

**Eric Fryson**

130166-6U

**From:** Ansley Watson, JR. <AW@macfar.com>  
**Sent:** Monday, June 17, 2013 2:23 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Jennifer Crawford; 'Floyd, Kandi M.'; Martha Brown; 'Carole Barice'; 'Dion, Ed'; 'Nicholson, David M.'  
**Subject:** Joint petition for approval of territorial agreement in Orange County, by Peoples Gas System and The Lake Apopka Natural Gas District  
**Attachments:** image001.jpg; PGS - LANGD - Petition.pdf

a. Ansley Watson, Jr.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601  
Phone: (813) 273-4321  
Fax: (813) 273-4396  
E-mail: [aw@macfar.com](mailto:aw@macfar.com)

and

Carole Joy Barice  
McGee & Mason, P.A.  
101 South Main Street  
Brooksville, Florida 34601  
Phone: (352) 796-0796  
Fax: (352)  
E-mail: [carolebarice@mcgeemasonlaw.com](mailto:carolebarice@mcgeemasonlaw.com)

- b. Joint petition for approval of territorial agreement in Orange County, by Peoples Gas System and The Lake Apopka Natural Gas District.
- c. Peoples Gas System and The Lake Apopka Natural Gas District
- d. Total of 13 pages
- e. The attached document is a transmittal letter and the joint petition for approval of a territorial agreement in Orange County, by Peoples Gas System and The Lake Apopka Natural Gas District.

**Ansley Watson, Jr.**  
**Macfarlane Ferguson & McMullen**  
One Tampa City Center  
P.O. Box 1531 Tampa, FL 33601  
201 N. Franklin Street Suite 2000  
Tampa, FL 33602  
Main: (813)273-4200  
Direct: (813)273-4321  
Mobile: (813)695-5900  
Fax: (813)273-4396  
[aw@macfar.com](mailto:aw@macfar.com)  
[V Card](#) ♦ [Bio](#)

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03370 JUN 17 2013

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**MACFARLANE FERGUSON & McMULLEN**  
*Attorneys & Counselors At Law*

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# MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

1611 HARDEN BOULEVARD  
LAKELAND, FLORIDA 33803  
(863) 680-9906 FAX (863) 683-2849

ONE TAMPA CITY CENTER, SUITE 2000  
201 NORTH FRANKLIN STREET  
P.O. BOX 1531 (ZIP 33601)  
TAMPA, FLORIDA 33602  
(813) 273-4200 FAX (813) 273-4396

www.mfmlegal.com  
EMAIL: info@mfmlegal.com

925 COURT STREET  
P. O. BOX 1669 (ZIP 33757)  
CLEARWATER, FLORIDA 33756  
(727) 441-8866 FAX (727) 442-8470

IN REPLY REFER TO:

Ansley Watson, Jr.  
P.O. Box 1531  
Tampa, Florida 33601  
e-mail: [aw@macfarlane.com](mailto:aw@macfarlane.com)

June 17, 2013

## VIA E-FILING

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

130166-6U

**Re: Joint petition for approval of territorial agreement in Orange County,  
by Peoples Gas System and The Lake Apopka Natural Gas District**

Dear Ms. Cole:

Enclosed for electronic filing on behalf of Peoples Gas System and The Lake Apopka Natural Gas District, please find the Joint Petition referenced above.

Thank you for your usual assistance.

Sincerely,

  
ANSLEY WATSON, JR.

AWjr/a  
Enclosures

cc: Carole Joy Barice, Esquire  
Ms. Kandi M. Floyd

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint petition for approval of territorial agreement in Orange County, by Peoples Gas System and The Lake Apopka Natural Gas District. :

DOCKET NO.  
Submitted for Filing:  
6-17 -13

**JOINT PETITION**

Petitioners, Peoples Gas System ("Peoples") and The Lake Apopka Natural Gas District ("LANGD") (collectively, "petitioners"), by their respective undersigned attorneys and pursuant to Section 366.04(3)(a), *Florida Statutes*, and Rule 25-7.0471, *Florida Administrative Code* ("F.A.C."), jointly file this petition for an order approving a territorial agreement between Petitioners in a portion of Orange County, said agreement being attached hereto as Exhibit 1.

