

1 NATURAL GAS
2 FRANCHISE AGREEMENT
3 ORDINANCE NO. 2016-77
4
5

6 AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A
7 DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS
8 AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE
9 AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE
10 CITY OF ORLANDO, FLORIDA, AND PRESCRIBING THE TERMS
11 AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE
12 EXERCISED; MAKING FINDINGS; AND PROVIDING AN
13 EFFECTIVE DATE.

14
15 WHEREAS, Peoples Gas System and the City of Orlando desire to enter into a
16 franchise agreement for a period of ten (10) years commencing from the date provided
17 herein; and

18 WHEREAS, the City Council finds that it is in the public interest of its citizens to
19 enter into a new franchise agreement with Peoples Gas System.

20 NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE
21 CITY OF ORLANDO, FLORIDA, THAT:

22 SECTION 1: DEFINITIONS

23 For the purposes of this Ordinance, the following terms shall have the meaning
24 given herein.

25 A. "Customer" shall mean any person, firm, public or private corporation, or
26 governmental agency served by the Company within the corporate limits

1 of the City.

2 B. "City" shall mean the City of Orlando, Orange County, Florida, its
3 successor and assigns.

4 C. "Company" shall mean Peoples Gas System, a division of Tampa Electric
5 Company, a Florida corporation, its successors and assigns.

6 D. "Gas" or "Natural Gas" shall mean natural gas and/or manufactured gas
7 and/or a mixture of gases which is distributed in pipes and measured by
8 meter on the Customer's premise. It shall not mean propane gas or
9 liquefied petroleum gas (commonly referred to as "bottled gas") or any
10 other fuel that is typically delivered by truck and stored in tanks.

11 E "Gross Revenues" shall mean all revenues received by the Company from
12 any Customer from the sale, transportation, distribution or delivery of Gas,
13 including related charges (e.g. customer charge), if any, but excluding
14 miscellaneous charges (e.g., turn-on/turn-off fees) not generated from the
15 sale, transportation, distribution or delivery of Gas.

16 F. "Facilities" or "equipment" shall mean pipe, pipe line, tube, main, service,
17 trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit,
18 appliance, attachment, structure or structures, and appurtenances used or
19 useful in the distribution of gas, located or to be located in, upon, along,
20 across, or under the streets or within the public rights of way.

21 G. "Franchise" or "Franchise Agreement" shall mean this agreement, as
22 passed and adopted by the City and accepted by the Company, as provided
23 in Section 18 below.

1 H. "FPSC" shall mean the Florida Public Service Commission or any
2 successor agency.

3 I. "Distribution System" shall mean any and all transmission pipe lines, main
4 pipe lines and Customer pipe lines, together with all necessary and
5 desirable appurtenances, that are situated within the corporate limits of the
6 City and are reasonably necessary for the sale, transportation, distribution
7 or delivery of Gas or Natural Gas for the public and private use of
8 Customers.

9 SECTION 2: GRANT

10 The City hereby grants to the Company the non-exclusive right, privilege, and
11 franchise to lay, erect, construct, operate and maintain in, on or under any and all of the
12 public streets, alleys, highways, waterways, bridges, easements and other public rights-
13 of-way of the City, as they now exist or may be hereafter constructed, opened, laid out or
14 extended within the present incorporated limits of the City, or in such territory as may be
15 hereafter added or annexed to, or consolidated with, the City, a Distribution System
16 subject to the terms and conditions herein contained.

17 SECTION 3: TERM

18 Except as provided in Sections 14 and 16, the Franchise hereby granted shall be
19 for a period of ten (10) years from the effective date of this ordinance; provided,
20 however, that there will be an option to renew the Franchise for one (1) ten (10) year
21 renewal term if the Company provides the City with written notice, no less than one
22 hundred and eighty (180) days prior to the expiration of the initial ten (10) year term,
23 stating that the Company wants to exercise the option to an additional ten (10) year term,

1 and in addition, the City then provides written notice, from the City's Chief
2 Administrative Officer, of acceptance of the ten (10) year renewal term prior to the
3 expiration of the initial ten (10) year term. If the Company fails to provide timely written
4 notice that Company wants to exercise the option for the additional ten (10) year term or
5 if the City does not accept the Company's request for the additional ten (10) year term,
6 then the Franchise shall expire upon the conclusion of the initial ten(10) year term.

7 SECTION 4: ASSIGNMENT

8 A. The Franchise hereby granted shall not be leased, assigned or otherwise
9 alienated or disposed of except with the prior express written consent of the City Council
10 of the City, which shall not be unreasonably withheld or unduly delayed. No assignment
11 shall be allowed without the assignee assuming the terms of the Franchise Agreement
12 with the City.

