

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: 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 )  
\_\_\_\_\_ )

Docket No. 20180055-GU

**CITY OF LEESBURG’S MOTION TO DISMISS**

The City of Leesburg (“The City”), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code (“FAC”), moves to dismiss the Petition filed by Peoples Gas System (“PGS”) in the above-styled matter. The Petition is materially deficient as a matter of law and does not sufficiently set forth a claim ripe for determination by the Florida Public Service Commission for the reasons detailed below.

1. The City of Leesburg is a municipality of approximately 22,500 residents that was incorporated in 1875. Since 1959, the City has provided natural gas service to its customers. Presently, the City distributes natural gas to nearly 12,000 customers, both within and outside its corporate boundary limits. The City has approximately 240 miles of distribution lines installed and operating to provide its customers with natural gas. The City has distribution lines near future planned development of The Villages and is well positioned to efficiently, safely and effectively provide natural gas service to these future developments. The Villages, aware of the City’s outstanding performance, and being dissatisfied with natural gas service provided by PGS, has exercised customer choice and seeks to have all future natural gas service to its developments be provided by the City; the City is ready, willing and able to provide such service. The City has an outstanding safety record as documented by the Florida Public Service Commission and provides exemplary service to its customers.

2. The City entered into a contractual agreement (“Agreement”) with South Sumter Gas Company, LLC (“SSG”) on or about February 12, 2018. This contract, a copy of which was attached to the PGS Petition as Exhibit B, provides that the City will own, maintain and operate certain natural gas infrastructure as residential development in the south Sumter County area moves in a southerly direction toward the City limits, and toward an existing and nearby federal facility that the City currently provides with natural gas. This Agreement provides in part that the rates charged to customers in future developments of the Villages will never exceed the rate charged by PGS.

3. As detailed below, the PGS Petition fails to plead sufficient facts for the matter to move forward. Instead, PGS makes a few conclusory and summary allegations that do not meet the legal standard for pleading a case and controversy, i.e., an actual dispute that is ripe for the Commission’s consideration. Just as courts work to conserve judicial resources, the Commission should conserve its resources, namely staff and Commission time and attention, and not decide alleged “disputes” supported only by conclusory statements. At bottom, the Petition is devoid of detailed factual allegations that are legally required and necessary to set forth a real dispute that warrants the Commission’s time and attention.

4. When considering a motion to dismiss, the ruling tribunal must treat the factual allegations of the complaint as true and consider those allegations in the light most favorable to the Petitioner. *See, e.g., Siegle v. Progressive Consumers Ins. Co.*, 819 So.2d 732, 734-35 (Fla. 2002). However, conclusory allegations are disfavored and insufficient. *See Shands Teaching Hosp. and Clinics, Inc. v. Estate of Lawson ex rel. Lawson*, 175 So.3d 327, 331 (Fla. 1st DCA 2015) (en banc); *Stein v. BBX Capital Corp.* 2018 WL 1410715 (Fla. 4<sup>th</sup> DCA 2018)( “While we must accept the facts alleged as true and make all reasonable inferences in favor of the

pleader, *id.*, conclusory allegations are insufficient.” (Opinion issued March 21, 2018; available only on WestLaw and subject to revision or withdrawal until released for publication in permanent law reports).

5. Here, PGS makes the overly broad, conclusory factual allegations that:

“a territorial dispute exists ... with respect to the rights of each to serve customers in Sumter County, including those areas in the Villages. The dispute exists because the natural gas facilities either under construction or to be constructed by Leesburg, or by South Sumter Gas for operation and maintenance by Leesburg, would uneconomically duplicate existing natural gas facilities currently operated by Peoples in many portions of the area covered and to be covered by the Gas System Construction Agreement. In addition, the Gas System Construction Agreement contemplates the construction of natural gas facilities by South Sumter Gas (to be operated by Leesburg) within areas capable of being more economically served by Peoples.”

See Paragraph 16 of PGS Petition.

