

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

September 1, 2017

HAND DELIVERY

Ms. Carlotta Stauffer, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

REDACTED

RECEIVED-FPSC
2017 SEP -1 PM 3:08
COMMISSION
CLERK

Re: **New Filing - Petition for Approval of Transportation Service Agreement with Florida Public Utilities Company by Peninsula Pipeline Company, Inc.**

Dear Ms. Stauffer:

Attached for filing, please find the original and 7 copies of a Petition for Approval of a Firm Transportation Service Agreement with Florida Public Utilities Company (redacted), submitted on behalf of Peninsula Pipeline Company, Inc.. A request for confidential classification of certain information contained in the filing is being submitted under separate cover.

As always, please don't hesitate to let me know if you have any questions. Thank you for your assistance with this filing.

Kind regards,



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

cc:/ (Certificate of Service)

COM ___
AFD ___
APA ___
ECO 5
ENG 2
GCL ___
IDM ___
CLK ___

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Approval of Transportation)
Service Agreement with Florida Public) DOCKET NO.
Utilities Company by Peninsula Pipeline)
Company, Inc.) FILED: September 1, 2017

PETITION FOR APPROVAL OF TRANSPORTATION
SERVICE AGREEMENT BETWEEN PENINSULA PIPELINE
COMPANY, INC. AND FLORIDA PUBLIC UTILITIES COMPANY

Peninsula Pipeline Company, Inc. (“Peninsula” or “Company”), by and through its undersigned counsel, hereby files this Petition seeking approval of a Firm Transportation Service Agreement (“Agreement”) between the Company and Florida Public Utilities Company (“FPUC”), which is attached hereto as Attachment A. The Agreement with FPUC contemplates that Peninsula will construct 58,700’ of 8” steel pipe in New Smyrna Beach, Florida. In addition, the Agreement contemplates that Peninsula will relocate the existing gate station from the RV Park, where it is currently situated, to a new location on Highway 92. In support of this request, the Company hereby states:

1. Peninsula is a natural gas transmission company subject to the Commission’s jurisdiction as prescribed under Chapter 368.101, et. seq., Florida Statutes. Its principal business address is:

Peninsula Pipeline Company, Inc.
1750 S 14th Street, Suite 200
Fernandina Beach FL 32034

The name and mailing address of the persons authorized to receive notices are:

| | |
|----------------------------------|---|
| Beth Keating, Esq. | Mike Cassel |
| Gunster, Yoakley & Stewart, P.A. | Director, Regulatory and Governmental |
| 215 South Monroe St., Suite 601 | Affairs |
| Tallahassee, FL 32301 | Florida Public Utilities Company/Chesapeake |
| (850) 521-1706 | Utilities Corporation |
| | 1750 S 14 th St., Suite 200 |
| | Fernandina Beach, FL 32034 |

mcassel@chpk.com

2. Peninsula, a wholly-owned subsidiary of Chesapeake Utilities Corporation (“CUC”), is a Delaware corporation authorized to transact business in the State of Florida. Peninsula is engaged in the business of building pipeline laterals from interstate transmission pipelines for customers. Peninsula provides firm transportation service only and does not engage in the sale of natural gas. Consistent with Section 368.105(6), F.S., the Company constructs such pipeline lateral facilities and related facilities required for interconnection with a customer only if the potential customer agrees to fully compensate the Company for reasonable costs incurred. Likewise, consistent with the referenced provision, the Company provides transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory.¹ To be clear, Peninsula provides firm transportation service only and does not engage in the sale of natural gas.

3. The Company is unaware of any material facts in dispute at this time, but the proceeding may involve disputed issues of material fact. The Company’s request set forth herein does not involve reversal or modification of a Commission decision or proposed agency action. This is a Petition representing an initial request to the Commission, which is the affected agency located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

I. BACKGROUND

4. By Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, the Commission approved the Company’s intrastate pipeline tariff, consistent with the Commission’s jurisdiction under Chapter 368, Florida Statutes. Therein, the Commission also determined that the tariff

¹ By the same token, Section 368.105 (6), F.S. recognizes that a natural gas transmission company is not required to provide transmission access to a person at rates that are not just and reasonable.

was consistent with the Commission's prior Declaratory Statement, which provided additional parameters for Peninsula's operations in the State.²

