

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve)	DOCKET NO. 910653-GU
territorial dispute with Peoples)	ORDER NO. 25809
Gas System, Inc., by Sebring Gas)	ISSUED: 02/25/92
System, a division of Coker)	
Fuels, Inc.)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY

ORDER REGARDING TERRITORIAL DISPUTE

BY THE COMMISSION:

On April 30, 1991, Sebring Gas System (Sebring), a division of Coker Fuels, Inc., filed a Petition for Issuance of Order Declaring Jurisdiction. We issued an Order Declaring Jurisdiction over Sebring Gas System on July 5, 1991 (Order No. 24761), wherein we noted that "[o]ne of the reasons that Sebring petitioned this Commission to declare jurisdiction over the Company was so that we would be able to resolve any territorial disputes the Company may have with other gas utilities."

In fact, Sebring filed its Petition to Resolve Territorial Dispute on June 4, 1991, and we opened Docket No. 910653-GU. Sebring sought relief from a territorial dispute with Peoples Gas System (Peoples). The dispute concerns a service area west of the city limits of the City of Sebring.

Sebring has also requested that we set initial rates for the company. Accordingly, we opened Docket No. 910873-GU. In Order No. 25456, issued December 9, 1991, we established initial rates for Sebring. We are scheduled to vote on final rates for Sebring at a Special Agenda Conference on May 8, 1992.

We also note that we issued Order No. 25618 on January 21, 1992 (Docket No. 920050-GU), wherein we authorized Sebring's name change from Sebring Gas System, a division of Coker Fuels, to Sebring Gas System, Inc.

Both parties, Peoples and Sebring, have stipulated to the territorial boundary of the disputed area. The legal description of this disputed area is affixed as Attachment 2. The parties have also agreed that the map affixed as Attachment 1 accurately depicts this legal description. We find that Attachments 1 and 2 accurately reflect the boundary of the disputed area. The parties

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have also stipulated that they are not bound by any territorial agreement.

Peoples and Sebring both estimate the disputed area will provide annual throughput of approximately 180,000 therms in year one, growing to approximately 250,000 by year five. Any difference between the utilities' estimates of annual throughput is minor, and within the range of estimating error. Neither utility predicted customer load growth beyond five years. The strongest growth in the proximity of the City of Sebring is predicted to occur primarily along Highway 27. We find there to be no real disagreement on growth in the disputed area.

Nor is there disagreement between the parties concerning which utility had historically provided natural gas service to customers within the disputed area. At the time the petition was filed, neither company had provided natural gas service to the area in question. Although Sebring has provided propane service to customers at the edges of the disputed area, and even though Coker Fuels, or another unregulated propane company, may have provided propane tank service to customers in the disputed area, we believe this to be irrelevant to our decision in this docket. Accordingly, we find that neither utility has historically provided customers in the disputed area with natural gas service.

The Parties do not dispute the location of each other's facilities, nor that facilities near the disputed area have capacity sufficient to provide service to the area in question. We have authorized Sebring to provide natural gas to its customers, but as of the hearing, Sebring had not yet converted any of its system to natural gas. Part of Sebring's existing propane system lies within the disputed area, northeast of the Highway 27 and Fairmont Drive intersection. Sebring is presently converting its underground gas piping system from propane to natural gas. At the time of the hearing, Sebring had four-inch polyethylene plastic mains terminating at or near the intersection of Highway 27 and Schumacher Road. Sebring's southernmost main ended about one-half mile southeast of the intersection. Those lines are directly adjacent to, but east of, Highway 27, which borders the disputed area. Sebring would need to extend these facilities to reach the disputed area. The bulk of the disputed area is west of Highway 27, where neither utility has natural gas facilities. However, Sebring installed a 360 foot section in the disputed area the day before it filed its petition to resolve this dispute. Sebring also has facilities located South of the disputed area, but those facilities are not physically interconnected with the main part of Sebring's system, the part which will be converted first to natural gas. At the time of the hearing, Peoples had a four-inch

polyethylene plastic main north of the disputed area, near U.S. Highway 27 and Sun-N-Lakes Boulevard, with a two-inch plastic main extending west along the north side of Sun-N-Lakes Boulevard. Peoples would need to extend these facilities to reach the disputed area. We find that facilities exist for both utilities to provide service to the disputed area. Sebring and Peoples have agreed that the map affixed as Attachment 1 accurately reflects the facilities of both utilities.

