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July 9, 2024

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Item 1

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams, Fogleman) *CAH*
Office of the General Counsel (Imig, Farooqi, Harper) *ACH*

RE: Docket No. 20240043-TP – Request for submission of proposals for relay service, beginning in March 2025, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

AGENDA: 07/09/24 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: The current contract expires February 28, 2025. Significant time is needed to issue the RFP, evaluate proposals, and to set-up the system.

SPECIAL INSTRUCTIONS: Anticipate the need for sign language interpreters and assisted listening devices. Please place near the beginning of the agenda to reduce interpreter costs.

Case Background

The existing Florida relay service provider contract expires February 28, 2025. On March 1, 2024, T-Mobile USA, Inc. (T-Mobile) provided written notice to the Florida Public Service Commission (Commission) that it does not intend to extend the relay provider contract an additional year past the expiration date, as permitted by the existing contract.

Attachment A to this recommendation contains a Draft Request for Proposals (RFP) to provide telecommunications relay service in Florida. If approved, the RFP will be issued no later than July 16, 2024, with the proposals due by August 19, 2024. The tentative schedule calls for the Commission to select a provider at the November 5, 2024 Agenda Conference, and for the provider to begin providing service on March 1, 2025.

Pursuant to Section 287.057(1)(b) Florida Statutes (F.S.), an agency is required to issue an RFP when it solicits commodities or contractual services that meet a certain threshold amount. *See* Section 287.017, F.S. In this case, the RFP is necessary in order for the Commission to offer relay service in compliance with:

- The Florida Telecommunications Access System Act (TASA), Chapter 427, Part II, F.S.;
- The Federal Americans with Disabilities Act of 1990, 42 USC §12101 et seq.; and
- The Federal Communications Commission (FCC) regulations on relay service, 47 CFR Part 64.

The RFP mandates many features for relay service, including 24 hour a day service every day of the year, answering time and blocking standards, confidentiality conditions, procedures for relaying a call giving substantial control to the user as to how the call is handled, Communications Assistant (CA) and provider requirements, and provisions for complaint resolution and consumer input. In addition, the RFP allows a bidder to provide unsolicited features as part of its basic relay service for which additional evaluation points may be awarded.

Pursuant to Chapter 287, F.S., the Commission must award the contract to the bidder whose proposal is the most advantageous to the state, taking into account the factors set forth in Section 427.704(3)(a), F.S.:

1. The appropriateness and accessibility of the proposed telecommunications relay service for the citizens of the state, including persons with hearing and/or speech loss;
2. The overall quality of the proposed telecommunications relay service;
3. The charges for the proposed telecommunications relay service;
4. The ability and qualifications of the bidder to provide the proposed telecommunications relay service as outlined in the RFP;
5. Any proposed service enhancements and technological enhancements which improve service without significantly increasing cost;
6. Any proposed inclusion of provision of assistance to deaf persons with special needs to access the basic telecommunications system;
7. The ability to meet the proposed commencement date for the Florida Relay Service; and
8. All other factors listed in the RFP.

Each bidder will be required to submit its proposal on the basis of a charge per billable minute for a three-year contract with the option of four one-year extensions. The price proposal must be submitted in a sealed envelope separate from the technical proposal.

The RFP also provides for a point system for evaluating the proposals. A weight of 50% will be given to the technical aspect of the proposal and a weight of 50% will be given to the price aspect of the proposal.

A Bidders' Conference was held on April 23, 2024. During the Conference, staff conducted a detailed walk-through of the Draft RFP and allowed participants to ask questions and present suggested changes. In addition, staff allowed Conference participants and all interested persons to submit written suggested changes to the Draft RFP for staff's consideration. Staff has addressed suggested changes and has presented its recommended basis for acceptance or denial in Issue One of the recommendation.

The Commission has authority over TASA pursuant to Part II of Chapter 427, F.S., and issues this RFP pursuant to Chapter 287, F.S.

Discussion of Issues

Issue 1: Should the Commission issue the RFP for telecommunications relay service?

Recommendation: Yes. The Commission should issue the RFP, as set forth in Attachment A.

Staff Analysis: The RFP was drafted to describe as specifically as possible the relay service that should be provided. The RFP includes traditional telecommunications relay service (TRS) and speech-to-speech (STS) service currently provided in Florida, and complies with FCC regulations. The RFP does not include analog captioned telephone service (CTS) that is offered under the current relay provider contract.