In support of this Petition, petitioners state as follows:

- 1. The names and mailing addresses of the petitioners are:

Peoples Gas System P. O. Box 2562 Tampa, Florida 33601-2562	The Lake Apopka Natural Gas District 1320 Winter Garden-Vineland Road Winter Garden, Florida 34787
---	--

- 2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this petition are:

**As to Peoples:**

Ansley Watson, Jr., Esq. Macfarlane Ferguson & McMullen P. O. Box 1531 Tampa, Florida 33601-1531	Paula K. Brown Peoples Gas System P. O. Box 2562 Tampa, Florida 33601-2562
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**As to LANGD:**

Carole Joy Barice, Esq. McGee & Mason, P.A. 101 South Main Street Brooksville, Florida 34601	Samuel Davis, Jr. General Manager and CEO The Lake Apopka Natural Gas District 1320 Winter Garden-Vineland Road Winter Garden, Florida 34787
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- 3. Peoples is a public utility regulated by the Commission pursuant to Chapter 366, *Florida Statutes*, and provides natural gas service to approximately 345,000 customers

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throughout most of the State of Florida, including customers in Orange County.

4. LANGD is a public body corporate and independent special district of the State of Florida created in 1959<sup>1</sup> for the purposes of acquiring, constructing, owning, operating, managing, extending, improving and financing one or more natural gas transmission and distribution systems within and without its member municipalities of Apopka, Winter Garden and Clermont, and for the benefit of nearby municipalities and unincorporated areas and the public within the statutory area of service of the district. LANGD is not a "public utility" as defined by Section 366.02(1), *Florida Statutes*, but is a "natural gas utility" subject to the Commission's jurisdiction under Section 366.04(3), *Florida Statutes*, for the purposes of resolving territorial disputes and approving territorial agreements. LANGD currently provides natural gas service to approximately 15,000 customers in Orange and Lake Counties.

#### **Background**

5. During the 1990s, LANGD and Peoples entered into agreements (the "Transfer Agreements") pursuant to which Peoples and LANGD agreed that Peoples would provide natural gas service to certain customers in Orange County, and that LANGD would have an option to purchase, at their depreciated book value, the facilities installed to serve such customers when LANGD advised Peoples that LANGD was ready to provide such service itself. Upon LANGD's purchase of the facilities, the customers served by those facilities would be transferred to LANGD.

7. In July 2012, LANGD notified Peoples that LANGD desired to acquire all facilities installed by Peoples pursuant to the Transfer Agreements (the "Transfer Facilities").

8. Petitioners have entered into an Asset Purchase and Sale Agreement which provides for, upon the closing of the transaction, the transfer from Peoples to LANGD of the

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<sup>1</sup> Chapter 59-556, Laws of Florida 1959, as amended by Chapter 74-553, Laws of Florida 1974, and subsequently codified, reenacted, amended and repealed by Chapter 99-454, Laws of Florida 1999.

Transfer Facilities as well as the customers that receive natural gas service through the Transfer Facilities.

**Requested Relief**

9. The petitioners seek Commission approval of the Territorial Agreement attached hereto as Exhibit A. The agreement provides that approval by the Commission is a condition precedent to its effectiveness. Any modification of the agreement must be reviewed and/or approved by the Commission.

10. Peoples and LANGD 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 of the petitioners, or to the existing or future ratepayers of either of them, and that the Commission's approval of the agreement would be consistent with the standards set forth in Section 366.04, *Florida Statutes*, and Rule 25-7.0471, *F.A.C.*

11. All terms and conditions pertaining to the Territorial Agreement, and the implementation thereof, are set forth in such agreement.