13 B. Notwithstanding the foregoing, the Company may lease, assign or
14 otherwise alienate and transfer this Franchise in connection with the lease or sale of the
15 Distribution System or upon its merger and consolidation with, or transfer to, any other
16 corporation engaged in similar business (including any affiliate or subsidiary of the
17 Company), or pledge or mortgage such Franchise in connection with the physical
18 property owned and used by it in the operation of the Distribution System for the purpose
19 of securing payment of monies borrowed by the Company without the express consent of
20 the City Council of the City.

21 SECTION 5: USE OF STREETS

22 The Distribution System shall be erected, placed, or laid in such manner as will,
23 consistent with necessity, least interfere with other public uses of said streets, alleys,

1 avenues, easements, and public rights of way, and said streets shall not be unnecessarily
2 obstructed, and before, except in an emergency situation, the Company makes any
3 excavation or disturbs the surface of any of the streets, alleys, or other public rights of
4 way, it shall make application for a permit to the appropriate City authority. The City
5 shall issue, or if applicable deny, permits within ten (10) business days of application by
6 the Company. The Company shall, with due diligence and dispatch, place such streets,
7 easements or public rights of way in as good condition and repair as before such
8 excavation or disturbance was made, and in default thereof the City may make such
9 repairs and charge the reasonable cost thereof to the Company and collect the same from
10 it.

11 To the extent consistent with Florida law, the Company hereby agrees to abide by
12 all the rules and regulations and ordinances which the City has passed or might pass in
13 the future, and further agrees to abide by any established policy which the City or its duly
14 authorized representative has passed, established, or will establish; provided, however,
15 the City shall not pass any ordinance or regulation that results in a material change in the
16 rights or obligations of the Company under the Franchise Agreement.

17 SECTION 6: MAINTENANCE

18 All such components of the Distribution System of the Company located within
19 the City shall be installed and maintained in accordance with accepted good practice and
20 in accordance with the orders, rules, and regulations of the Florida Public Service
21 Commission or other regulatory body having jurisdiction over the Company.

1 SECTION 7: LAYING OF PIPE

2 All components of the Distribution System shall be laid consistent with all
3 applicable codes, rules, regulations and laws, including, to the extent consistent with all
4 applicable codes, rules, regulations and laws, and specifications contained in City
5 permits.

6 SECTION 8: CONSTRUCTION WORK

7 The City reserves the right to permit to be laid electric conduits, water and gas
8 pipes and lines, cables, sewers, and to do and permit to be done any underground work
9 that may be deemed necessary or proper by the City or other governmental body having
10 jurisdiction in, across, along, or under any street, alley, public way, easement, place, or
11 other public rights of way. Whenever, by reason of establishing a grade or by reason of
12 changes in the grade of any street, or by reason of the widening, grading, paving, or
13 otherwise improving present or future streets, alleys, or other public rights of way, or in
14 the location or manner of construction of any water pipes, electric conduits, sewers, or
15 other underground structure, it shall be deemed necessary by the City or other
16 governmental body to alter, change, adapt, or conform any portion of the Distribution
17 System of the Company hereto, such alterations, or changes, shall be made by the
18 Company as ordered in writing by the City or other governing body, without claim for
19 reimbursement. If the City shall require the Company to adapt or conform any portion of
20 its Distribution System or in any way to alter, relocate or change its property to enable
21 any other person or entity to use said street, alley, easement, highway or public rights-of-
22 way of the City, as part of its permitting or approval process, the City shall require the
23 person or entity desiring or occasioning such alteration, relocation or change to reimburse

1 the Company for any loss, cost or expense caused by or arising out of such change,
2 alteration or relocation of any portion of the Company’s facilities. The Company further
3 agrees that it will not intentionally interfere with, change, or injure any water pipes,
4 drains, or sewers of said City unless it has received specific permission from the City or
5 its duly authorized representative.

6 SECTION 9: FRANCHISE FEE

7 Within thirty (30) days after the close of the first full billing month following the
8 effective date of this Franchise Agreement, and each month thereafter during the term of
9 this Franchise Agreement, the Company, its successors or assigns, shall pay to the City,
10 or its successors, a sum of money which is equal to six percent (6%) of the Company’s
11 Gross Revenues as defined in Section 1.E., less any adjustments for uncollectable
12 accounts, from Customers within the corporate limits of the City. The franchise fee
13 payment shall be deemed paid on time if post-marked within thirty (30) days of the close
14 of the preceding billing month.