The RFP is substantially similar to the RFP issued by the Commission on May 11, 2021, with the exception of analog CTS. Based on analysis by staff, along with comments from Hamilton Relay, Inc. (Hamilton Relay) and T-Mobile, staff recommends selective revisions to the May 11, 2021 RFP. Staff's review of suggested revisions to sections of the 2021 RFP is presented below.

Removal of analog CTS from the RFP

T-Mobile has requested the removal of analog CTS from the RFP. In support, T-Mobile cites the continued decline in analog CTS minutes of use, the absence of an FCC mandate, and the availability of viable alternatives. T-Mobile noted the number of analog CTS subscribers decreased from 137 to 89 during the twelve month period from April 2023 to March 2024.

Hamilton Relay supports the continuation of analog CTS in Florida to support traditional analog CTS users. Hamilton Relay presented some creditable information in support of the continued offering of analog CTS in Florida. However, based on declining minutes of use, viable alternatives, the potential impact on competition, along with statutory constraints, staff does not support Hamilton's position.

As staff has previously reported to the Commission, analog CTS minutes of use continue to decline. This is driven in large part by the analog to digital transition in the telecommunications industry. This transition presents challenges for users reliant on analog forms of CTS, particularly those without access to broadband due to demographics or financial constraints. Historical data from the Commission's three most recent Relay Reports is provided below with forecasted minutes of use by T-Mobile for the last two years:

	Analog CTS Minutes of Use
July 2020 to June 2021	368,337
July 2021 to June 2022	236,044
July 2022 to June 2023	166,908
July 2023 to June 2024	153,345*
July 2024 to June 2025	84,435*

* Forecast provided by T-Mobile in associated FRTI budget dockets.

In response to this transformation, relay programs in other states are adjusting with reforms ranging from issuing separate contracts for traditional TRS and analog CTS, to discontinuing

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analog CTS altogether. Multiple contracts are not an option in Florida because TASA mandates that a single statewide relay service provider be awarded the contract.¹ Staff notes that analog CTS is not a service mandated by the FCC for state relay program certification. Traditional TRS and STS are the only two mandated services required by the FCC for state certification.

It appears that issuing an RFP for only traditional TRS and STS will benefit Florida by providing the best opportunity for competition. To date, T-Mobile and Hamilton Relay are the only two potential bidders who have shown interest in submitting a proposal. T-Mobile has indicated to staff that it is not willing to continue offering analog CTS once the current contract expires. With T-Mobile ceasing the provision of analog CTS, requiring that service in Florida would result in a single bid in response to the RFP. This scenario has the potential to have adverse consequences on the price Florida Telecommunications Relay, Inc. (FTRI) pays for relay service and subsequently its relay service provider expense.

Staff acknowledges that issuing an RFP that does not include analog CTS is a significant change. However, staff is encouraged by the continued rapid advances in technology and the adoption of these advances by consumers. One of these advances will be offered by FTRI. It is an alternative to analog CTS that uses a new Caption Device that provides benefits to customers that are similar to analog CTS. The XLC8, when combined with the XLC8GLT Deluxe, offers the benefits of a CA assisted analog CTS call without the CA. The translation of voice to text is performed by the XLC8GLT Deluxe device. Other alternatives noted by T-Mobile include: use of a traditional CapTel phone with traditional relay Voice Carry-Over, Internet Protocol CTS for those customers who have internet access, and wireless service with free apps.

If the Commission approves staff's recommendation to issue the RFP for traditional TRS and STS only, it will be important for FTRI, T-Mobile, and the winning bidder to educate consumers and the deaf and hard of hearing community about the change and alternative service offerings. FTRI's continued outreach efforts, and specifically its marketing of the XLC8GLT Deluxe is important. T-Mobile, with input from staff, has already contacted consumers informing them that the CapTel service may be ending in the near future. T-Mobile also provided consumers with a method to learn more about alternative services.

Staff has deleted references to analog CTS that were included in the 2021 RFP. Staff recommends issuing the 2024 RFP for traditional TRS and STS only.

Section A.7. Key Dates

T-Mobile recommended extending the Clarifying Questions Submitted in Writing to the Proposal Review Committee Chairman date to at least two weeks from the date the RFP is released. Staff's original schedule required clarifying questions to be submitted within one week.

Hamilton Relay did not comment on this section.

