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COMMISSION CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: August 24, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Barrera)
Division of Economic Regulation (Rieger)

*MFBSA
SDR PR CA
GAB*

RE: Docket No. 110192-GU – Joint petition for approval of territorial agreement in Volusia County by Peoples Gas System and Florida Public Utilities Company.

AGENDA: 09/08/11 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110192.RCM.DOC

Case Background

Pursuant to Section 366.04(3)(a), Florida Statutes (F.S.), and Rule 25-7.0471, Florida Administrative Code (F.A.C.), Florida Public Utilities Company (FPUC) and Peoples Gas System (Peoples) filed a May 27, 2011 joint petition for approval of a territorial agreement between the Petitioners related to the provision of natural gas service in the eastern portion of Volusia County. Each Petitioner owns and operates natural gas distribution facilities in various portions of Florida. Peoples operates a natural gas distribution system primarily in the northern portion of Volusia County with its greatest concentration of customers in the Daytona Beach area. FPUC operates a natural gas distribution system in the southern portion of Volusia County, with the greatest concentration of customers in the New Smyrna Beach area.

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As explained in the Parties' Petition, in mid-2010, Peoples became aware that FPUC was in negotiations with Florida Gas Transmission Company, LLC (FGT) for the purchase of an FGT lateral transmission line. This line extended south from the FGT mainline in northern Volusia County through a portion of the areas currently identified as the service territory of Peoples, and continues generally south-southeast through the County to the New Smyrna Beach area currently identified as FPUC's service territory. The Petition indicated that FPUC is interested in obtaining the FGT lateral line in connection with planned improvements to its New Smyrna Beach distribution system, and does not intend to duplicate any existing Peoples facilities used to serve customers in the northern areas of Volusia County where Peoples operates. As a result of the discussions between the Parties, a Territorial Agreement was ultimately made and submitted to the Commission for approval. There is no existing territorial agreement between the Parties in Volusia County.

This is staff's recommendation regarding the Volusia County Territorial Agreement. The Commission has jurisdiction over the matter pursuant to Section 366.04, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the Joint Petition for a territorial agreement in Volusia County between Peoples and FPUC?

Recommendation: Yes. The Joint Petition for approval of the Territorial Agreement between Peoples and FPUC is in the public interest and should be approved. (Barrera, Rieger)

Staff Analysis: On May 27, 2011, Peoples and FPUC filed a Joint Petition for the Commission to approve a Volusia County Territorial Agreement (Agreement). A July 14, 2001 Amended and Restated Agreement recognized that FPUC has purchased (as of December 2010) from FGT a lateral transmission line in Volusia County extending south-southeast towards its service territory, through an area that Peoples currently serves. The Agreement acknowledged the Commission's authority, pursuant to Section 366.04(3)(a), F.S., to approve territorial agreements. Pursuant to Rule 25-7.0471 F.A.C., it was also noted that the Parties have entered into the Agreement to avoid any unnecessary and uneconomic duplication of natural gas facilities which would be contrary to Commission policies, and detrimental to the interests of their customers and the general public. The Agreement included maps of the agreed upon area along with a written territorial description showing the Parties' respective service areas. The Agreement basically divided the eastern part of Volusia County in half by a natural boundary line known as the "Spruce Creek Boundary," with Peoples' territory to the north and FPUC territory to the south.

According to the Petition, each Party, within its respective designated areas, shall have the authority to serve all customers. Also, each Party agrees that it will not provide, offer to serve, or use equipment located in the service area of the other Party to provide natural gas service to existing or potential customers within the service area reserved to the other Party. However, a circumstance could occur when good engineering practices or economic constraints indicate it is more reasonable for any small service area and/or future natural gas customer within one Party's service area to be served by the other Party. In that situation, the Agreement provides for the other Party to serve upon approval of the Commission.

The Parties propose that, once the Commission order approving the Agreement becomes final and effective, it will be in effect until its termination or modification is mutually agreed upon and approved by the Commission. Also, the Agreement states that termination or modification of the Agreement may also result if mandated by a governmental entity or court with appropriate jurisdiction. The Agreement provides for the Parties to review the Agreement's status prior to second anniversary of its effective date, and no more than every fifth anniversary thereafter, with joint status reports of the Agreement to be filed to the Commission. The Agreement also noted that it does not provide for the transfer of any existing customers or facilities. Therefore, no existing customers will be affected by this Agreement. FPUC serves a total of 11,160 customers in Volusia County; 4,275 customers are located in the Southeastern portion of Volusia County, south of the Spruce Creek Boundary. The remaining FPUC customers are in the Southwestern portion of Volusia County. All of Peoples 7,351 active customers are located in Northeastern Volusia County, north of the Spruce Creek Boundary.

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It appears that the Volusia County Territorial Agreement proposed by FPUC and Peoples eliminates existing or potential uneconomic duplication of facilities, and does not cause a decrease in the reliability of natural gas service to existing or future ratepayers. Therefore, staff recommends that the Joint Petition for approval of the Territorial Agreement between FPUC and Peoples is in the public interest and should be approved.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action within 21 days, the docket may be closed upon issuance of a consummating order. (Barrera)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's proposed agency action within 21 days, the docket may be closed upon issuance of a consummating order.