The location of utility facilities as they existed on the attached map do not indicate any duplication of facilities. Accordingly, we find that in the past, no unnecessary duplication of natural gas facilities has taken place in the vicinity of the disputed area.

The main focus of the territorial dispute is Lakeshore Mall. To reach the Lakeshore Mall, Peoples would have to build approximately 20,000 feet of main, and Sebring would have to build approximately 6700 feet of main. Both utilities would have to install associated service lines, valves, meters and regulators. We find there to be no dispute concerning the facilities which either party would be required to build. We find that the parties agree that each utility is capable of extending its facilities and of providing service to the disputed area.

Sebring estimated it would cost \$108,776 to provide natural gas to the disputed area, and Peoples estimated it would cost \$170,625 for it to extend natural gas service to the disputed area. Both estimates include the cost of reimbursing the Lakeshore Mall developer who put in facilities under an agreement of all three Parties. We find that the Parties do not disagree with each other's cost estimates.

In Order No. 24761, we ordered Sebring to begin serving customers with natural gas by January 10, 1992. At the hearing, Mr. Melendy, Sebring's witness, testified it would take three to four weeks to convert Sebring's system from the gate station to Sebring Square, which is at the southeast corner of the Highway 27 and Fairmont Drive. That phase of the conversion would require the conversion of thirty-six customers. In addition, Mr. Melendy stated it would take four to six weeks to extend facilities to Lakeshore Mall from the Sebring Square area. This time schedule means that Sebring will have natural gas to Sebring Square by February 4, 1992, the date we considered this matter at Agenda Conference. The record is silent regarding when Sebring will provide service to other customers within the disputed area who have requested natural gas service. Peoples' witness, Mr. Grey, stated that Peoples would have natural gas flowing to all customers

within the disputed area in twelve to fourteen weeks. We find that Peoples questioned Sebring's time schedule; however, no one challenged Peoples time schedule.

Rule 25-7.042, Florida Administrative Code, directs this Commission to consider "customer preference if all other factors are substantially equal." The record contains no statements of customer preference. Because all other things do not appear to be equal, we find that customer preference does not appear to be a factor in this dispute.

Now we must consider which party should be awarded the service area in dispute. As noted above, Sebring has facilities in place directly adjacent to the disputed area, whereas Peoples' closest facilities lie north of the disputed area. If Peoples were to serve the disputed area, particularly Lakeshore Mall, Peoples' main would extend along the west side of Highway 27, passing some of Sebring's currently existing facilities which lie literally across the street at the Highway 27/Schumacher Road intersection. We find that this would be unnecessary duplication of facilities.

Sebring testified that, in the future, it plans to loop its system from Sebring Square to the two-inch system south of Lake Jackson, after it attaches those southern systems from the east. Sebring plans to do the looping as growth occurs in the southern area, making expansion feasible. If we were to award the disputed area to Sebring, this expansion would bring Sebring nearly a mile closer to the eventual closing of its loop, thus enhancing Sebring's feasibility of looping its system. Accordingly, we find that if Sebring were to serve the disputed area, additional customers south of the disputed area should have natural gas service sooner.