Staff supports T-Mobile's request to extend the due date to two weeks from the RFP release date.

¹ Section 427.704(1), Florida Statute.

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Section A.34. Liquidated Damages for Failure to Initiate Services on Time or to Provide Contracted Services for the Life of the Contract

T-Mobile explained that as the industry has experienced significant declines in minutes of use, the liquidated damages for service level performance now far exceed the cost to provide the service. T-Mobile requests that the RFP reduce the amount of liquidated damages from \$5,000 per day to \$250 per day for Meet Answer Time Requirement and Meet Blockage Rate or Transmission Level Requirement.

Hamilton Relay suggests that due to shrinking relay usage, the liquidated damages contained in this section are stringent and increase costs. Hamilton asked that the Commission amend this section by adding the following language at the end of Section A.34: “Under no circumstance shall the liquidated damages exceed the revenue generated for the respective day.” Staff does not oppose this revision.

Staff does not oppose T-Mobile’s request to reduce the amount. However, staff does not support reducing the amount to \$250 per day. In FTRI’s FY 2024/2025 Commission approved budget, total relay service provider expense is \$921,793. This equates to a daily expense of \$2,525. Staff believes \$1,000 per day addresses the impact of declines in minutes of use and the resulting revenue decline, while providing continued incentive for the provider to deliver quality service. In addition, adoption of Hamilton Relay’s suggestion to cap liquidated damages further addresses T-Mobile’s concern.

Staff recommends the amount for liquidated damages for Meet Answer Time Requirement and Meet Blockage Rate or Transmission Level Requirement be reduced from \$5,000 to \$1,000 per day. Staff further recommends that liquidated damages not exceed the revenue generated for the respective day.

Section B.43. Performance Bond

This section requires the provider to furnish an acceptable performance bond, certified or cashier’s check, or bank money order equal to the estimated total first year price of the contract.

T-Mobile did not comment on this section.

Hamilton communicated that in light of decreasing minutes of use, “we respectfully request the Commission consider modifying this requirement to lower the amount to the estimated total for the first six months’ price of the contract.”

Staff agrees with Hamilton Relay that minutes of use continue to decline. FTRI’s relay service provider expense has continued to decline on an annual basis. Staff agrees that there is flexibility to lower the bond requirement as minutes and cost continue to decline. Staff supports Hamilton Relay’s request.

Section D. THE PRICE PROPOSAL FORMAT

This section requires that a bid price must be on a flat rate basis per billable minute for all billable minutes and not vary depending upon the volume of traffic. This section of the RFP has also been revised to reflect the discontinuance of analog CTS.

T-Mobile did not comment on this section.

In its written comments, Hamilton Relay proposed alternate pricing models. In response, Hamilton Relay submitted several alternative pricing models for consideration in its written comments which include a per minute rate with a monthly minimum and a monthly recurring charge with overages. Staff reviewed the alternative pricing models submitted by Hamilton Relay, but staff believes that the current flat rate billable minute methodology works well in Florida and should be retained.

In addition to the changes discussed above, the 2021 RFP has been edited for internal consistency with those changes. Staff recommends that the Commission issue the RFP as set forth in Attachment A.

Issue 2: Should this docket be closed?

Recommendation: No. (Imig)

Staff Analysis: An RFP is issued pursuant to Chapter 287, F.S. Moreover, this RFP is specific to meet the requirements of Chapter 487, F.S., for TASA services. Accordingly, this docket should remain open throughout the life of the contract, and the provider should be selected at a future Commission Agenda Conference to begin providing service on March 1, 2025.

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STATE OF FLORIDA

FLORIDA PUBLIC SERVICE COMMISSION

REQUEST FOR PROPOSALS

TO PROVIDE

TELECOMMUNICATIONS RELAY SERVICE IN

FLORIDA

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REQUEST FOR PROPOSALS

A. ADMINISTRATIVE REQUIREMENTS AND PROCEDURES

1. Issuing Entity and Point of Contact

This Request For Proposals (RFP) is issued by the Florida Public Service Commission (FPSC). The FPSC's Proposals Review Committee (PRC) Chairman is the sole point of contact concerning this RFP and all communications must be made through the Chairman, Curtis Williams. Mailed correspondence must be addressed to Curtis Williams, c/o Mr. Adam J. Teitzman, Commission Clerk, Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 and should reference Docket No. 20240043-TP. The PRC Chairman can be contacted at (850) 413-6924. E-mail should be directed to the PRC Chairman at cjwillia@psc.state.fl.us.

