

Wayne L. Schiefelbein
Attorney at Law

P.O. Box 13688 • Tallahassee, FL 32317
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RECORDS AND
REPORTING

August 19, 1999

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

991168-GU

HAND-DELIVERY

Re: Petition by the Florida Division of Chesapeake Utilities Corporation for
Approval of CTS Gas Transportation Service Agreement with Citrusuco
North America, Inc.

Dear Ms. Bayo:

Enclosed on behalf of the Florida Division of Chesapeake Utilities Corporation for
filing are an original and fifteen (15) copies of its Petition for Approval of CTS
Gas Transportation Service Agreement with Citrusuco North America, Inc.

Please open a docket for consideration of the Petition.

Please acknowledge your receipt of this filing by stamping the enclosed duplicate
copy of this transmittal letter.

Thank you for your assistance.

Sincerely,



Wayne L. Schiefelbein

cc: Thomas A. Geoffroy

RECEIVED & FILED


FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09920 AUG 19 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Florida Division)
of Chesapeake Utilities Corporation)
for approval of CTS Gas)
Transportation Service Agreement)
with Citrosuco North America, Inc.)

PETITION FOR APPROVAL OF CTS GAS
TRANSPORTATION SERVICE AGREEMENT
WITH CITROSUCO NORTH AMERICA, INC.

The Florida Division of Chesapeake Utilities Corporation ("Florida Division"), by and through the undersigned counsel, and pursuant to Section 366.06, Florida Statutes, petitions the Commission for approval of a CTS Gas Transportation Service Agreement with Citrosuco North America, Inc. (Citrosuco), and in support thereof states as follows:

1. The name, address, and telephone number of the petitioner are:

Chesapeake Utilities Corporation, Florida Division
1015 6th Street N. W.
P. O. Box 960
Winter Haven, FL 33882
(941) 293-2125

2. The name, address, and telephone and fax numbers of the person authorized to receive notices and communications with respect to this petition are:

Wayne L. Schiefelbein
P. O. Box 13688
Tallahassee, FL 32317
(850) 385-8598 (voice)
(850) 531-0011 (fax)

3. The Florida Division is a natural gas distribution company subject to the regulatory jurisdiction of this Commission as prescribed in Chapter 366, Florida Statutes. Its substantial interests will be affected by the Commission's disposition of this Petition in that such disposition will

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

determine whether the Florida Division will be permitted to provide gas transportation service on terms agreeable to it and Citrusuco.

4. Citrusuco owns and operates a citrus processing plant in Lake Wales, Florida. Its facility is located within the Florida Division's existing territory, as described in the Florida Division's Commission-approved tariff.

5. Citrusuco is constructing an approximately eight-inch (8") steel natural gas pipeline ("the Pipeline") extending from the Florida Division's Lake Wales Gate Station approximately eleven (11) miles to the terminus of the pipeline at the point of interconnection with Citrusuco's meter at the front entrance to its citrus processing plant, for the purpose of receiving natural gas purchased by Citrusuco from various gas suppliers and delivered for its account at the Florida Division's Lake Wales Gate Station. The Pipeline is expected to be in service in October, 1999.

6. Citrusuco and the Florida Division have entered into a Pipeline Lease Agreement under which the Florida Division, as the lessee of the Pipeline, will provide natural gas service to Citrusuco, the lessor. Under the lease agreement, the Florida Division also has the right to connect mains or service lines to the Pipeline for the purpose of providing gas service to existing and potential customers of the Florida Division in the vicinity of the route of the Pipeline, provided that no exercise of such right by the Florida Division would cause any interruption in Citrusuco's ability to use the Pipeline for receipt of its citrus processing facility's full requirements for natural gas.

7. By Order No. PSC-99-1592-DS-GU, issued on August 16, 1999, the Commission granted the joint petition of the Florida Division and Citrusuco for a declaratory statement, that Citrusuco would not be subject to Commission jurisdiction as a public utility by virtue of its construction and lease of the Pipeline.