15 SECTION 10: FRANCHISE PARITY

16 A. If, during the term of this Franchise Agreement, the City, by franchise
17 agreement or ordinance, allows other gas providers, gas consumers or gas transporters
18 (“Alternate Gas Providers”) the right, privilege or franchise to construct, maintain,
19 operate or use gas facilities in, under, upon, over or across the present or future streets,
20 alleys, bridges, easements or other public rights of way of the City, for the purpose of
21 supplying or delivering Natural Gas to customers located within the corporate limits of
22 the City or receiving such gas from a person other than the Company within such
23 corporate limits, and imposes a franchise compensation obligation or an equivalent on

1 such Alternate Gas Provider for any customer or class of customers that is less than that
2 imposed with respect to the same Customer or class of Customers under this Franchise
3 Agreement, the franchise compensation rate and/or base to which such rate is applied
4 with respect to the same class of customers shall be reduced under this Franchise
5 Agreement so that the franchise compensation paid hereunder for such Customer class is
6 no greater than the franchise compensation payable by such Alternate Gas Provider under
7 the franchise agreement or ordinance applicable to it, when compared on a dollars-per-
8 therm basis. In the event that the City determines not to impose any franchise
9 compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider,
10 the Company's obligation to pay a franchise fee under this Franchise Agreement with
11 respect to revenues derived from the provision of service by the Company to the
12 comparable class of customers served by such Alternate Gas Provider thereafter shall be
13 extinguished. The term "franchise compensation" includes the fair market value of non-
14 monetary compensation or other in-kind contributions. This Section 10.A. shall have no
15 effect if the Alternate Gas Provider is the Orlando Utilities Commission.

16 B. In the event the Company enters into a franchise agreement with another
17 Florida municipality or government entity that contains substantially similar terms and
18 conditions as this Franchise and that provides for a franchise fee calculation that would
19 provide a Franchise Fee higher than that promised hereunder, or that purports to exact a
20 franchise fee based on the volume of Gas transported, then the Company shall so notify
21 City and, at the City's option, the Franchise Fee hereunder will be adjusted so as to be
22 consistent with the franchise fee calculation extended to such Florida municipality or
23 government entity.

1 SECTION 11: ACCOUNTS AND RECORDS

2 The Company shall maintain accounting, maintenance, and construction records
3 as prescribed by the FPSC. The Company shall establish and maintain appropriate
4 accounts and records in such detail that revenues within the corporate limits of the City
5 are consistently declared separately from all other revenues, and such records shall be
6 maintained within the State of Florida, and be open at all reasonable times for inspection
7 by the duly authorized representatives of the City pursuant to an appropriate
8 confidentiality agreement. Upon request by the City, or its designated representative, the
9 Company shall make available said records within thirty (30) days to the City for the
10 determination of the accuracy of the Gross Revenues upon which the Company's
11 franchise fee is based. Said records will be made available in electronic format whenever
12 possible. Any over- or underpayment shall be paid by the appropriate party within thirty
13 (30) days. The Company shall maintain its billing records only for the period of time
14 required by the FPSC or five (5) years, whichever is longer (provided such period shall
15 be tolled by any notice of intent to audit), and any examination conducted after such
16 period shall be confined to the billing records then available.

17 No less than thirty (30) days prior to the effective date of a change in the City
18 limits, whether by addition, annexation, or consolidation, the City shall deliver to the
19 Company written notice of such occurrence, and include in such notice a description of
20 the affected territory.

21 SECTION 12: INSURANCE

22 During the term of this Franchise, the Company shall file with the City Clerk and
23 shall keep in full force and effect at all times during the term hereof, insurance

1 certificates evidencing a general liability insurance policy or policies or evidence of self-
2 insurance within the corporate limits of the City, as they currently exist or may exist in
3 the future. Each such policy shall be in the minimum sum of \$5,000,000.00, combined
4 single limit per occurrence, for bodily injury, death and property damage, and said sum
5 shall remain in full force and shall be undiminished during the effective period of this
6 Ordinance. The coverage requirements set forth in this Section 12 may be satisfied, in
7 whole or in part, with self-insurance.

8 Company shall notify the clerk of the City, in writing, at least thirty (30) days
9 before any material alteration, modification, or cancellation of such policy is to become
10 effective. Every such insurance policy and certificate of insurance shall provide and
11 indicate that the City is an additional insured as to liabilities arising out of the Franchise
12 Agreement.