2. Purpose

The purpose of this RFP is to contract for a Florida Relay Service (FRS) System that meets the needs of the people of the State of Florida pursuant to the Telecommunications Access System Act of 1991 (Part II of Chapter 427, Florida Statutes) and which satisfies or exceeds the relay system certification requirements of the Federal Communications Commission (FCC) under the Americans with Disabilities Act. Bidders must comply with the requirements of both laws.

Section F, Tables 1 and 2 of this RFP contains a summary of Florida intrastate billable session minutes for telecommunications relay services (TRS), speech-to-speech (STS), and Spanish, provided by the current relay service provider for the months of March 2022 through February 2023 and March 2023 through February 2024 respectively. Section F, Tables 3 and 4 contains a summary of intrastate and interstate session minutes for TRS, STS, and Spanish provided by the current relay provider for the months of March 2022 through February 2023 and March 2023 through February 2024 respectively. The bidder assumes all responsibility for the accuracy of data from these reports and billable minute information in using them for bidding purposes.

3. Other Applicable Laws/Legal Considerations

This RFP, and any resulting contract, shall be governed by the laws of the State of Florida. The bidders and provider shall comply with applicable federal, state, and local laws and regulations.

The contract shall be construed according to the laws of the State of Florida. Any legal proceedings against any party relating to or arising out of the RFP or any resultant contract or contractual relation shall be brought in State of Florida administrative or judicial forums. The venue will be Leon County, Florida.

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4. Scope

This RFP contains the instructions governing the proposal to be submitted and the material to be included therein, mandatory administrative and operational requirements which a bidder shall meet to be eligible for consideration, specific instructions for proposal submission, and evaluation criteria.

5. FCC Authority to Provide Relay Services

The provider shall have the necessary FCC authority or only use, for relay service, telecommunications providers that have the necessary FCC authority to provide interstate and international service.

6. Definitions/Acronyms

The following terms, when used in this RFP, have the meaning shown below.

- a. Abandoned Calls – Calls reaching the relay switch and terminated by the caller before a communications assistant answers regardless of the amount of time that has elapsed since the call reached the relay switch.
- b. Administrator – A not-for-profit corporation incorporated pursuant to the provisions of Chapter 617, Florida Statutes, and designated by the FPSC to administer the telecommunications relay service system and the distribution of specialized telecommunications devices pursuant to Section 427.703(1), Florida Statutes.
- c. Advisory Committee – A group created by Section 427.706, Florida Statutes, and consisting of up to ten individuals named by the FPSC for the purposes described in Part II of Chapter 427, Florida Statutes.
- d. Answer Time – The point in the progression of inbound calls beginning when it arrives at the call center switch until it is routed to a communications assistant.
- e. Billable Minutes – For the purpose of calculating and rendering bills to the Administrator pursuant to Section 427.704(4), Florida Statutes, billable minutes is the elapsed time between the time the incoming call enters the Florida Relay System provider's relay center switch and the completion of relay service. Total session time shall be rounded to the nearest one-tenth of a minute or less per session and the time for all call sessions shall be added together for all incoming calls during the month to produce the total billable minutes per month. The total of billable minutes for the month shall be rounded to the nearest one-tenth of a minute. In a session which includes a mix of intrastate toll

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or local calls and interstate or international calls, the time associated with the interstate or international calls shall not be included in the billable time for that call session.

- f. Blocked calls — Calls blocked by the carrier's 800 number network.
- g. Communications Assistant (CA) - A person who relays conversation to and from users of a relay system.
- h. Deaf — Having a permanent hearing loss and being unable to discriminate speech sounds in verbal communication, with or without the assistance of amplification devices.
- i. Dual Sensory Loss — Having both a permanent hearing loss and a permanent visual impairment and includes deaf/blindness.
- j. Electronic Posting - The Florida Department of Management Service's Vendor Bid System website located at http://myflorida.com/apps/vbs/vbs_www.main_menu.
- k. FPSC - Florida Public Service Commission.
- l. General Assistance Calls — Incoming calls to the CA that are not associated with an outgoing relay call. Such calls may provide information about using relay or other types of calls that are normally handled by customer service.
- m. Hard of Hearing — Having a permanent hearing loss which is severe enough to necessitate the use of amplification devices to discriminate speech sounds.
- n. Hearing Loss or Hearing Disabled — Being deaf or hard of hearing and includes dual sensory impairment.
- o. Hearing Carry-Over (HCO) — A feature that allows people who are speech disabled to use their hearing abilities to listen directly to their party. The CA voices the typed responses from the HCO user to the hearing person, who then speaks directly to the HCO user without CA interaction.
- p. Incoming Call — An incoming call refers to the portion of the communications connection from the calling party to the relay service center as well as general assistance calls.
- q. Minor Irregularity — A variation from the request for proposals terms and conditions which does not affect the price of the proposal, give the bidder an