8. The Florida Division and Citrusuco have entered into a CTS Gas Transportation Service Agreement, subject to Commission approval. A copy of the agreement is appended hereto as Exhibit 1. The Florida Division would thereunder receive certain quantities of natural gas at its Lake Wales Gate Station for Citrusuco's account, transport such quantities on the Pipeline, and redeliver same to Citrusuco's citrus processing facility in accordance with the terms and conditions of the Florida Division's Commission-approved Contract Transportation Service (CTS) Rate Schedule.

9. The Florida Division's CTS Rate Schedule in pertinent part provides:

Notwithstanding the other provisions of this Rate Schedule, the Company may enter into a contract with an interruptible customer to provide service under terms other than those set forth herein; provided that the charges prescribed in any such contract shall be established with the objective of enabling the Company to recover at a minimum the fully allocated cost of serving that customer. Any such contract shall be subject to approval by the Florida Public Service Commission, and the Commission shall have continuing jurisdiction over the rates charged therein.

10. The CTS Gas Transportation Service Agreement has an initial term of ten (10) years, with Citrusuco having the unilateral right to extend the term for one or more periods of five (5) years, or such other period to which the Florida Division may agree. This parallels the Pipeline Lease agreement, which also has an initial ten (10)-year term, with the Florida Division holding the unilateral right to extend the lease term for one or more periods of five (5) years, or such other period to which Citrusuco may agree.

11. During the initial ten (10)-year term of the CTS Gas Transportation Service Agreement, Citrusuco would pay to the Florida Division an annual transportation charge of \$147,000.00. During any secondary term of the Agreement, the charge shall be adjusted by the lesser of three (3%) percent per year or the change in the Producer Price Index, from the base year of 1999 through the year in which such secondary term commences. Consistent with the Florida Division's

CTS Rate Schedule, the CTS Gas Transportation Service Agreement recognizes that the annual transportation charge established thereunder may change from time to time due to changes in the Florida Division's operations, and that the aforesaid or otherwise applicable rate schedules may be revised, amended or superceded from time to time subject to the approval of the Commission.

12. Consistent with the Florida Division's CTS Rate Schedule, the aforesaid annual transportation charge would enable the Florida Division to more than recover the fully allocated cost of serving Citrusuco. This is demonstrated by the Cost of Service Study appended hereto as Exhibit 2. The Agreement clearly generates revenues in excess of the cost to serve, thereby providing benefits to the general body of ratepayers. The Florida Division believes that additional benefits to the general body of ratepayers would follow the anticipated addition of new customers in the vicinity of the route of the pipeline, at a low marginal cost.

13. The Florida Division is entitled to reasonable compensation for the service rendered, and the Commission has the authority to approve rates to provide such compensation, pursuant to Chapter 366, Florida Statutes.

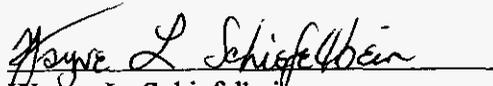
14. This petition is filed pursuant to the provisions of the Florida Division's CTS Rate Schedule. Accordingly, the Florida Division requests that Commission approval be made effective as of the date of the vote by the Commission, and that in the event a protest to the Order granting the instant petition is timely filed, that the authority to collect the rate remain in effect, subject to refund, pending resolution of the protest.

15. The Florida Division is aware of no disputed issues of material fact.

WHEREFORE, the Florida Division of Chesapeake Utilities Corporation requests Commission approval of the CTS Gas Transportation Services Agreement with Citrusuco North America, Inc., as soon as is practical.

DATED this 19th day of August, 1999.

Respectfully submitted,



Wayne L. Schiefelbein

P. O. Box 13688

Tallahassee, Florida 32317

(850) 385-8598

Attorney for the Florida Division
Chesapeake Utilities Corporation

EXHIBIT 1

TRANSPORTATION SERVICE AGREEMENT

CTS GAS TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT, entered into this 8th day of March, 1999, by and between **Chesapeake Utilities Corporation**, a Delaware corporation (doing business in Florida as Central Florida Gas Company and hereinafter referred to as "CUC"), and **Citrosuco North America, Inc.**, a Delaware corporation ("Shipper").