5. Pursuant to the Company's tariff on file with the Commission, as well as Order No. PSC-07-1012-TRF-GP, the Company is allowed to undertake certain projects without express Commission approval. For instance, the Company is not required to seek prior approval if the customer is not currently receiving natural gas service from another entity, such as a local distribution company ("LDC"), and the customer's facilities are located at a distance greater than one mile from the existing gas facilities of an investor-owned gas utility, a municipal gas utility, or a gas district. The Company also need not seek regulatory approval if it is engaged to serve an LDC that is not an affiliate of the Company.³ Consistent with Section 368.105(3), Florida Statutes, for contracts such as these, the Company is only required to file affidavits from both the Company and the customer affirming that:

- a. Neither the natural gas transmission company nor the customer had an unfair advantage during the negotiations;
- b. The rates are substantially the same as rates between the natural gas transmission company and two or more of those customers under the same or similar conditions of service; **or**
- c. Competition does or did exist either with another natural gas transmission company, another supplier of natural gas, or with a supplier of an alternative form of energy. Section 368.105(3), Florida Statutes (emphasis added).

² Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, in Re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, et seq.

³ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Sheet No. 11, Section 3

Petition for Approval of Transportation Agreement/New Smyrna

6. The Company is, however, required to seek Commission approval of projects in the following categories:

- a. Interconnection to an LDC in order to serve a customer downstream;
- b. Interconnection with an LDC to provide service to another LDC;
- c. Construction of facilities to serve a current LDC customer or one that is within 1 mile of the existing facilities of an investor-owned or municipal gas utility, or a gas district; and
- d. Other projects that are not otherwise specifically identified in the tariff as not requiring prior Commission approval.⁴

7. FPUC is a corporation organized under Florida law. Like Peninsula, it is now a corporate subsidiary of CUC. Pursuant to the provisions of Chapter 366, Florida Statutes, FPUC is subject to economic regulation by the Commission. FPUC's principal offices are located at 1750 S 14th Street, Suite 200, Fernandina Beach FL 32034. Because both FPUC and Peninsula are corporate subsidiaries of CUC, the Company is required to seek Commission approval prior to entering into a contract to construct facilities and provide transportation service to FPUC, consistent with Sheet 12, Section 4 (d).

8. As noted above, the approved tariff, consistent with Order No. PSC-06-0023-DS-GP, provides that the Company must seek approval for agreements unless an individual agreement fits the criteria set forth in the Company's tariff for an agreement that does not require prior Commission approval.⁵ The Agreement with FPUC would not meet any of the enumerated criterions; thus; Peninsula respectfully seeks Commission approval in this instance.

⁴ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Sheet No. 12, Section 4

⁵ Moreover, since the tariff expressly provides that the Company need not seek approval if it enters into an agreement with a non-affiliated LDC, the Company believes that it must therefore seek Commission approval when the converse situation arises.

II.

NEW SMYRNA PROJECT

9. With regard to review of the Agreement under the standard set forth in Section 368.105, Florida Statutes, the Company submits that the Agreement withstands review under the seminal case for review of affiliate transactions, because the rate charged under this agreement is not “inherently unfair” or in excess of the going market rate.⁶ Specifically, this contract has been necessitated by a request for service by FPUC, as discussed in greater detail below to enable FPUC to eliminate existing pressure problems, improve reliability, as well as removing facilities from a populated area in New Smyrna Beach Florida.

10. Specifically, Peninsula received a service request from FPUC to construct facilities that will help it resolve operational pressure issues on their distribution system. These existing pressure issues have limited growth on FPUC’s system. The current gate station and a portion of the pipeline are located in high consequence areas with significant compliance requirements. This project contemplates lowering the pressure on the existing portion of pipeline, moving the existing gate station out of an active RV park, constructing a larger diameter pipeline with increased pressure, and moving both the gate station and new pipeline into a public right of way. This will eliminate the existing pressure issues while providing opportunity for growth on this portion of the system.

11. The pressure and associated volume issues in the New Smyrna Beach area have affected FPUC’s ability to provide adequate service to the outer edges of the New Smyrna Beach system during peak periods. This has also directly impacted economic development in the area, because it has effectively eliminated growth in both the large commercial and small industrial sectors.

⁶ See also GTE Florida Incorporated v. Deason, 642 So. 2d 545 (Fla. 1994)(determining that the appropriate review of an affiliate transaction considers “. . .whether the transactions exceed the going market rate or are otherwise inherently unfair.”)

12. An added motivating factor in FPUC's decision to approach Peninsula with this project is that Pipeline and Hazardous Materials Safety Administration ("PHMSA") requirements, on pipes operating at this pressure, will necessitate that FPUC physically expose the existing 4" pipe crossing at Turnbull Bay before the end of 2017. This would be a costly venture, as well as being operationally difficult, and it would not address the pressure issues that currently exist on the pipeline. The installation of the new pipeline by Peninsula, and resulting lower inlet pressure, would allow FPUC to de-rate the pipeline from transmission to distribution pressure. Once the line is no longer transmission, the transmission integrity requirements no longer apply, and the need to expose the existing line is negated.

