAHAM: There's no other lights on.  
8 Commissioner Polmann, you have your light on?  
9 Commissioner Polmann.

10 COMMISSIONER POLMANN: There, I'll turn my  
11 light on. Now you can turn it off.

12 Mr. Chairman, I just wanted to understand your  
13 words at -- which, I think, Commissioner Brown  
14 agreed, but are you stating that you support the  
15 staff recommendation, sir?

16 CHAIRMAN GRAHAM: I do support the staff  
17 recommendation, correct.

18 COMMISSIONER POLMANN: Because sometimes the  
19 legal phrasing is a little bit hard for me to  
20 follow.

21 CHAIRMAN GRAHAM: I -- I understand.

22 (Laughter.)

23 COMMISSIONER POLMANN: Because I -- I would  
24 like to think I understand the legal phrasing, but  
25 sometimes it -- the double negatives or the deny



1 the positive is a little bit confusing to me. So,  
2 thank you for the clarification.

3 CHAIRMAN GRAHAM: Sure.

4 Commissioner Brown, did you have a motion?

5 COMMISSIONER BROWN: Yes, move to support  
6 staff recommendation on Issues 2 and 3 under  
7 Item 2.

8 CHAIRMAN GRAHAM: It's been moved and second,  
9 staff recommendations on Item No. 2.

10 COMMISSIONER POLMANN: Second.

11 CHAIRMAN GRAHAM: Any further discussion?

12 Seeing none, all in favor, say aye.

13 (Chorus of ayes.)

14 CHAIRMAN GRAHAM: Any opposed?

15 By your action, you have approved the staff  
16 recommendations on Item No. 2.

17 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED THIS 13th day of June, 2018.



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ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #GG060963  
EXPIRES February 9, 2021