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April 9, 2018

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

**Re: 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**

Dear Ms. Stauffer:

Attached for electronic filing with the Commission on behalf of Peoples Gas System please find the following:

1. Peoples' Reply to City of Leesburg's Motion to Dismiss Peoples' Petition;
2. Peoples' Response to City of Leesburg's Request for Oral Argument;
3. Peoples' Reply to SSGC's Motion to Dismiss Peoples' Petition; and
4. Peoples' Response to SSGC's Request for Oral Argument.

Your assistance in this matter is greatly appreciated.

Sincerely,  
A handwritten signature in blue ink that reads "Andrew M. Brown".  
Andrew M. Brown

AB/plb  
Attachments

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

**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

Submitted for filing:  
4-9-2018

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

Peoples Gas System ("Peoples" or the "Company"), by its undersigned counsel, replies to the City of Leesburg's ("Leesburg's") Motion to Dismiss Peoples' petition in this docket ("Motion"), and says:

1. Leesburg's Motion seeks dismissal of Peoples' petition because it allegedly "fails to plead sufficient facts for the matter to move forward," because it "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." Motion, ¶3. The remainder of the Motion consists of Leesburg's own allegations of fact which may or may not ultimately be relevant to the Commission's determination of the dispute initiated by Peoples' petition. Leesburg's factual allegations are irrelevant to its Motion to Dismiss for failure to state a cause of action consideration of which is limited to the language in the petition. Such allegations are more appropriately reserved for presentation at an evidentiary hearing. Moreover, Leesburg's factual assertions in its Motion and the description of why Leesburg and SSGC do not wish to have Peoples serve the disputed area only confirm that a territorial dispute in fact exists.

2. SSGC asserts that Peoples has not met the pleading requirements under *FAC Rule* 28-106.201. However, the general provisions of that Rule apply primarily to petitions requesting a hearing on proposed agency action, *In re Petition for Issuance of a Storm Recovery Financing Order*, by Florida Power and Light Company, Docket PSC 06-0038-EI, Order No. PSC-06-0260-PCO-EI; 2006 WL 850958 (Fla. P. S. C.). In that case, several intervenors moved to dismiss FP&L's original petition in part on the basis that the petition did not sufficiently allege "all disputed

issues of material fact.” The Commission held that:

A petitioner filing an original request for relief cannot reasonably be expected to identify “all disputed issues of material fact” that might arise. Prior to some potential party opposing the relief sought through an original petition, logic dictates that there is no “disputed issue” to identify. The law recognizes that statutes and rules should not be interpreted in a manner that produces an absurd result. Intervenors argument on this point is inconsistent with this principle of interpretation.”

PSC-06-0260-PCO-EI at 7; 2006 WL 850958 (P.S.C.) at 4.

Peoples' Petition contains a sufficient statement of the ultimate facts alleged under the general *FAC Rule 28-106.201*. More significantly, the Petition meets the specific pleading requirements of *FAC Rule 25-7.0472* (Territorial Disputes for Natural Gas Utilities), which require that a territorial dispute may be initiated by a petition and that each utility which is a party to a territorial dispute “provide a map and written description of the disputed area along with the conditions that caused the dispute.” There is no question that Peoples has met that requirement. The Petition clearly sets forth that there is gas infrastructure being installed by South Sumter Gas Company, LLC (“SSGC”), that the area in question is immediately adjacent to Peoples' gas infrastructure, that there is an agreement between the City of Leesburg (“Leesburg”) and SSGC in which Leesburg is to supply gas to the area, and that Leesburg is in the process of building a 6-inch main line in excess of two miles in length with which to serve the areas in question. The Petition also references *FAC Rule 25-7.0472*, and by any common sense reading of the petition and review of the attached map, it is clear that the areas in question should properly be served by Peoples and that SSGC/Leesburg's efforts to serve these areas will be far more costly and burdensome to accomplish compared with the ease with which Peoples could provide the gas service. There is no question that Peoples has met the burden of pleading a territorial dispute. The Petition clearly sets forth that there is gas infrastructure being installed by South Sumter Gas Company, LLC (“SSGC”), that the area in question is immediately adjacent to Peoples' gas infrastructure, that there is an agreement between the City of Leesburg (“Leesburg”) and SSGC in which Leesburg is to supply gas to the area, and that Leesburg is in the

process of building a 6-inch main line in excess of two miles in length with which to serve the areas in question. The petition also references *FAC Rule 25-7.0472*. There is no question that Peoples has met the burden of pleading a territorial dispute.