Sebring has already stated its intent to serve customers east of Highway 27. If Peoples were awarded the disputed area, it would not cross Highway 27. Thus, Sebring would still be able to serve the service area east of Highway 27. Peoples testified that if it were allowed to serve the disputed area, a situation would be created where one company has a gas line down one side of the road, and another company has a line down the other side, because it seems reasonable that a company come right up to the line defining its service territory. While that may be reasonable in other cases, it is not reasonable in this case. The narrow strip of land lying between Highway 27 and Lake Jackson dictates that companies not "come right up to the line," but that they parallel each other along the line for some distance. We find that this would also create unnecessary duplication of facilities.

As we discussed above, Sebring can extend its facilities to the disputed area for less cost than Peoples. Additionally, if we were to award the disputed area to Sebring, Peoples would not incur any expenditures in bringing its lines south. However, if we awarded the service area to Peoples, Sebring would still have to extend lines south to serve customers between Lake Jackson and Highway 27 in order to loop its system. Therefore, we find that an award to Peoples would result in little savings to the ratepayers of Sebring over the years. We also find that an award to Peoples would result in duplicative facilities parallel to Highway 27, whereas an award to Sebring would not.

We find there are two reasons that could support our award of the disputed area to Peoples. First, such an award would bring lower purchased gas costs, which are passed on to ratepayers. A comparison of gas costs on September 30, 1991, indicated that Peoples' weighted average cost of gas (WACOG) was 25.311 cents per therm. Sebring was not taking natural gas on September 30, 1991, but the applicable rate (SGS rate class) from Florida Gas Transmission (FGT) was 27.51 cents per therm, plus 3.5 cents per therm for transportation through Sebring Utility Commission's line, or a total of 31.01 cents. This difference in rate should not be ignored, but neither should it be the deciding factor. Sebring is not precluded from making direct purchases of gas, as Peoples does, and customers, particularly larger customers, may also be able to buy gas directly, and have it transported by FGT and Sebring.

The second reason that could support our award of the disputed area to Peoples is a history of delay by Sebring. We believe that this consideration is important, and it is why we have ultimately decided that our award of the disputed area to Sebring be conditioned on Sebring's performance by a date certain.

Sebring testified that Coker Fuels, as owner of the Sebring system, has intended to convert its system to natural gas since 1963. In 1986, Peoples attempted to get a franchise from the City of Sebring to bring natural gas into the City. Sebring (then Coker Fuels) objected, and Peoples did not get the franchise. Sebring (then Coker Fuels) came to the Commission staff "pre-1988" to learn what they should do to become regulated. Sebring has had an allocation of gas from FGT, and it has had its gate station in place since 1988. Sebring's customers requested natural gas service at least as long ago as January of 1991. Despite these occurrences, Sebring took no affirmative steps with this Commission to provide natural gas service to its customers until April 30, 1991. We find that the record indicates that Sebring has moved slowly in taking the steps necessary to provide natural gas to these customers.

In January, April, and May, of 1991, the developer of Lakeshore Mall and other customers in the disputed area requested Peoples to provide them with natural gas service. Peoples then surveyed the route to extend its system.

On April 30, 1991, after Peoples had received requests for natural gas service, Sebring asked this Commission to declare jurisdiction over it so that it could provide natural gas to its propane customers. A very short time later, on June 4, 1991, Sebring filed its petition to resolve the territorial dispute with Peoples. When Mr. Watson, counsel to Peoples, asked Sebring's witness whether customers would continue to buy propane gas at 80 cents or a dollar a gallon, if these customers could also get natural gas for 20 or 40 cents per therm, Sebring stated the customers would probably buy natural gas. The record shows that it appears that only after evidence of competitive threat from Peoples did Sebring move to actually supply lower cost natural gas to its customers.

We would like to ensure that Sebring will move expeditiously to provide natural gas service. We believe that if we were to make an outright award of the disputed area to Sebring, any competitive threat from Peoples would permanently go away. Throughout the record of this docket, Sebring testified it could provide natural gas service to Lakeshore Mall within four to six weeks of our vote to award the disputed area to Sebring.

