

**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. )  
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Docket No. 20180055-GU

Submitted for filing:  
4-9-2018

**PEOPLES GAS SYSTEM'S REPLY TO  
SOUTH SUMTER GAS COMPANY, LLC'S MOTION TO DISMISS PEOPLES' PETITION**

Peoples Gas System ("Peoples" or the "Company"), by its undersigned counsel, replies to the South Sumter Gas Company, LLC's ("SSGC's") Motion to Dismiss Peoples' petition in this docket ("Motion"), and states:

1. SSGC's Motion seeks to dismiss Peoples' Petition because it did not sufficiently provide a "statement of all disputed issues of material fact", page 7. It also asserts that the controversy is not ripe for adjudication and states that the resolution of this dispute by the Commission is not in the public interest. The remainder of the Motion consists of SSGC's assertions of fact which may or may not ultimately be relevant to the Commission's determination of the dispute initiated by Peoples' petition. SSGC's factual assertions 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 assertions are more appropriately reserved for presentation at an evidentiary hearing. Moreover, SSGC's factual assertions in its Motion and the description of why SSGC does not wish to have Peoples serve the disputed area only confirms 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.

3. SSGC's Motion relies on the case of *Gulf Coast Electric Cooperative v. Johnson*, 727 So.2d 259 (Fla. 1999) for the proposition that this dispute is not ripe for adjudication. 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. Nor does *Gulf Coast* address the concept of "ripeness". The term "ripeness" is not used in the decision, an inconvenient fact grudgingly acknowledged by SSGC in its Motion, ¶ 17.<sup>1</sup> 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 Commission did not dismiss the Petition at the initial pleading stage. Interestingly, the Court noted that in the underlying action, the Commission had ordered the parties to negotiate a resolution of the territorial dispute but that they were unable to do so.

4. SSGC also cites *Gulf Coast* for the proposition that physical proximity of one utility's infrastructure to another does not make for duplicative facilities. The ruling was based primarily on the fact that the territories in dispute had no actual customers. The *Gulf Coast* decision 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, while in *Gulf Coast*, the future customers are clearly identifiable in

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<sup>1</sup> SSGC's argument on this issue is convoluted, flimsy and a classic creation of a legal "straw man." Paragraph 17 of the Motion starts by admitting that the Court in *Gulf Coast* did not rule that the case was not ripe for disposition. SSGC then, in mid-sentence, cites other cases that generally talk about the concept of ripeness despite having acknowledged that *Gulf Coast* did not rule on the issue of ripeness. SSGC then argues that the Petition should be dismissed for lack of ripeness based on the application of a two-prong test for ripeness that applies solely to challenges to Agency action which

that they are the homeowners of the specific developments that The Villages is constructing immediately adjacent to its prior developments 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. SSGC's reference to and reliance upon the Supreme Court's two-prong test for ripeness in *National Park Hospitality Association v. DOI*, 538 US 803, 123 S.Ct. 2026, 155 L.Ed. 2<sup>nd</sup> 1017 (2003) is similarly irrelevant to a motion to dismiss. First, the test relates to determining the ripeness of administrative actions. In this case, there is no administrative action which Peoples is challenging. Peoples is challenging the ability of SSGC and Leesburg to attempt to provide gas service in areas that from a geographic perspective, a capability perspective, and a cost perspective, should rightfully be served by Peoples. Peoples is not disputing an agency action. Rather, it is proceeding under *FAC Rule 25-7.0472*, which provides for how territorial disputes for natural gas utilities are to be resolved. In addition, the *Gulf Coast* holding was based upon the fact that there was a general challenge to a particular regulation without an actual "concrete dispute with NPS ("National Park Service") 123 S.Ct at 2030. In this case, there is an actual dispute between the parties and not a generalized challenge to a regulation.

6. SSGC's final argument, that the public interest does not require action is a culmination of one of the themes throughout the Motion. SSGC argues that this petition is unnecessary because The Villages has chosen Leesburg to provide gas service. The theory appears to be that it is solely the power of the developer to decide which utility will provide service in a given area regardless of cost, feasibility or any other considerations other than perhaps the fact that the developer (in this case The Villages) has found a better financial arrangement with one gas

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is not remotely an issue raised by Peoples Petition.

utility compared to another. While it is understandable why SSGC would prefer to pretend that the regulations governing territorial disputes do not exist, the reality is that they do exist and they exist precisely for this type of situation which SSGC and Leesburg have created by disregarding well settled regulatory principles in Florida which favor the utility is best able to serve an area under the criteria set forth in the Florida regulatory structure. The fact that SSGC would like to ignore regulations does not give it the right to do so and it certainly does not form a basis for dismissing the Peoples' Petition in this case.

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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