W I T N E S S E T H:

WHEREAS, CUC operates facilities for the distribution of natural gas in the State of Florida;
and

WHEREAS, Shipper has requested that CUC receive certain quantities of gas for Shipper's account, transport such quantities on CUC's distribution system, and redeliver same to Shipper's Facility located at 5937 Highway 60 East, Lake Wales, Polk County, Florida, and CUC agrees to provide such service in accordance with the terms hereof;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Unless another definition is expressly stated the following terms and abbreviations, when used in this Agreement and in all exhibits, recitals, and appendices contained in or attached to this Agreement are intended to and will mean as follows:

- 1.1 "Btu" means the amount of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 p.s.i.a.
- 1.2 "Day" means a period of 24 consecutive hours beginning and ending at 10:00 A.M. Eastern clock time, or as defined in Florida Gas Transmission Company's ("FGT's") FERC Tariff, as the same may be amended from time to time.
- 1.3 "°F." means degree(s) Fahrenheit.
- 1.4 "Delivery Point" means the point at the connection of the facilities of an upstream party and a downstream party's facility at which the gas leaves the outlet side of the measuring equipment of the upstream party and enters the downstream party's facility.

- 1.5 "Gas" means natural gas which is in conformance with the quality specifications of the Transporter.
- 1.6 "Lease" means that certain Pipeline Lease Agreement between Shipper and CUC dated as of even date herewith.
- 1.7 "Maximum Daily Transportation Quantity" or "MDTQ" means the largest quantity of gas, expressed in MMBtu, that CUC is obligated to transport and make available to a Shipper under any applicable Service Agreement or Service Agreements for Firm Transportation Service on any one day.
- 1.8 "Month" means a period beginning at 10:00 A.M. Eastern clock time on the first day of a calendar month and ending at 10:00 A.M. Eastern clock time on the first day of the next succeeding calendar month, or as defined in FGT's FERC Tariff, as the same may be amended from time to time.
- 1.9 "MMBtu" means 1,000,000 Btu's or ten (10) therms.
- 1.10 "p.s.i.a." means pounds per square inch absolute.
- 1.11 "Receipt Point" means the point at which gas is received by Transporter into Transporter's system from an upstream service or facility.
- 1.12 "Service Commencement Date" means the date on which title to the Pipeline is conveyed by Bosek, Gibson and Associates, Inc. ("BGA") to Shipper pursuant to Paragraph 26.3 of the General Conditions attached as Exhibit A to the Contract between BGA and Lessor, dated as of even date herewith and providing for BGA's construction of the Pipeline.
- 1.13 "Shipper" means Citrosuco North America, Inc., a Delaware corporation, and its successors and assigns.
- 1.14 "Therm" means a unit of heat equal to 100,000 Btu's.
- 1.15 "Transporter" means Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.
- 1.16 "Transporter's Delivery Point" means the delivery point on Transporter's system known as CFG-Lake Wales, DRN 3197.

ARTICLE II
POINTS OF DELIVERY AND REDELIVERY

- 2.1 Shipper shall cause the Transporter to deliver to CUC at Transporter's Delivery Point the quantities of gas to be transported by CUC hereunder. CUC shall have no responsibility for

transportation of Shipper's gas prior to receipt of such gas from the Transporter at Transporter's Delivery Point. CUC shall deliver such quantities of gas received from the Transporter at Transporter's Delivery Point for Shipper's account to the meter at Shipper's Facility located at 5937 Highway 60 East, Lake Wales, Polk County, Florida.