The record indicates that in addition to Lakeshore Mall, the following customers have requested natural gas service within the disputed area from either Peoples or Sebring: Ho King, Inc, Dominos Pizza, Central Plaza Laundromat, Pizza Hut, Schultz Charcoal Grill, Red Lobster, T. G. Bailey's Restaurant, Quincy's Steak House, barro's Pizza, Mr. Wu's Chinese Gourmet, and Ohrt's Mobile Home Park. Lakeshore Mall, and these other customers within the disputed area, should be assured of natural gas service. These customers should not have to pay for any delay in providing service to the disputed area by buying propane gas from Coker Fuels at a higher price than natural gas.

Accordingly, we order Sebring to provide each of these customers who have requested natural gas service with natural gas service no later than March 17, 1992, which is 6 weeks from the date we voted at Agenda Conference. If Sebring does not provide each of these customers with natural gas service by midnight, March 17, 1992, it will no longer have the opportunity to serve the disputed area. If Sebring determines it cannot provide service by this date, or if it has not provided natural gas service to all customers listed above by this date, the right to serve the

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disputed area shall pass to Peoples. If Peoples is awarded the disputed area, Peoples shall reimburse Sebring for any facilities Sebring has in place within the disputed area at midnight, March 17, 1992.

Finally, we find that this docket shall remain open until a notice has been filed by Sebring Gas System stating that all customers within the disputed area, who have requested service and who are listed above, are presently receiving natural gas service. Upon receipt of this notice, the Staff of this Commission shall verify that each of the customers listed above do have natural gas service. Upon verification, this docket shall be administratively closed by Staff. However, if Sebring does not provide natural gas service to the customers within the disputed area by midnight, March 17, 1992, this matter shall be brought back for our confirmation of the award of the disputed area to Peoples.

It is, therefore,

ORDERED by the Florida Public Service Commission that Sebring Gas System, Inc. shall be awarded the service area in dispute, and as more fully described in Attachments 1 and 2 to this Order. It is further

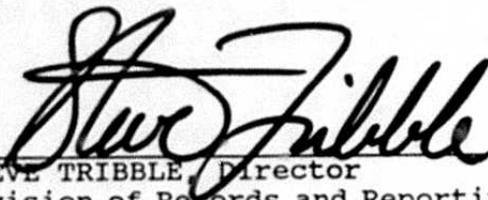
ORDERED that this award shall be conditioned upon Sebring Gas System, Inc. providing natural gas service to all customers, as described above, in the disputed area by midnight, March 17, 1992. It is further

ORDERED that if Sebring Gas System, Inc. fails to meet the deadline of midnight, March 17, 1992, the disputed service area shall be awarded to Peoples Gas System. It is further

ORDERED that this docket shall remain open until all events have been completed as described above.

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By ORDER of the Florida Public Service Commission, this
25th day of FEBRUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