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unfair advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the FPSC.

- r. Outgoing Call – An outgoing call refers to the portion of the communications connection from the relay service center to the called party.
- s. Provider – The entity with whom the FPSC contracts to provide Florida Relay Service.
- t. Proposals Review Committee (PRC) – The PRC consists of designated FPSC staff and designated members of the Advisory Committee.
- u. Session Minutes – Session minutes include the entire time that the relay call is connected to the communication assistant, including the time used to set up the call until the time the communications assistant disconnects the last party.
- v. Speech Impaired or Speech Disabled – Having a permanent loss of verbal communications ability which prohibits normal usage of a standard telephone set as stated in Section 427.703(10), Florida Statutes.
- w. Speech to Speech (STS) – A service that enables a person with speech disabilities to use relay service with his own voice or voice synthesizer, rather than using a TDD. A specially trained CA functions as a human translator for people with speech disabilities who have trouble being understood on the telephone. The STS CA repeats the words of the speech disabled user to the other party on the call.
- x. Telecommunications Device for the Deaf (TDD or TTY) - A teleprinter, an electronic device connected to a standard telephone line, operated by means of a keyboard, and used to transmit or receive signals through telephone lines.
- y. User - Includes either the calling or called party in a relay call.
- z. Video Relay – Video relay interpreting allows the caller, utilizing video conferencing facilities, to use sign language to communicate with the CA who voices the call to the hearing person at the receiving end.
- aa. Voice Carry-Over - A feature that enables a user with a hearing disability to utilize his useable speech for direct expression of voice communications and to use the CA for conversion of the other user's communications from voice to TDD.

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7. Key Dates

The following dates are target dates. The FPSC and the PRC Chairman reserve the right to change the dates. Any change to the dates shall be accomplished by addendum.

Release Request for Proposals.....by July 16, 2024
Clarifying Questions Submitted in Writing to
PRC Chairman 3:00 p.m. EDTby July 30, 2024
Answers to Clarifying Questions.....by August 6, 2024
TECHNICAL AND PRICE PROPOSAL
DUE DATE & TIME 3:00 p.m. EDT.....by August 19, 2024
Performance Bond DueUpon Execution of Contract
Begin ServiceMarch 1, 2025

8. Commencement Date

The commencement date for the service is March 1, 2025. Within their response to the RFP, bidders shall provide a work schedule showing how they can meet that deadline and shall provide a statement that they can provide the complete service on March 1, 2025.

9. Term of Contract

The term of the Contract will be an initial three year period. Upon mutual agreement between the FPSC and the provider, the Contract may be extended for up to four additional one year periods subject to the same terms and conditions set forth in the initial Contract and any written amendments signed by the parties. Any extension is subject to the availability of funds and contingent upon satisfactory performance by the provider. The provider shall notify the FPSC Commission Clerk in writing whether or not it seeks to extend service by March 1 the year before the current contract expires. For example, if the contract service period is due to expire on February 28, 2028, the provider must notify the FPSC by March 1, 2027, if it desires a one year extension of service.

10. Restrictions on Communications

From the issue date of this RFP until the staff recommendation on the award of the contract is filed in the docket file, bidders are not to communicate with any FPSC Commissioner, staff member, or Advisory Committee member regarding this RFP except for:

- a. Written correspondence to or from the PRC Chairman for clarifying questions only regarding the FPSC-approved RFP. All written questions must be submitted to the PRC Chairman by 3:00 pm EDT, July 30, 2024, and written answers to the questions will be posted in Docket No. 20240043-TP and on the Florida Department of Management Services Vendor Bid System

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(http://www.myflorida.com/apps/vbs/vbs_www.main_menu) by August 6, 2024. No changes to the FPSC-approved RFP will be considered.