12. The agreement merely confirms that from and after the later to occur of the consummation of the purchase and sale of the Transfer Facilities and the date an order of this Commission approving the Territorial Agreement becomes final, as between Peoples and LANGD, the areas occupied by the Transfer Facilities and any extensions thereof constitute a service area reserved to LANGD. Petitioners submit that approval of the agreement by the Commission will assist in avoiding future uneconomic duplication of facilities by the parties, will expedite the handling of applications for service by future potential natural gas customers, and that the agreement is therefore in the public interest.

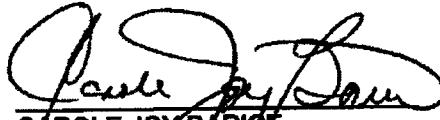
WHEREFORE, Peoples and LANGD respectfully request that the Commission enter its order approving the Territorial Agreement attached hereto as Exhibit 1.

Respectfully submitted,



ANSLEY WATSON, JR.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531  
(813) 273-4321  
[aw@macfar.com](mailto:aw@macfar.com)

Attorneys for Peoples Gas System



CAROLE JOY BARICE  
McGee & Mason, P.A.  
101 South Main Street  
Brooksville, Florida 34601  
(352) 796-0796  
[carolebarice@mcgeemasonlaw.com](mailto:carolebarice@mcgeemasonlaw.com)

Attorneys for The Lake Apopka Natural Gas District

**TERRITORIAL AGREEMENT**

THIS TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 17th day of June, 2013, by and between **Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples")**, and **The Lake Apopka Natural Gas District, a public body corporate and Independent Special District of the State of Florida ("LANGD")**. Peoples and LANGD are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, Peoples is a natural gas public utility subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, LANGD is a natural gas utility subject to the Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 366.04(3), *Florida Statutes*; and

WHEREAS, as pertinent to this Agreement, both LANGD and Peoples are presently providing natural gas ("gas") service to customers in portions of Orange County, Florida; and

WHEREAS, the parties entered into agreements during the 1990s pursuant to which Peoples constructed gas distribution facilities (the "Transfer Facilities") in portions of Orange County to provide gas service to customers through such facilities, and LANGD was granted the option to purchase, at their depreciated book value, such Transfer Facilities when LANGD advised Peoples that LANGD was ready to provide such service itself; and

WHEREAS, LANGD exercised its option to purchase in October 2012, and the parties have entered into an Asset Purchase and Sale Agreement dated as of May 20, 2013 (the "PSA"), which provides for, upon the closing of the transaction, the transfer from Peoples to LANGD of the Transfer Facilities as well as the customers that receive gas service through the Transfer Facilities; and

WHEREAS, the parties desire to avoid future unnecessary and uneconomic duplication of gas distribution facilities in the locations where the Transfer Facilities are installed, which would be contrary to Commission policies and detrimental to the interests of their customers and the general public, and to expedite the handling of applications for service by future potential gas customers near such locations; and

WHEREAS, the Commission 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.

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 terms and conditions herein set forth, agree as follows:



**Section 1.**

(a) Upon the consummation of the purchase and sale of the Transfer Facilities, and the transfer of customers then served through such facilities from Peoples to LANGD, as contemplated by the PSA, the locations occupied by the Transfer Facilities and any extensions thereof shall, as between the parties, be deemed to be a service area of LANGD. Such locations are generally depicted on the map attached hereto and made a part hereof as Exhibit A, and the nature and location of such facilities are described in the narrative attached hereto and made a part hereof as Exhibit B.

(b) Except as specifically otherwise provided herein, Peoples agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to LANGD.

(c) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be 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 general office level of the parties. No such facilities shall be used by Peoples to provide natural gas service to customers located in the service area reserved hereunder to LANGD.

(d) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 2.** Notwithstanding the provisions of Section 1, LANGD may request that Peoples provide natural gas service to potential customers within the service area reserved hereunder to LANGD. In the event of any such request, Peoples may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 3.** If LANGD determines, in a specific instance, that good engineering practices or economic constraints indicate that a small service area and/or future natural gas customer within LANGD's service area under Section 1 hereof should not be served by LANGD, LANGD shall notify Peoples and request that Peoples serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit Peoples to provide such service to such small service area and/or future natural gas customer.