ARTICLE III **QUANTITIES**

- 3.1 Subject to the terms and conditions of this Agreement, CUC agrees to receive from the Transporter, at Transporter's Delivery Point, on a daily basis, a quantity of gas up to Shipper's Maximum Daily Transportation Quantity ("MDTQ"), and to transport and deliver equivalent quantities to Shipper at the meter at Shipper's Facility. Shipper's MDTQ under this Agreement shall be the quantity of gas per day as shown in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof.
- 3.2 CUC agrees to increase the MDTQ under this Agreement upon request of Shipper provided CUC determines in its reasonable judgment that the increase requested will not have an adverse effect on the operation of CUC's distribution system. If an increase in the MDTQ has been requested by Shipper and CUC determines that the increase requested will require upgrades to the portion of its distribution system used to provide service to Shipper hereunder, CUC agrees to increase the MDTQ as requested by Shipper if Shipper agrees to contribute financially to the cost of such improvements (a) in the manner then provided in CUC's Natural Gas Tariff on file with the FPSC, or (b) in such other manner as may be acceptable to CUC.

ARTICLE IV **SCHEDULING AND BALANCING**

- 4.1 Shipper shall be responsible for nominating quantities of gas to be delivered by the Transporter to Transporter's Delivery Point and by CUC to the meter at Shipper's Facility. Shipper shall promptly provide notice to CUC, via facsimile transmission, of all such nominations. Imbalances between quantities (i) scheduled for delivery by the Transporter to CUC and/or delivery by CUC to the meter at Shipper's Facility, and (ii) actually delivered by the Transporter and/or CUC hereunder, shall be resolved in accordance with the applicable provisions of CUC's Florida Public Service Commission ("FPSC") Natural Gas Tariff, as such provisions may be amended from time to time, subject to approval by the FPSC.
- 4.2 The Parties hereto recognize the desirability of maintaining a uniform rate of flow of gas to the meter at Shipper's Facility over each 24-hour period and each day throughout each month. Therefore, CUC agrees to receive from the Transporter for Shipper's account at Transporter's Delivery Point and deliver to the meter at Shipper's Facility up to the MDTQ as described in Exhibit A attached hereto, subject to any restrictions imposed by the Transporter and to the provisions of Articles V and IX of this Agreement, and Shipper agrees to use commercially reasonable efforts to regulate its deliveries from CUC's gas distribution

system at a daily rate of flow not to exceed the applicable MDTQ for the month in question, subject to any additional restrictions imposed by the Transporter or by CUC pursuant to Articles V and VI of this Agreement.

- 4.3 CUC shall make available to Shipper, at Shipper's cost, electronic information with respect to consumption of gas at Shipper's facility as well as all other electronic information CUC obtains from such electronic equipment as may be installed by CUC at Shipper's facility.

ARTICLE V CURTAILMENT

- 5.1 This Agreement shall be and remain in all respects subject to the applicable provisions of the General Rules and Regulations of CUC's Natural Gas Tariff, as they specifically apply to curtailment, and as approved by the FPSC or its appropriate successor agency or authority, all of which are made a part hereof by this reference.

ARTICLE VI TITLE, CONTROL AND INDEMNIFICATION

- 6.1 Shipper warrants that it will have good and merchantable title to all gas delivered by the Transporter to CUC for Shipper's account at Transporter's Delivery Point, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever. Shipper will indemnify CUC and save it harmless from all suits, actions, debts, accounts, damages, costs including reasonable attorneys' fees, losses, and expenses arising from or out of the adverse claim of any and all persons to said gas. CUC will indemnify Shipper and save it harmless from all suits, actions, debts, accounts, damages, costs including reasonable attorneys' fees, losses, and expenses arising from or out of the adverse claim of any and all persons to gas delivered for the account of Shipper to CUC for transportation hereunder which arise from or relate to CUC's transportation of said gas on CUC's distribution system. In the event any adverse claim in respect to said gas is asserted, or Shipper breaches its warranty herein, CUC shall not be required to perform its obligations to transport and deliver gas to the meter at Shipper's Facility or, subject to receipt of any necessary regulatory obligation, to continue service hereunder for Shipper, until such claim has been finally determined, provided, however, that Shipper may receive service if (i) in the case of an adverse claim, Shipper furnishes a bond to CUC, conditioned for the protection of CUC with respect to such claim; or (ii) in the case of a breach of warranty, Shipper furnishes evidence, satisfactory to CUC, of Shipper's title to said gas.
- 6.2 CUC shall be deemed to be in control and possession of the gas to be transported by it upon delivery of such gas by the Transporter to CUC for Shipper's account at Transporter's Delivery Point and until it shall have been delivered to Shipper at the meter at Shipper's Facility, and Shipper shall be deemed to be in control and possession of such gas prior to such delivery to CUC and after such delivery by CUC to Shipper. Each party, while deemed to be in control and possession of such gas, shall be responsible for, and shall indemnify and hold