6. These allegations, while parroting the phrase “territorial dispute” found in section 366.04(3)(b), Florida Statutes, do not meet the legal requirement to plead all disputed facts. See Rule 28-106.201(2)(d), Florida Administrative Code (“All petitions filed under these rules shall contain ... a statement of all disputed issues of material fact.”). PGS simply does not make sufficient factual allegations to warrant the Commission deciding “the rights of each to serve customers in Sumter County” as requested by Petitioner, much less the area that is addressed in the City’s contractual agreement with SSG. Stated differently, the details of the alleged dispute are missing from the pleading (because they do not exist), and are surely insufficient for the Commission to make territorial decisions for all of Sumter County, as requested.

7. Additionally, the PGS pleading, with its conclusory allegations, does not adequately place the City on notice as to what is in dispute, the nature of the dispute, or the facts that support a finding of a dispute. Put simply, as detailed, *infra*, the fact that a land

developer/development commonly known as The Villages with land holdings in three contiguous counties was dissatisfied with PGS' performance, and opted to sever an unsatisfactory business relationship with PGS, does not present a territorial dispute for the Commission to referee. The Commission should be hesitant to inject itself into a business dispute between PGS and the Villages, particularly in light of the Petition's paucity of factual allegations of a bona fide territorial dispute.

8. The Commission should be hesitant to consider a case that is not ripe. Instructively, in *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power*, Order No. PSC-98-0174-FOF-EU (January 28, 1998), *affirmed on appeal, Gulf Coast Electric Cooperative v. Johnson*, 727 So.2d 259 (Fla. 1999), the Commission declined to divide up the southern areas of Bay and Washington counties among two electric utilities, Gulf Coast Electric Cooperative, Inc. and Gulf Power Company. Even though the two companies had electric facilities that were comingled, the Commission decided not to insert itself in the matter. The Commission explained that "drawing lines on the ground would result in centralized planning by this Commission which is not the most economic way to determine the service areas because it does not take into account market forces which will dictate the manner in which some of the expansion of facilities is going to take place." *Gulf Coast Order* at p. 10-11. Here, like the *Gulf Coast Electric Cooperative* case, PGS has not plead sufficient facts to compel "centralized planning" by the Commission, something that should be avoided when market forces will determine the manner in which the expansion of natural gas facilities is going to take place.

9. Market forces are properly at work. The Villages developments provide a tremendous economic engine in Sumter County. See attached Exhibit A; news story entitled

“Governor Scott Praises Economic Growth”. As a large landowner in Sumter County, a county not controlled by an existing territorial agreement, The Villages was dissatisfied with the performance of PGS. See Exhibit B; letter filed in this docket dated March 8, 2018 from counsel for the Villages to counsel for PGS; (“My clients have previously suffered through the actions of Peoples Gas in failing to keep schedule and delaying construction to my client's significant harm. In light of this history, our client cannot rely on Peoples Gas in the development of its current and future land holdings.”)

Understanding markets and being a market force, the Villages opted to have its future development activity handled by SSG and the City, something expressly contemplated by the Commission in the *Gulf Coast Electric Cooperative* case, *supra*. The Commission in *Gulf Coast Electric Cooperative* tellingly stated, “In this situation, customer choice will be a factor for future electric service. Customer choice will be based on a determination of which utility is the most efficient provider of service.” *Id.* at p. 4. Disappointed by the Villages’ decision to not do further business with PGS because of its poor service and failure to meet time schedules, something that is obviously quite important to a developer of any size, PGS is now asking the Commission to order the Villages to do business with PGS and engage in the very “centralized planning” cautioned against in *Gulf Coast Electric Cooperative*. As pointed out, *supra*, the Commission should decline the PGS request because PGS has not, and cannot, plead detailed, non-conclusory facts that can survive a motion to dismiss.

Finally, as a matter of public policy previously recognized by the Commission in *Gulf Coast Electric Cooperative*, customer choice and market forces play key roles in the provision of service in a regulated utility environment. These very forces are at work in south Sumter County, and respectfully, the Commission should not assert regulatory jurisdiction in a factual

matter, accepting PGS's factual assertions as true, when such regulation is not warranted given the Commission's instructive order in the *Gulf Coast Electric Cooperative* case.

10. For the foregoing reasons, the City respectfully asks that the Commission grant the City's Motion to Dismiss the pending PGS Petition.