**Section 4.** This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be 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. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

**Section 5.** As soon as practicable after the later to occur of the Effective Date and the date on which the purchase and sale contemplated by the PSA is consummated, Peoples agrees to file any revisions to its tariff on file with the Commission which may be required as a

result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to LANGD upon their filing with the Commission.

**Section 6.** 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 7.** This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

**Section 8.** This Agreement shall be governed by the laws of the State of Florida.

**Section 9.** All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

To Peoples:

President  
Peoples Gas System  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
Facsimile: (813) 228-4811

To LANGD:

General Manager and CEO  
The Lake Apopka Natural Gas District  
1320 Winter Garden-Vineland Road  
Winter Garden, Florida 34787, Florida 33402  
Phone: (407) 656-2734  
Facsimile: (407) 656-9731

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a business day or, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

**Section 10.** This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas. This Agreement shall not affect or bind affiliates of Peoples.


**Section 11.** This Agreement may be executed in one or more counterparts and by original and/or facsimile signatures, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

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.

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

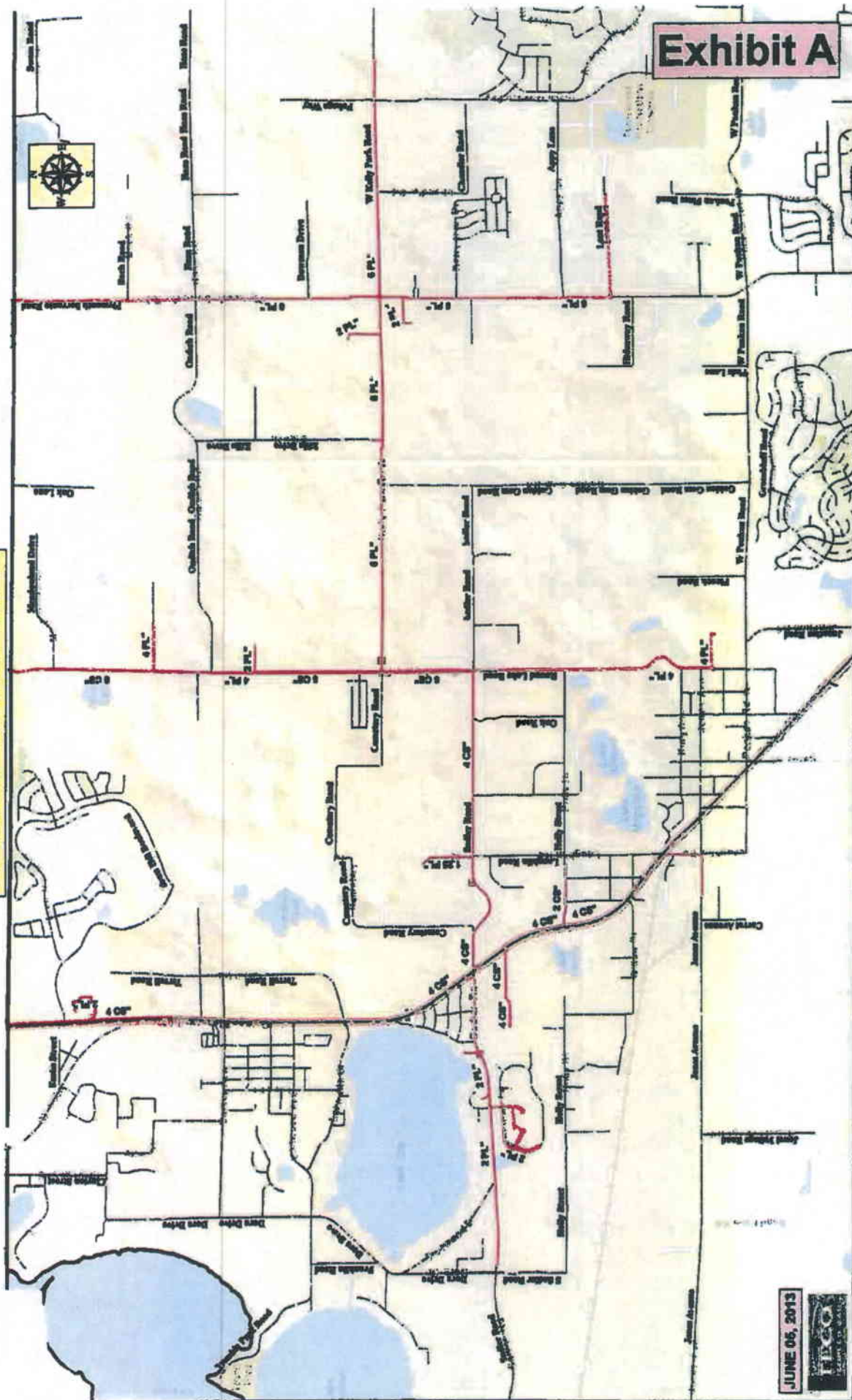
By:   
\_\_\_\_\_  
Bruce Narzissenfeld  
Vice President - Fuels