the other harmless from any and all claims, actions, suits, including reasonable attorneys' fees, arising out of or relating in any way to custody and control of such gas.

ARTICLE VII
RATE

- 7.1 During the Initial Term of this Agreement (as defined in Article VIII), CUC shall perform the transportation services provided for in this Agreement in accordance with CUC's approved CTS Transportation Service Rate Schedule at a transportation charge of \$147,000.00 per year (fractional portions of a year in proportion), said amount to be paid by Shipper to CUC within twenty (20) days following the Service Commencement Date, and a like amount to be paid by Shipper to CUC within twenty (20) days following each anniversary of the Service Commencement Date during the term of this Agreement. The transportation charge to be paid to CUC by Shipper during any Secondary Term (as defined in Article VIII) for which the term of this Agreement may be extended shall be \$147,000.00 per year, such amount to be adjusted by the lesser of three percent (3%) per year or the change in the Producer Price Index, from the base year of 1999 through the year in which such Secondary Term commences (fractional portions of a year in proportion), said amount to be paid by Shipper to CUC within twenty (20) days following each anniversary of the Service Commencement Date during any Secondary Term of this Agreement.
- 7.2 CUC and Shipper recognize that (i) the CTS Transportation Service Rate Schedule may change from time to time due to changes in CUC's operations and (ii) that the aforesaid or otherwise applicable rate schedules may be revised, amended or superseded from time to time subject to the approval of the FPSC. CUC and Shipper agree that in any such case, the newly applicable transportation rate schedule or the transportation rate schedule that supersedes any applicable transportation rate schedule or the revised or amended transportation rate schedule, as the case may be, shall apply to this Agreement.
- 7.3 Nothing contained in this Agreement shall prevent CUC from proposing to, and filing with, the FPSC: (i) changes and revisions to any effective rate schedule, (ii) superseding rate schedules, or (iii) any other modifications to its tariff for the purpose of changing the rates, charges and other provisions applicable to the service provided under this Agreement. Nothing contained in this Agreement shall prevent Shipper from opposing any changes, revisions or modifications contained in any proposal or filing made by CUC to or with the FPSC that affect the charges or other provisions applicable to service provided under this Agreement, or from pursuing any other available legal remedy with respect to such changes, revisions or modifications.
- 7.4 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase any present tax or levy any additional tax (excluding, in either case, any state or federal income tax), relating to the service provided by CUC under this Agreement, any such additional tax required by law to be paid by CUC

shall, in CUC's discretion, insofar as such discretion is provided for under applicable law, be either be separately stated on the total amount of the bill or computed on a cents per therm basis and added to the then effective rate for CUC's services hereunder. If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should decrease or eliminate any tax (excluding, in either case, any state or federal income tax) relating to the service provided by CUC under this Agreement, the reduction in such tax required to be paid by CUC shall, in CUC's discretion, insofar as such discretion is provided for under applicable law, be either be separately stated as a deduction to the total amount of the bill or computed on a cents per therm basis and subtracted from the then effective rate hereunder.