Respectfully submitted this 2nd day of April, 2018.

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Attorneys for City of Leesburg

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished to the following by Electronic Mail, on this 2nd day of April, 2018:

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[http://www.thevillagesdailysun.com/news/villages/governor-scott-praises-local-economic-growth/article\\_3aca25da-6395-11e7-884c-4f7891dce51.html](http://www.thevillagesdailysun.com/news/villages/governor-scott-praises-local-economic-growth/article_3aca25da-6395-11e7-884c-4f7891dce51.html)

## Governor Scott Praises Local Economic Growth

By David R. Corder, Daily Sun Senior Writer Jul 8, 2017



Executive Chef Louis Santiago, of Cane Garden Country Club, who prepares a white fish dish, is part of the growing employment dynamic in The Villages that impresses Gov. Rick Scott.

George Horsford, Daily Sun

When he looks at The Villages, Gov. Rick Scott sees an exciting dynamic taking place that squarely aligns with his state economic policies.

Jobs, jobs and more jobs.



In an exclusive interview Thursday with the Daily Sun, the governor voiced pride about the surging job market in The Villages metropolitan statistical area, and its positive regional and state economic impact.

“There’s not many other places growing like The Villages, in the entire state or anywhere in the country, or anywhere the world,” he said. “When I ran in 2010, I ran on a jobs platform. People were out of work; 800,000 people lost their jobs in (the previous) four years. Now we’ve added almost 1.4 million new jobs, and The Villages has been part of that. People are doing all sorts of things here from growing small businesses to building roads to working at all the different restaurants we enjoy. I’m appreciative because I enjoy all the different jobs.”

Without prompting, the governor recited one key statistic about the MSA, a 4.5 percent 12-month annual employment growth rate.

That year-over-year rate grew by 4 percent in the May jobs report the federal Bureau of Labor Statistics published about a week ago.

In terms of percentage increase, the 4 percent gain tied the MSA as the 11th fastest-growing job market in the United States, with a year-over-year May increase of 1,100 new jobs.

That job growth, with a large portion occurring in the home-building sectors, explains why The Villages ranks as the nation’s second top-selling master-planned community, with a 17 percent year-over-year growth for the six months ended June 30, according to the researchers at RCLCO Real Estate Advisors, one of the U.S. real estate industry’s go-to sources for research and consultation services.

One reason accounts for this growth, Sumter County Commission Chairman Doug Gilpin said.

The announcement earlier this year by The Villages Developer to build 14,000 homes in and around the villages of Fenney and Southern Oaks, he said.

“It’s obviously a direct result of The Villages Developer moving forward with a very substantial investment in Sumter County,” Gilpin said. “With that comes the confidence of all businesses in Sumter County to say, ‘Me too.’ It really is all about leadership.”

Businesses know The Villages Developer as a stable force in the county, Gilpin said.

“The Villages Developer has provided such as steady platform over such a long period of time, it makes it easy to keep things going well,” he said.

And the Developer's roots in the community also translate into opportunities not only for Sumter residents, but also those in surrounding communities, Gilpin said.

"It means that families can live and prosper here in Sumter County," he said. "In the past, you couldn't do that. We also have a tremendous influx of people who come into Sumter, earn their money and then go back to other counties to live. Over time, that will change as The Villages grows and opens up more opportunities for workers to build their homes here."

The jobs emerging from the MSA growth trend also contribute to a wide web of economic impact.

For instance, jobs in the construction industry produce houses, particularly in The Villages, that attract new Villagers who invested well for their retirement.

The increased population of retirees, combined with the growing workforce, has a positive impact on real personal income in The Villages, according to the federal Bureau of Economic Analysis.

Even prior to this growth surge, the MSA produced strong growth in real personal income, according to the bureau's latest available statistical report released about two weeks ago.

From 2011-15, real personal income in the MSA grew by about \$831 million over the five-year period, the report stated.

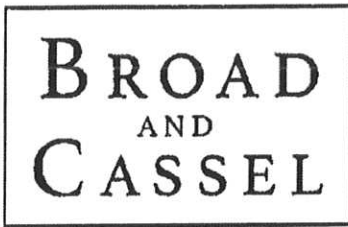
Now, annual real personal income in the MSA totals about \$4.64 billion, the report also stated.