- b. Oral discussions at an oral interview or site visit pursuant to Section A.

After the recommendation for award is filed, there will be no oral or written communication with FPSC staff, including the PRC Chairman, or any member of the FPSC concerning the RFP. Written correspondence submitted to the docket file for the sole purpose of identifying a mathematical error will be reviewed by appropriate FPSC staff.

For breach of this provision, the FPSC reserves the right to reject the proposal.

11. Modifications, Withdrawals, and Late Proposals

Proposals may only be modified or withdrawn by the bidder up to the established filing date and time. It is the responsibility of the bidder to ensure that both the technical and price proposals are received by the Office of Commission Clerk on or before August 19, 2024, at 3:00 p.m. EDT.

12. Bidding Costs

Neither the FPSC, nor the Florida Relay System, is liable for any costs incurred by a bidder in conjunction with the development of its proposal.

13. Rejection of Proposals, Correction of Errors

The PRC Chairman and the FPSC reserve the right to reject any or all proposals and to cancel the RFP. The FPSC reserves the right to allow a bidder to correct minor irregularities upon notification by the PRC Chairman. A bidder may not modify its proposal after opening; however, calculation or typographical errors may be corrected by the FPSC.

14. Public Availability of Proposals, News Releases and Public Announcements

The technical proposals will each be made available to the general public within 10 days after each is opened. The price proposals will not be opened until after the technical proposals have been evaluated. Such price proposals will be made available after the staff recommendation for award is filed. The FPSC may issue press releases or public announcements concerning filed proposals or the RFP process.

15. Protests

Failure to file a protest of either the RFP or the letter of intent within the time prescribed in Section 120.57(3)(b), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

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16. Letter of Intent/Notification to Bidders

Upon selection of a potential provider by the FPSC, the FPSC will issue a letter of intent to the potential provider. The electronic posting of the Notice of Intent to Award is the point of entry to protest the award pursuant to Section 120.57(3), Florida Statutes. A contract shall be completed and signed by all parties concerned within thirty (30) days of mailing the letter of intent. If this date is not met, through no fault of the FPSC, the FPSC may elect to cancel the letter of intent and make the award to another bidder.

All bidders will receive a copy of the letter of intent by certified mail, return receipt requested.

17. Award of Contract

The FPSC shall award the contract to the bidder whose proposal is the most advantageous to the state, taking into account the following considerations in Section 427.704(3)(a), Florida Statutes:

- a. The appropriateness and accessibility of the proposed telecommunications relay service for the citizens of the state, including persons who are deaf, hard of hearing, or speech impaired.
- b. The overall quality of the proposed telecommunications relay system.
- c. The charges for the proposed telecommunications relay service system.
- d. The ability and qualifications of the bidder to provide the proposed telecommunications relay service system as outlined in the RFP.
- e. Any proposed service enhancements and technological enhancements which improve service without significantly increasing cost.
- f. Any proposed provision of assistance to deaf persons with special needs to access the basic telecommunications system.
- g. The ability to meet the proposed commencement date for the FRS.
- h. All other factors listed in the RFP.

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18. Award Without Discussion

The FPSC reserves the right to make an award without discussion of proposals with the bidder. Therefore, it is important that each technical and price proposal be submitted in the most complete, understandable, and accurate manner possible.

19. Oral Interviews/Site Visits/Written Data Requests

Bidders may be asked to participate in oral interviews, respond to a written data request, make their facilities available for a site inspection by the PRC or make their financial records available for a FPSC audit. Such interviews, site visits, and/or audits will be at the bidder's expense except that the PRC will pay for its own expenses (transportation, meals, housing, etc.). Bidders should come to oral interviews prepared to answer the PRC's questions and the bidder's primary contact person (person signing the letter of transmittal accompanying the RFP or his designee) shall be present at all meetings with the PRC or FPSC.

20. Contract Document

The successful bidder will be required to sign a contract which will include the following elements.

- a. The RFP.
- b. The bidder's proposal in response to the RFP.
- c. A document identifying any clarifications to the proposal and any unsolicited items contained in the proposal and desired by the FPSC to be included in the FRS.

All of the above items together will constitute a complete initial contract that will be executed by the FPSC's Executive Director on behalf of the FPSC.