ARTICLE VIII **TERM**

- 8.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon the date of its execution by both parties. The term of this Agreement shall commence on the Service Commencement Date and shall continue in full force and effect until the beginning of the day commencing on October 1, 2009 (the "Initial Term"). Thereafter, Shipper shall have the unilateral right to extend the term of this Agreement for one or more periods of five (5) years, or such other period as to which CUC may agree (any such period being hereinafter referred to as a "Secondary Term"), by giving CUC written notice of the exercise of such right not less than ninety (90) days prior to the expiration of the Initial Term (or any Secondary Term for which this Agreement has been previously extended).
- 8.2 Notwithstanding the provisions of Section 8.1, the provisions and the parties' performance of this Agreement are subject to the regulatory authority of the FPSC, and appropriate approval by the FPSC of the provisions of this Agreement is a condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until FPSC approval thereof shall have been obtained, provided, however, that CUC shall exercise its best efforts to seek and obtain such approval so that the services contemplated by this Agreement may commence on or before October 1, 1999.

ARTICLE IX **CUC'S TARIFF PROVISIONS**

CUC's applicable Rate Schedule provisions and applicable Subsections of the General Rules and Regulations of CUC's Natural Gas Tariff approved with the FPSC, including any amendments thereto approved by the FPSC during the term of this Agreement, are hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between said provisions of CUC's FPSC Tariff and specific provisions of this Agreement, the latter shall prevail in the absence of an FPSC order to the contrary.

ARTICLE X
DISPUTE RESOLUTION

- 10.1 Except as provided in Section 10.2 below, prior to initiating arbitration to resolve a dispute under this Agreement, the parties agree to submit any and all disputes to pre-arbitration mediation under the Florida Rules for Certified and Court Appointed Mediators and Florida Rules of Civil Procedure 1.700 through 1.730 and 1.750, excluding subsection (b), together with the rules of the American Arbitration Association or the Foundation for Dispute Resolution. Accordingly, the parties agree to strictly follow said rules and abide by any agreement entered into as a result of such mediation. Good faith compliance with this section shall be considered a condition precedent to the right to arbitration under this Agreement. This section shall be deemed to be a material inducement to each party's entering into this Agreement.
- 10.2 Subject to Section 10.1, any dispute relating to or arising under this Agreement shall be decided by arbitration conducted in accordance with the arbitration rules and regulations (latest edition) established by the American Arbitration Association ("AAA"), by a single arbitrator appointed by the parties or, failing agreement as to such appointment within thirty (30) days of a party's proposal of an arbitrator, by an arbitrator appointed by the AAA. The physical location of the arbitration shall be in the State of Florida. The decision of such arbitrator shall be final and binding on the parties, who will pay the cost of the arbitrator as he or she directs.

ARTICLE XI
FORCE MAJEURE

- 11.1 In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that the obligations of such party, so far as they are affected by such force majeure, shall be suspended during the continuation of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided, however, that no party hereto shall be required against its will to adjust any labor dispute. It is agreed that such party shall give notice and full particulars of such force majeure event in writing, telecopied to the other party as soon as reasonably possible after the occurrence of such event.
- 11.2 The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes and hurricane warnings, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, curtailment, interruption or other unavailability of firm transportation, and any other causes, whether of the kind herein enumerated or otherwise, not

within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies which are required to enable such party to fulfill its obligations hereunder.

ARTICLE XII
MISCELLANEOUS PROVISIONS

- 12.1 **Notices and other communications.** Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

CUC:

Chesapeake Utilities Corporation
Florida Division
P. O. Box 960
Winter Haven, Florida 33882-0960
Attention: Transportation and Exchange
Coordinator
Telephone: (941) 293-1053
Facsimile: (941) 294-3895

Shipper:

Citrosuco North America, Inc.
P. O. Box 3950
Lake Wales, Florida 33859-3950
Attention: Elliott Seabrook
Telephone: (941) 696-7400
Facsimile: (941) 696-1303

- 12.2 **Headings.** All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.
- 12.3 **Entire Agreement.** This Agreement, the Master Agreement between the parties of even date herewith, and the Pipeline Lease Agreement between the parties of even date herewith, including the exhibit attached hereto, set forth the full and complete understanding of the parties as of the date of their execution by both parties, and supersede any and all prior negotiations, agreements and understandings with respect to the subject matter hereof and thereof. No party shall be bound by any other obligations, conditions or representations with respect to such subject matter.
- 12.4 **Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to section 12.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with section 12.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments which are

necessary to comply with the requirements of, or are otherwise approved by, the FPSC or its successor agency or authority.