**THE LAKE APOPKA NATURAL GAS DISTRICT**

By:   
\_\_\_\_\_  
Anne Dupee  
President

# Exhibit A

## TRANSFER FACILITIES



JUNE 06, 2013  
HBCO  
HUNTSVILLE, AL

## **EXHIBIT B**

### **Narrative Describing Transfer Facilities**

- 1) Initial installation completed June 11, 1990 under AFE: 010579003301
  - 23,390 feet 4" steel
  - 2800 feet of 2" steel
  - 7500 feet of 2" plastic

This included installing 4" steel beginning at SR 44 heading south along US Hwy 441 stopping just south of Sadler Rd. The 4" steel was also installed east along Sadler stopping at what is now called Monterey Mushrooms. 2" steel was installed off of the 4" steel going west on Sadler road to a new regulator station (01-05-790-060-01) installed on Sadler just west of Bigler Lane. 2" plastic was installed west of the station to serve what was then called Lake Ola Estates.

- 2) The next installation was completed November 29, 1990
  - 2392 feet of 4" steel
  - 600 feet of 2" plastic

This included attaching to the original 4" steel on US Hwy 441 just south of Sadler road. It was extended south to just south of Berg Dr. It was also installed west on Berg Dr to serve what was then called Hickerson Glowers (now Plowboys Inc.)

- 3) The next installation was completed July 15, 1992
  - 532 feet of 1.25" plastic

This was installed off of the regulator station installed on Sadler Road to Bigler Rd North of Sadler running to 5 residential customers.

- 4) The next installation was on Lake Ashley Dr. completed on Nov. 22, 1993
  - 914 feet of 2" plastic
- 5) The next installation was completed June 23, 1994.
  - 4623 feet 4" steel
  - 7529 feet of 4" plastic
  - Regulator station installed on Sadler road just west of Round Lake Rd

This included extending the 4" steel on Sadler road where it previously ended in front of Monterey Mushroom east to new regulator station just west of Round Lake Rd. 4" plastic was then installed north on round Lake Rd to serve Picketts Nursery and south on Round Lake Rd to serve Agri Starts Nursery.

- 6) The next installation was completed September 20, 1994
  - 6516 feet of 4" plastic

This installation was installed on the north side of Kelly Park Rd. east from Round Lake Rd to serve crematorium

- 7) The next installation was completed December 4, 1996
  - 8000 feet of 4" steel

This installation tied the new 4" steel to the previously installed gas main on the east side of US Hwy 441. It was continued southward on US Hwy 441 to Laughlin Rd and then west of Jones Ave. to serve Drum Services.