13. As always, safety is another key consideration. In this instance, FPUC weighed the fact that the pipeline is situated in a densely-populated residential area (pictures provided as Attachment B). The proposed project with Peninsula would construct a replacement pipeline in public road rights-of-way, away from the heavily populated residential areas, which will reduce risks for area residents.

14. In addition, the current gate station occupies an easement inside an active RV park. The station, including an odorizer, is currently within 20' of active RV sites (pictures provided as Attachment B.) Completion of this project would relocate this station to a new site adjacent to the Highway 92 right-of-way just north of the current site.

15. The new pipe installed by Peninsula will deliver gas at approximately 565 pounds per square inch gage ("psig") with a maximum allowable operating pressure ("MAOP") of 575 psig. The larger diameter of the new pipeline will increase the inlet pressure at the New Smyrna Beach station from the current 287 psig to 540 psig. Of note, the new pipeline will be slightly longer

than the pipeline being replaced, because the new pipeline will follow a different route that will enable it to be located entirely within the public rights-of-way.

16. The route of the proposed new pipeline will begin at the interconnection with Florida Gas Transmission (FGT) on the Daytona Beach Lateral along US Highway 92 approximately one mile west of Interstate 95 in Volusia County. It will then run east along Highway 92 to Tomoka Farms Road, then south along Tomoka Farms Road to Pioneer Trail to Turnbull Bay Road, then continuing easterly along Turnbull Bay to Creek Shore Trail, where it will interconnect FPUC's existing pipeline. (See Attachment C - Map).

17. Beyond the noted benefits to FPUC's system associated with this new pipeline, the benefit of having Peninsula provide this new facility, and transportation service thereupon, is primarily that Peninsula's construction and ownership of this extension will avoid FPUC undertaking the costs, and risks, for this project, which in turn protects FPUC's ratepayers.

18. The rates in the contract between FPUC and Peninsula meet the requirements of Section 368.105(3), Florida Statutes, and the contract containing those rates is consistent with Orders Nos. PSC-06-0023-DS-GP and PSC-07-1012-TRF-GP and with Peninsula's tariff on file with the Commission. Moreover, the rates set forth therein are consistent with a "market rate" in that they are within the range of the rates set forth in similar agreements between Peninsula and other customers, including the agreement between FPUC and Peninsula approved by the Commission by Order No. 12-0230-PAA-GU, issued May 9, 2012, in Docket No. 110271-GU. Likewise, the rates are not otherwise "inherently unfair," as proscribed by the Court in the GTE Florida v. Deason decision.⁷ As such, the Company asks that the Agreement be approved.

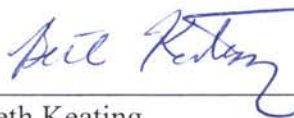
⁷ *Supra*, footnote 5.

Petition for Approval of Transportation Agreement/New Smyrna

19. The Company further respectfully asks that the Commission consider this Agreement at its October 3, 2017 Agenda Conference. This expedited treatment will avoid delay in the ordering and construction phase of this project, and thus, avoid placing the project timeline in jeopardy. In furtherance of this request, the Company commits to providing responses to any data requests from Commission Staff on an expedited basis and to make pertinent personnel from Peninsula and the FPUC available for informational meetings as may be necessary.

WHEREFORE, Peninsula respectfully requests that the Commission consider this Agreement at the Commission's October 3, 2017 Agenda Conference, and approve the Transportation Service Agreement between Peninsula Pipeline Company, Inc., and Florida Public Utilities Company.

RESPECTFULLY SUBMITTED this 1st day of September, 2017.



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

Attorneys for Peninsula Pipeline Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY ATTEST that a true and correct copy of the foregoing Petition has been served upon the following by U.S. Mail this 1st day of September, 2017:

| | |
|--|---|
| Jennifer Crawford Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 jcrowfor@psc.state.fl.us | J.R. Kelly Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 <u>Kelly.JR@leg.state.fl.us</u> |
|--|---|



Beth Keating, Esq.
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Ste 601
(850) 521-1706

Petition for Approval of Transportation
Service Agreement with Florida Public
Utilities Company by Peninsula Pipeline Company, Inc.