- 12.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.
- 12.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.7 Legal Fees. In the event of litigation between the parties hereto arising out of or in connection with this Agreement, then the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.
- 12.8 Independent Parties. CUC and Shipper shall perform hereunder as independent parties and neither CUC or Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.
- 12.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which shall not be unreasonably withheld) and unless the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring party, and upon such assignment or transfer and assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and assumption of duties and obligations.
- 12.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of gas hereunder. CUC and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. CUC and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party will proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any such law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting

the validity of any such law, order, directive, rule or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the FPSC over this Agreement or any part thereof. In the event of any such contest, and unless otherwise prohibited from doing so under this Section 12.10, CUC shall continue to transport and Shipper shall continue to take gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance is precluded.

- 12.11 Law Governing Agreement; Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.
- 12.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates stated below.

CUC:

SHIPPER:

CHESAPEAKE UTILITIES CORPORATION

CITROSUCO NORTH AMERICA, INC.

By: *Stephen C. Thompson*

By: *J. Elliott Seabrook*

Name: Stephen C. Thompson

Name: J. ELLIOTT SEABROOK

Title: Vice President

Title: PRESIDENT

Date: March 8, 1999

Date: March 8, 1999

**EXHIBIT A
TO
CTS GAS TRANSPORTATION SERVICE AGREEMENT
BETWEEN
CHESAPEAKE UTILITIES CORPORATION
AND
CITROSUCO NORTH AMERICA, INC.**

Transporter's Delivery Point

Gas to be delivered to Shipper's Facility shall be received by CUC at the interconnect between Florida Gas Transmission Company ("FGT") and CUC known as FGT's DRN 3197:

<u>Period</u>	<u>MDTQ (MMBtu)</u>
January	6,500
February	6,500
March	6,500
April	6,500
May	6,500
June	6,500
July	2,000
August	2,000
September	2,000
October	6,500
November	6,500
December	6,500

CUC:

SHIPPER:

CHESAPEAKE UTILITIES CORPORATION

CITROSUCO NORTH AMERICA, INC.

By: 

By: 

Name: Stephen C. Thompson

Name: J. ELLIOTT SEABROOK

Title: Vice President

Title: PRESIDENT

Date: March 8, 1999

Date: March 8, 1999

EXHIBIT 2

COST OF SERVICE STUDY

**COST OF SERVICE STUDY
CITROSUCO**

CHESAPEAKE UTILITIES CORPORATION
FLORIDA DIVISION

ESTIMATED RATE BASE AND RETURN

	<u>Description</u>	<u>Amount</u>
1	Cost of Plant: Gross investment in plant	\$65,000
2	Less CIAC	\$0
		<hr/>
3	Net Plant	\$65,000
4	Working Capital	\$0
5	Accumulated Deferred	
6	Income Taxes	\$0
7	Deferred Investment Tax Credit	<hr/> \$0
8	Rate Base	<hr/> <u>\$65,000</u>
9	Long Term Debt @ 0.00%	0
10	Common Equity @ 0.00%	<hr/> 0
11	Total Return @ 8.58%	<hr/> <u>\$5,577</u>

**COST OF SERVICE STUDY
CITROSUCO**CHESAPEAKE UTILITIES CORPORATION
FLORIDA DIVISIONESTIMATED INCOME TAXES

<u>Description</u>	<u>Total</u>
1 Rate Base	<u>\$65,000</u>
2 Return On Rate Base (Line 1 x Rate of Return)	\$5,577
3 Less: Interest on Debt	<u>(\$1,905)</u>
4 Net Income after Taxes	\$3,673
5 Divide by 1- Tax Rate	<u>0.6237</u>
6 Taxable Income	<u>\$5,888</u>
7 Income Taxes @ 37.63%	<u>\$2,216</u>