- 8) The next installation was completed on December 6, 1996
- 10900 feet of 6" plastic

This installation tied new 4" plastic that was completed under #5 above. 6" plastic was installed east along W. Kelly Park Rd to serve Robinson Nursery located at 2136 W. Kelly Park Rd.

- 9) The next installation was also completed on December 6 1996
- 4500 feet of 4" plastic

This installation tied onto the 4" plastic on Round Lake Rd ran to Pecketts Nursery in #4 above. It ran north along Round Lake Rd. and then east of Oak Hill St to serve Milestone Nursery.

- 10) The next installation was completed on October 6, 1997
- 10550 feet 6" plastic

This installation initiated on Hwy 46 in Orange County and was installed south on Plymouth Sorrento Rd tying into the 6" plastic that was installed on Kelly Park Rd installed under #7 above. It was installed to get numerous services on Plymouth Sorrento as well as enhance the existing system to meet the near & future demands in the area.

- 11) The next installation was completed on April 27, 1998
- 6144 feet 4" plastic.

This installation tied onto the existing 4" plastic installed under #4 above that had stopped at Agri Starts nursery. It was installed south along Round Lake Rd to serve three nurseries.

- 12) The next installation was completed on February 7, 2000.
- 13260 feet of 6" steel starting at the Orange County South

This installation was a 6" steel gas main began on SR 46 in Orange County south along Round Lake Rd tying into the existing 4" steel installed on Sadler Rd just west of the regulator station referred to in #4 above. This installation was needed to meet the demand of the new Egg Crate Plant that was being built on Jones Ave. where our existing 4" steel was installed referred to in #6 above. The system we had would not accommodate the proposed load of the Egg Crate necessitating the 6" steel installation.

- 13) The next installation was completed on July 31, 2000
- 366 feet of 2" steel

This installation was installed along Holly St. east from the 4" steel on US Hwy 441 referenced above in #6 above. This served the Anthony House.

- 14) The next installation was completed on September 18, 2001
- 480 feet of 6" plastic

This installation was installed extending the 6" plastic on Kelly Park Rd east tying into the main installed referenced on #7 above.

- 15) The next installation was completed on February 15, 2002
- 685 feet of 6" plastic
  - 970 feet of 2" plastic

This 6" plastic was installed south ward on Plymouth Sorrento to serve 4720 Plymouth Sorrento Rd tying onto the 6" plastic on Kelly Park Rd referred in #7 above.

- 16) The next installation was completed March 4, 2005
- 299 feet of 2" plastic

Installed to pet crematorium on Effie Rd Tying onto 4" plastic referred to #5 above.

- 17) The next installation was completed on November 7, 2007.
- 4616 feet of 2" plastic

This installation tied onto the 2" plastic installed on Sadler Rd referred to above in #1. It served a new nursery at 8258 Sadler Rd.

- 18) The next installation was completed June 9, 2009
- 1412 feet of 2" plastic and 493 feet of 1.25" plastic

This installation tied onto the 4" steel referred to in #1 above. It included a regulator station installed and the plastic ran into a new Publix Plaza on US Hwy 441.

- 19) The next installation was completed November 16, 2011
- 1043 feet of 2" plastic

This was tied into the existing 6" plastic installed under #7 above. It tied into the 6" on Kelly Park rd to serve new services at 3119 W. Kelly Park Rd.

- 20) The next installation was completed on August 18, 2011
- 1441 feet of 2" steel

This was 2" steel tying into the existing 2" steel on Holly St referred to in #12 above to serve new service at 6029 Holly St.

- 21) Installed gas main south on Plymouth Sorrento south from Kelly Park Rd. and east on Lent Rd. Completed and made active 11-2-2012
- Installed 7100 feet of 6" plastic and 2000 feet of 4" plastic D0021216

This included four services that have been installed and activated:

- 1) 4309 Plymouth Sorrento Rd
- 2) 3746 Plymouth Sorrento Rd
- 3) 4322 Plymouth Sorrento Rd
- 4) 2490 Lent Rd.