3. Paragraph 7 of Leesburg's Motion also speciously suggests that Peoples' petition "does not adequately place the City on notice . . . ." In order for that suggestion to be true, one would have to ignore everything written in the petition. In fact, Leesburg was arguably on notice when it first read the Agreement referenced in paragraph 2 of the Motion, which specifically contemplates the possibility of the City's inability to use the natural gas facilities installed pursuant to the Agreement "due to any regulatory ruling preventing the City from providing service within the Service Area." Agreement, ¶5. Further, the plain meaning of Peoples' petition is more than adequate to put Leesburg on notice regarding the nature of the dispute to be resolved by the Commission.

4. Leesburg's Motion makes continued reference to the case of *Gulf Coast Electric Cooperative v. Johnson*, 727 So.2d 259 (Fla. 1999) as support for the granting of its motion to dismiss. The *Gulf Coast* case has nothing to do with pleading and has nothing to do with dismissing a complaint or petition before evidence has been submitted. In *Gulf Coast*, an appeal was taken after the Commission in a 2-1 decision, ruled that under the facts of that particular case, territorial boundaries should not be imposed "at this time." 727 So.2d 259 at 261. The Commission's decision was reached "after a two-day hearing which included visits by the Commissioners to 15 locations in the areas in question and the consideration of multiple exhibits and witnesses." *Gulf Coast* at 261. The case has nothing to do with dismissing a petition at this early stage. Interestingly, the court noted that in the underlying, the Commission had ordered the parties to negotiate a resolution of the territorial dispute but that they were unable to do so. The court also noted that the Commission reserved jurisdiction to resolve future disputes regarding particular customers on a case by case basis, *Gulf Coast* at 261. Most importantly, the court's holding was that the Commission was not required as a matter of law to "establish territorial boundaries in order to resolve a territorial dispute

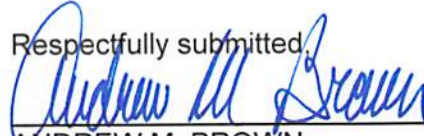
that does not involve service to current or future identifiable customers." *Gulf Coast* at 264. In this case, the future customers are clearly identifiable in that they are the homeowners of the specific developments that The Villages is constructing immediately adjacent to prior developments The Villages had constructed which are being currently served by Peoples. In other words, the factual scenario put forth in the petition is quite different than the issue resolved by the Supreme Court in *Gulf Coast*. While the ruling in *Gulf Coast* may eventually be of use to one or both sides in this dispute, at this early stage, with an understandably limited factual record, *Gulf Coast* is frankly irrelevant to a motion to dismiss.

5. The alleged "business dispute" referenced in paragraph 7 of the Motion, the alleged "market forces" and "customer choice" referenced in the Motion, and the unsupported allegations in the letter attached to the Motion as Exhibit B, may all become matters to be considered by the Commission at an evidentiary hearing, but they do not support the Motion's premise that Peoples' petition is deficient in its allegations and subject to dismissal.

6. Contrary to the Motion's assertion, neither the Commission's orders (nor the decisions of the Florida Supreme Court reviewing those orders) in the *Gulf Coast Coop/Gulf Power* cases cited in Leesburg's Motion, even mentions "ripeness" of any issue for consideration by the Commission. The ultimate decision of the Commission in these cases may eventually have application in the resolution of the dispute in this docket, but it provides no basis whatsoever for the dismissal of Peoples' petition.

WHEREFORE, Peoples submits that Leesburg's Motion to Dismiss Peoples' petition in the is docket must be denied.

Respectfully submitted,



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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply has been furnished (except as otherwise noted below) by electronic mail to the following, this 9th day of April, 2018:

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