**COST OF SERVICE STUDY
CITROSUCO**
CHESAPEAKE UTILITIES CORPORATION
FLORIDA DIVISION

COST OF SERVICE

<u>Cost of Service</u>	<u>Amount</u>
1 Operation & Maintenance	\$ 11,844
2 Depreciation	3,158
3 Insurance	5,000
4 Taxes - Other Than Income 1/	1,704
5 Lease Expense	100,000
6 Income Taxes	2,216
7 Return @ 8.58% /2	<u>5,577</u>
8 Total Operating Costs	<u>\$ 129,498</u>

9 NOTES:

10 1/ Taxes Other Than Income - Property and Revenue Related

11 1998 Property Tax Expense	<u>\$351,538</u>	Revenue Related Taxes	0.500%
12 13 month average gross plant	<u>\$23,666,456</u>	Projected Revenues	<u>\$147,000</u>
13		Revenue Related Taxes	<u>\$735</u>
14 Average Tax Rate	\$0.0149		
15			
16 x Gross Plant	\$65,000		
17			
18 Property Tax Expense	<u>\$969</u>	Total revenue related taxes	<u>\$1,704</u>

19 2/ 8.58% Return is the Company's achieved rate of return from 1998 surveillance report as filed with the FPSC.

**COST OF SERVICE STUDY
CITROSUCO**

CHESAPEAKE UTILITIES CORPORATION
FLORIDA DIVISION

ESTIMATED O&M EXPENSES

	<u>Description</u>	<u>Amount</u>
1	1. Cathodic Protection Testing - 8 hours/year @ \$22.42/hr	\$179
2	2. Leak Testing - 4 hours/year @ \$16.71/hr plus \$25 Materials	\$92
3	3. Pipeline Marker Replacements - 5 markers/yr @ \$12 each + 5 hours/year	\$172
4	@ \$22.42/hr	
5	4. Repaint Station every 3 years - 8 hours/yr @ \$21.62/hr plus \$70 materials	\$243
6	5. Maintenance and calibration of EFM equipment - 50 hours/yr @ \$28.74/hr plus	\$1,937
7	\$500 materials	
8	6. Billing & Customer Accounting - 1 hour @ \$25.93/hr	\$26
9	7. Percentage of time allocated from Management and	\$3,416
10	Marketing personnel - 5 hrs/month @ \$56.94/hr	
11	8. Meter Test every 5 years and Repair - 6 hours/yr @ \$28.74/hr plus \$500	\$672
12	materials	
13	9. Meter Parts	\$100
14	10. Annual Regulator Testing and Repair - 12 hours/yr @ \$28.74/yr plus \$200	\$545
15	materials	
16	11. Telemetry Monitoring and T&E Functions - 4 hours @ \$25.93/hr	\$104
17	12. Annual Odorant Expenses	\$2,500
18	13. Railroad Crossings	\$1,000
19	14. Cathodic Protection Expense - rectifier expenses	\$750
20	15. Emergency Valve Maintenance - 2 hours/yr @ \$20.36/hr	\$41
21	16. Line Locating Expense - 3 hours/yr @ \$22.19/hr	\$67
22	TOTAL ESTIMATED O & M EXPENSES	<u>\$11,844</u>

**COST OF SERVICE STUDY
CITROSUCO**

CHESAPEAKE UTILITIES CORPORATION
FLORIDA DIVISION

CAPITALIZATION AS
FILED IN 1998 SURVEILLANCE REPORT

	<u>Amount</u>	
1	38.63%	Debt
2	<u>61.37%</u>	Common Equity, DIT, ITC, Customer Deps.
3	<u>100.00%</u>	
4	2.9300%	Weighted Average Cost of Service
5	\$65,000	Rate Base
6	<u>\$1,905</u>	Interest Expense