ATTACHMENT A

Firm Transportation Service Agreement

Between

Peninsula Pipeline Company

And

Florida Public Utilities Company

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 25th day of August, 2017, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

WITNESSETH

WHEREAS, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

WHEREAS, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

ARTICLE I
DEFINITIONS

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

2.1 Company shall construct a new, higher pressure pipeline (New Smyrna Beach Line) from the Florida Gas Transmission's Daytona West gate station to pressure regulating stations named by Shipper as New Smyrna and Turnbull Bay, where a custody transfer station will be installed, as is more particularly described on Exhibit A, with a capacity of at least the Maximum Daily Transportation Quantity as set forth on Exhibit A attached hereto. All pipe and fittings will have a maximum design pressure of 1206 psig, which will allow an MAOP of 575 psig. Shipper is not responsible for any direct costs associated with the construction, operation, or maintenance of the Pipeline.

2.2 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.3 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

ARTICLE III
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax, relating to the service provided by Company under this Agreement, such change shall be implemented immediately upon the effective date of such change.

ARTICLE IV
TERM AND TERMINATION

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date. Thereafter, the Agreement shall be extended for additional 10-year increments, unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the initial period or any subsequent 10-year term. This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.3 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

ARTICLE V
COMPANY'S TARIFF PROVISIONS

5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

ARTICLE VI
REGULATORY AUTHORIZATIONS AND APPROVALS

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's tariff.

ARTICLE VII
DELIVERY POINT(S) AND POINT(S) OF DELIVERY

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s). Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

ARTICLE VIII
SCHEDULING AND BALANCING

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline 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 Company pursuant to Company's tariff provisions.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 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:

Company: Peninsula Pipeline Company, Inc.
1750 South 14th Street, Suite 200
Fernandina Beach, Florida 32034
Attention: Senior Manager, Business Process Development

Shipper: Florida Public Utilities
1750 South 14th Street, Suite 200
Fernandina Beach, Florida 32034
Attention: Director, Regulatory Affairs

9.2 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.

9.3 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

9.4 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 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

9.5 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; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 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, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor 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.

9.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which approval 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. Upon such assignment or transfer, as well as 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 the assumption of duties and obligations.

9.10 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. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

authority in connection with the performance of this Agreement. Each party shall 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 applicable 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 Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company 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 under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the date first set forth above. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in Section 2.1 hereof, issues an order, ruling, decision or regulation (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

In the event of the issuance of any enforceable and unappealable compliance obligations related to operation, maintenance, or safety and integrity compliance of the pipeline facility, which are not reasonably foreseeable as of the Execution Date, has a substantial

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

and materially adverse impact on the Company, and such economic impact cannot be substantially mitigated by the Company, Company and Shipper shall meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations.

If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.

9.11 Applicable Law and 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.


9.12 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.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY
Peninsula Pipeline Company, Inc.

SHIPPER
Florida Public Utilities

By: 

Kevin Webber
Title: Vice President

By: 

Jeffry Householder
Title: President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: _____
Title: _____
Date: _____

Attested By: _____
Title: _____
Date: _____

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE AGREEMENT

BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

FLORIDA PUBLIC UTILITIES COMPANY

DATED

August 25, 2017

| <u>Description of Delivery Point(s)</u> | <u>Description of Point(s) of Delivery</u> | <u>MDTQ, in Dekatherms, excluding Fuel Retention</u> |
|---|--|--|
| Interconnection With FGT at the New Daytona West Gate Station in Volusia County, FL | See Below | ██████████ / Day |

Total MDTQ (Dekatherms): ██████████ / Day

MHTP: 6%

Monthly Reservation Charge: ██████████

The Company shall provide written notification to Shipper that the New Smyrna Beach Line has been completed and establish an in-service date. The Parties recognize that the New Smyrna Beach Line may be completed in segments with each segment placed into service as completed. In such event, the Company may provide written notification of the in-service date of each segment, whereupon the Company may begin to charge Shipper a pro rata portion of the Monthly Reservation Charge associated with the in-service segment.

Unauthorized Use Rate (In addition to Monthly Reservation Charge): ██████████ Each Day of Unauthorized Use

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

Description of Point(s) of Delivery: Up to two (2) Points of Delivery

- 1) One or more points – FPU Turnbull Bay Pressure Regulator Station at the intersection of Turnbull Bay Road and Creek Shore Trail in Volusia County, FL
- 2) One or more points – FPU New Smyrna Pressure Regulator Station at the intersection of Industrial Park Ave and Turnbull Street in Volusia County, FL

Petition for Approval of Transportation
Service Agreement with Florida Public
Utilities Company by Peninsula Pipeline Company, Inc.

ATTACHMENT B

Pictures



2



Petition for Approval of Transportation
Service Agreement with Florida Public
Utilities Company by Peninsula Pipeline Company, Inc.

ATTACHMENT C

MAP