21. Limited Liability

Neither the FPSC, its Advisory Committee, the Administrator, the PRC and the provider of the telecommunications relay service, nor any agent, employee, representative, or officer of the foregoing shall be liable for any claims, actions, damages, or causes of action arising out of or resulting from the establishment, participation in, or operation of the telecommunications relay service, except where there is malicious purpose or wanton and willful disregard of human rights, safety, or property in the establishment, participation in, or operation of the telecommunications relay service. To the fullest extent permitted by law, all prospective service providers and their assigns or successors by their participation in the RFP process, shall indemnify, save and hold the FPSC and its employees and agents, including the

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Advisory Committee and PRC, free and harmless from all suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses, and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of the RFP and/or any subsequent acts related thereto, including, but not limited to, the recommendation of a bidder to the FPSC and any action brought by an unsuccessful bidder. This is a statutory requirement that will not be amended or waived.

22. Disclaimer

All information contained in the RFP, including any amendments and supplements thereto, reflects the best and most accurate information available to the FPSC at the time of the RFP preparation. No inaccuracies in such information shall constitute a basis for change of the payments to the provider or a basis for legal recovery of damages, either actual, consequential, or punitive.

23. Cancellation/Availability of Funds

The FPSC shall have the right to unilaterally cancel, terminate, or suspend any ensuing contract, in whole or in part, by giving the provider 60 calendar day's written notice by certified mail, return receipt requested, or in person with proof of delivery. If a breach of the contract by the provider occurs, the FPSC will provide written notice to the provider, and allow 30 days to cure the breach. If a breach of the contract is not cured within the 30 days, the FPSC may, by written notice to the provider, terminate the contract upon 24 hour notice. The provisions herein do not limit the FPSC's right to remedies at law or to damages.

Pursuant to Rule 25-25.013, F.A.C., on multi-term contracts, this contract is subject to the availability of funds.

24. Public Bidder Meetings and Proprietary/Confidential Information

Written requests for confidentiality shall be considered by the FPSC as described in Section 364.183, Florida Statutes. Rule 25-22.006, F.A.C., should be followed in making a request.

Meetings held between the FPSC or PRC and the bidder shall be open to the general public. Should the need arise to discuss any confidential materials, the FPSC or PRC will attempt to hold such a discussion by referring to the confidential material in a general way without closing the meeting. All meetings with bidders will be transcribed.

25. Public Records

All material submitted regarding this RFP becomes the property of the FPSC and subject to Chapter 119, Florida Statutes, (Public Records Law) and in accordance with Section

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119.0701, Florida Statutes (Request for Contractor Records). The PRC reserves the right to use any or all information/material presented in reply to the RFP, subject to any confidentiality granted via Chapter 364 and Part II of Chapter 427, Florida Statutes. Disqualification of a bidder does not eliminate this right.

Unless otherwise exempt from disclosure under Chapter 119, Florida Statutes, or Section 24(a) of Article I of the State of Florida Constitution, all documents qualifying as public records shall be made available by the provider to the requestor, for public inspection. The FPSC may unilaterally cancel the contract for refusal by the provider to allow such public access. The provider must:

- a. Keep and maintain public records required by the FPSC in order to perform the service.
- b. Upon request from the FPSC's custodian of records, provide the FPSC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Public Records Law or as otherwise provided by law. A provider who fails to provide public records to the FPSC may be subject to penalties under Section 119.10, Florida Statutes.
 - i. The Provider should acknowledge public records requests in a reasonable time and begin gathering the responsive records promptly. If the Provider requires a clarification from the requestor of public records, the Provider should ask for clarification from the requestor within 3 business days of receiving the public records request.
 - ii. When it appears that preparation of requested records will require the extensive use of information technology processing resources and/or extensive time to locate and prepare the material for copying (i.e. more than 30 minutes to locate the records), the person requesting the public records should be advised within 3 business days of the request that they may be billed for the actual cost of locating these records. The estimated costs should be consistent with the FPSC's *Time Accounting for Copying PSC Records* form (PSC/CLK 014-C). Pursuant to Section 350.06(6), F.S., in any instance where the copying fee would amount to less than \$1, no fee is to be charged. If the requestor agrees to pay the estimated costs, the Provider should gather the records for delivery. The Provider should

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also keep a record of the time spent in searching for and preparing the material for copying so the actual costs can be billed to the requestor. Upon payment of the actual costs of locating the records, the Provider should deliver the copied material to the requestor.