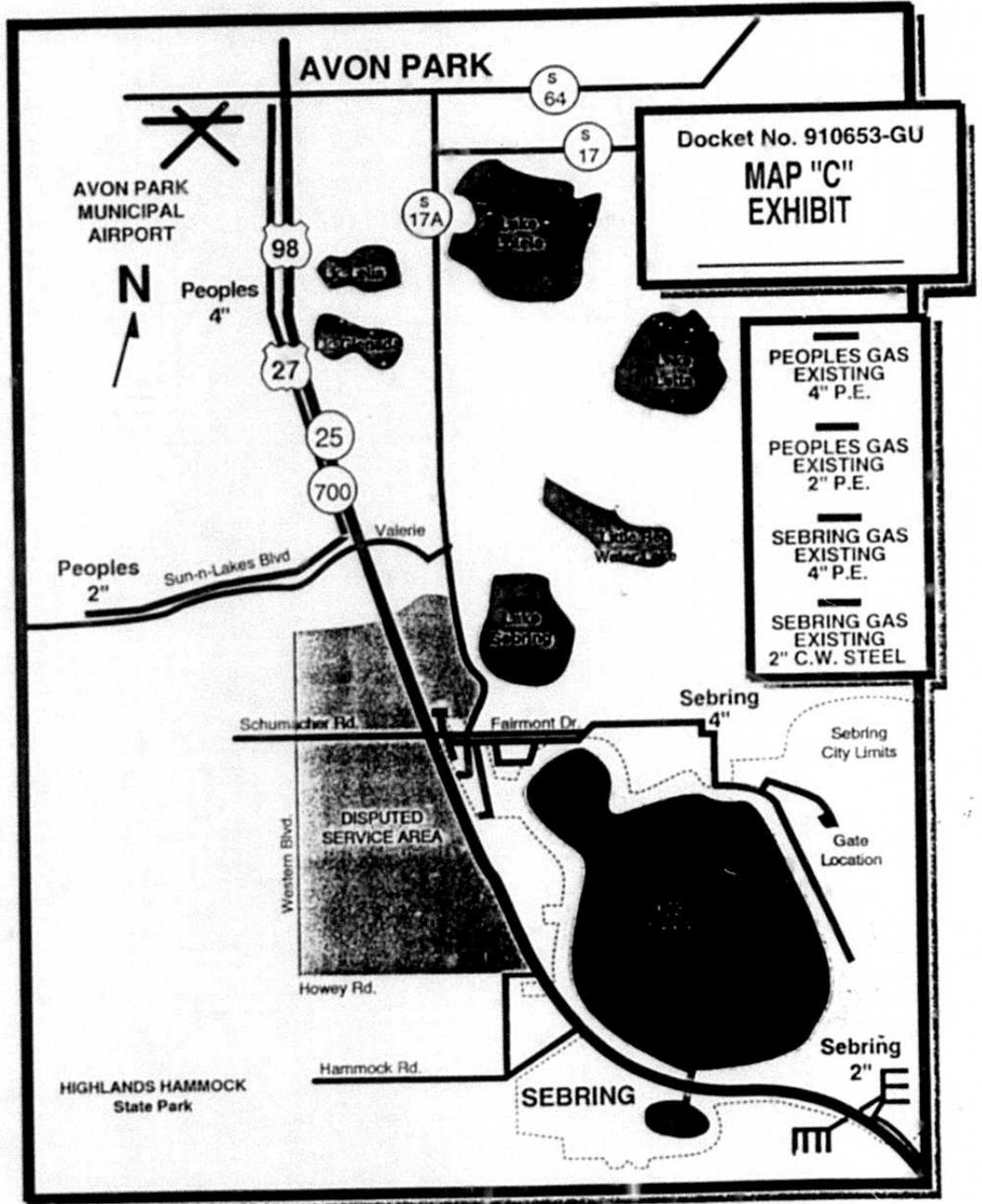
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.



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ATTACHMENT 2

LEGAL DESCRIPTION OF DISPUTED AREA

The disputed area is that area included within the following described boundaries, excluding the area located within the corporate limits of the City of Sebring. Beginning at the intersection of U.S. Highway 27 and Fairmont Drive in Highlands County, Florida, proceed east on Fairmont Drive approximately .2 miles to State Road 17A; then proceed north approximately 1.25 miles to Bramblewood Road (formerly Maxcy Road); then proceed west on Bramblewood Road approximately .5 mile to U.S. Highway 27; then proceed south on U.S. Highway 27 approximately 300 feet to the section line on the northern edge of Section 15, Township 34 South, Range 28 East; then proceed west on the section line approximately 1.25 miles to the northwest corner of said Section 15; then proceed south approximately 3 miles on the section lines along the western edges of Section 15, 22 and 27, Township 34 South, Range 28 East, to the southwest corner of Section 27, Township 34 South, Range 28 East; then proceed east approximately 2 miles on the section lines along the southern edges of Section 27 and 26, Township 34 South, Range 28 East, to U.S. Highway 27 (at Howey Road); then proceed north on U.S. Highway 27 approximately 2 miles to the point of beginning.