"When I first ran in 2010, around 92,000 people lived in The Villages," Scott told the Daily Sun. "It's close to 115,000 people now. With all this additional land, I know more people are going to get to enjoy the experience of The Villages. And now there are jobs for building homes. There's jobs for building roads. There's jobs to work in the restaurants. There's jobs in all the services that get provided. As all this happens, people who move down here like to invest in the state, too."

So, continued prosperity appears to be a certainty, Scott said.

"We have about 350,000 people moving here a year (to Florida)," he said. "We've added almost 1.4 million jobs over the past six and half years. This is the place that everybody wants to be. I was just in Connecticut recruiting jobs, and I want to thank all the governors up there for raising taxes, because it clearly helps give people another reason to come down here on top of all the wonderful people who already live here."

David Corder is a senior writer with The Villages Daily Sun. He can be reached at 352-753-1119, ext. 9066, or [david.corder@thevillagesmedia.com](mailto:david.corder@thevillagesmedia.com).



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March 8, 2018

VIA EMAIL (AB@MACFAR.COM)

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Re: Petition to Resolve a Territorial Dispute between Peoples Gas and The City of  
Leesburg/South Sumter Gas Company

Dear Mr. Brown:

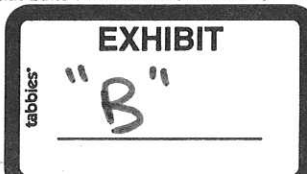
This firm represents The Villages Land Company, LLC and its related entity, South Sumter Gas Company, LLC. My clients have requested that I respond to your letter dated February 23, 2018. In that letter, you write, on behalf of Peoples Gas System ("Peoples Gas"), to the City of Leesburg ("City") to request that the City cease compliance with the terms of its Natural Gas System Construction, Purchase, and Sale Agreement (the "Contract") with our client. It is clear from your letter that, your client admits it is aware of this contractual relationship. Please be advised that by making this request, Peoples Gas is interfering with the performance of an existing and lawful contract. Further, your client is intentionally interfering with my clients' advantageous business relationships with the City. Peoples Gas is hereby demanded to retract its letter and specifically its request that the City not timely comply with the Contract. Failure of Peoples Gas to immediately do so will result in the filing of litigation to recover damages for this tortious conduct.

I would note that the action of Peoples Gas is wholly motivated by financial gain and not based upon any lawful rights it holds. We believe that the outcome of the Petition ("Petition") filed with the Public Services Commission ("PSC") will affirm that Peoples Gas was not protecting any right established in law or contract. Instead, it will be demonstrated that Peoples Gas took these actions without any legally enforceable interest in the area subject to the Contract. We believe that such a PSC determination will establish for a jury that Peoples Gas acted solely in an attempt to force a concession to which Peoples Gas is not entitled. Such a finding would support not only the millions in anticipated actual damages but also punitive damages.

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Andrew M. Brown, Esq.  
March 8, 2018  
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I also want to be clear that Peoples Gas will not be rewarded for this untenable position. Even if Peoples Gas could prevail (which it cannot) before the PSC, there would never be an agreement between my clients and Peoples Gas. My clients have previously suffered through the actions of Peoples Gas in failing to keep schedule and delaying construction to my client's significant harm. In light of this history, our client cannot rely on Peoples Gas in the development of its current and future land holdings. If Peoples Gas could prevent the City from using these lines, my client would simply install electric appliances in these homes rather than allow Peoples Gas to delay construction and delivery of new homes and non-residential buildings. There is no scenario under which Peoples Gas will benefit from its tortious conduct in this matter.

Thus, we again demand that Peoples Gas withdraw its letter and the Petition before the PSC. Failure of Peoples Gas to take such appropriate actions will subject it to significant damages claims.

Sincerely,

BROAD AND CASSEL LLP



Todd K. Norman, P.A.  
Partner

TKN:ag

cc: ✓ Ms. Carlotta S. Stauffer  
Commission Clerk  
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