13 SECTION 13: INDEMNIFICATION

14 In consideration of the permissions granted to the Company by this Franchise
15 Agreement, the Company hereby agrees to indemnify and hold harmless the City, its
16 officers, agents and employees from and against claims, suits, actions, and causes of
17 action, caused by or arising out of and to the extent of the Company's negligent operation
18 of the Distribution System within the City during the term of this franchise and resulting
19 in personal injury, loss of life or damage to property sustained by any person or entity,
20 through or as a result of the doing of any work herein authorized or the failure to do work
21 herein required, and including all reasonable costs, attorney's fees, expenses and
22 liabilities incurred by the City in connection with any such claim, suit, action or cause of
23 action including the investigation thereof, and the defense of any action or proceeding

1 brought thereon and any order, judgment or decree which may be entered in any such
2 action or proceeding or as a result thereof, except that neither the Company nor any of its
3 employees, agents, contractor, licensees, or sublessees shall be liable under this section
4 for any claims, suits, actions, damages, expenditures, including attorney's fees, or causes
5 of action arising out of injury, loss of life or damage to persons or property caused by or
6 arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the
7 City, its officers, agents, or employees. The provisions of this section shall survive the
8 expiration or earlier termination of this Franchise Agreement. Notwithstanding any
9 provision herein to the contrary, the Company's liability under this Agreement shall be
10 limited to the assets and business of Peoples Gas System, a division of Tampa Electric
11 Company, as if Peoples were incorporated separate and apart from Tampa Electric
12 Company.

13 SECTION 14: TERMINATION BY CITY

14 Violation by the Company of any of the covenants, terms, and conditions hereof,
15 or default by the Company in observing or carrying into effect any of said covenants,
16 terms and conditions, shall authorize and empower the City to declare a termination of
17 this Franchise Agreement; provided, however, that before such action by the City shall
18 become operative and effective, the Company shall have been served by the City with a
19 written notice setting forth all matters pertinent to such violation or default, and
20 describing the action of the City Council with respect thereto, and the Company shall
21 have had a period of thirty (30) days after service of such notice or, in the event such
22 cure reasonably requires a period of more than thirty (30) days, to present a plan,
23 satisfactory to the City, acting reasonably, to effect such cure; and provided further that

1 any violation or default resulting from a strike, a lockout, an act of God, or any other
2 cause beyond the control of the Company shall not constitute grounds for termination.

3 SECTION 15: CHANGES IN PROVISIONS HEREOF

4 Changes in the terms and conditions hereof may be made by written agreement between
5 the City and the Company.

6 SECTION 16: SEVERABILITY; CHANGE IN LAW

7 A. If any section, part of a section, paragraph, sentence, or clause of this
8 Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such
9 decision shall not affect the validity of any other portion hereof, but shall be restricted
10 and limited in its operation and effect to that specific portion hereof involved in the
11 controversy in which such decision shall have been rendered; provided, however, that
12 should elimination of the specific portion of the Franchise Agreement adjudged to be
13 invalid results in significant adverse consequences to a party, then that party may
14 terminate this Franchise Agreement by providing ninety (90) days written notice to the
15 other party.

16 B. Upon the issuance by a court of competent jurisdiction of an order, ruling,
17 or decision, or the enactment or adoption by the Florida Legislature, the City or any other
18 governmental or regulatory body, of a law, rule, regulation or ordinance, that materially
19 diminishes a municipality's ability to exact franchise fees from a utility, or that
20 effectively does away with the ability of a municipality to grant a franchise altogether,
21 then the Company or City may terminate this Franchise Agreement by providing ninety
22 (90) days written notice to the other party.

23

1 SECTION 17: GOVERNING LAW, VENUE AND JURISDICTION

2 This franchise shall be governed by the laws of the State of Florida and applicable
3 federal law. Venue and jurisdiction for any action concerning this franchise or this
4 ordinance shall be in the Circuit Court in and for Orange County, Florida.

5 SECTION 18: EFFECTIVE DATE

6 This Franchise Agreement shall become effective upon its acceptance by the
7 Company, which acceptance must be evidenced in writing within thirty (30) days of the
8 City’s passage and adoption hereof.

9 ADVERTISED _____, 2016.

10 READ FIRST TIME _____, 2016.

11 READ SECOND TIME AND ADOPTED _____, 2016.

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CITY OF ORLANDO, FLORIDA

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MAYOR/MAYOR PRO TEM

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18 ATTEST:

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Amy T. Iennaco, City Clerk

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Approved as to form and legality
for the use and reliance of the
City of Orlando, Florida, only.

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_____, 2016.

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Assistant City Attorney
Orlando, Florida.

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ACCEPTANCE BY FRANCHISEE

The foregoing Ordinance and the Franchise provided for therein, and all the terms and conditions thereof, are hereby accepted this _____ day of _____, 2016

PEOPLES GAS SYSTEM, A DIVISION OF
TAMPA ELECTRIC COMPANY

By: _____

Print Name: _____

Title: _____