- iii. If the Provider requires FPSC assistance to respond to a public records request that requires extensive use of time, it should inform the FPSC of any such public records request within 3 days of receiving the request so that the FPSC can assist the Provider in facilitation of the request when possible.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the provider does not transfer the records to the FPSC.
- d. Upon completion of the contract, transfer, at no cost, to the FPSC all public records in possession of the provider or keep and maintain public records required by the FPSC to perform the contract. If the provider transfers all public records to the FPSC upon completion of the contract, the provider shall destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. If the provider keeps and maintains public records upon completion of the contract, the provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the FPSC in an Adobe PDF format.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 413-6770, clerk@psc.state.fl.us, 2540 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-0850.

The FPSC and the provider acknowledge that this contract, including all elements identified in section A. 20 of this RFP, is a public record, is available to the public for inspection, and may be posted on a web site by the State of Florida.

26. Non-Collusion

By submitting a proposal, the bidder affirms that the proposed bid prices have been arrived at independently without collusion, consultation, or communications with any other bidder or competitor, that the said bid prices were not disclosed by the bidder prior to filing

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with the FPSC, and that no attempt was made by the bidder to induce any other person, partnership or corporation, to submit or not submit a proposal.

27. Changes in the Contract

Any change in the contract shall be accomplished by a formal written contract amendment signed by the authorized representatives of both the FPSC and the provider. No other document or oral communications shall be construed as an amendment to the contract.

28. Conflict of Interest/Standards of Conduct

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes, (Public Officers and Employees), and Chapter 350, Florida Statutes (Standards of Conduct). All bidders shall disclose with their bid the name of any officer, director, or agent, who is also an employee of the State of Florida, or any of its agencies. Further, all bidders shall disclose the name of any state employee who owns, directly or indirectly, an interest of five percent or more in the bidder's firm or any of its branches.

29. Minority Business

It is the policy of the FPSC to encourage participation by minority business enterprises (as defined in Section 287.012, Florida Statutes) in FPSC contracts. If two identical bids/proposals to an invitation for bids or request for proposals are received and one response is from a minority owned company, the FPSC shall enter into a contract with the minority owned company. If applicable, the bidder shall include in its proposal evidence that it meets the definition of a minority business.

30. Dispute Resolution

Any dispute concerning performance of the Contract shall be decided by the FPSC or the FPSC's designated Contract manager, who shall reduce the decision to writing and serve a copy on the provider. The decision shall be final and conclusive unless within 21 days from the date of receipt, the provider files with the FPSC a petition for administrative hearing. The FPSC's decision on the petition shall be final, subject to the provider's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the provider's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120, Florida Statutes. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

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31. Waiver

The delay or failure by the FPSC to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of FPSC's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

32. Severability

If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

33. Force Majeure, Notice of Delay, and No Damages for Delay

The provider shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the provider or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the provider's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the provider. In case of any delay the provider believes is excusable, the provider shall notify the FPSC in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the provider could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five days after the date the provider first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE PROVIDER'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.

Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the FPSC. The provider shall not be entitled to an increase in the Contract price or payment of any kind from the FPSC for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the provider shall perform at no increased cost, unless the FPSC determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the FPSC may (1) accept allocated performance or deliveries from the provider, or (2) purchase from other sources (without recourse to and by the provider for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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34. Liquidated Damages for Failure to Initiate Services on Time or to Provide Contracted Services for the Life of the Contract

Implementation of the Florida Relay Service in a timely manner is essential. Failure by the provider to implement the service by March 1, 2025, shall be considered a significant and material breach of the Contract. For each day the service is delayed, the provider shall pay to the Administrator, for deposit in its operating fund, the sum of \$25,000. Except for the Force Majeure provisions in Section A.33., which shall apply, this amount is not subject to the limitations and cure language set forth below. After a 30 day opportunity for the provider to effectuate a cure that is approved by the Commission, liquidated damages may accrue up to the following amounts for each breach as set forth below:

- a. Meet answer time requirements - \$1,000/day.
- b. Meet blockage rate or transmission level requirement - \$1,000/day.
- c. Meet complaint resolution requirement - \$1,000/complaint.
- d. Provide timely reports - \$500/day.
- e. Meet minimum typing speed of 60 words per minute on live traditional relay calls - \$1,000/day.
- f. Provide contracted services for the life of the contract, the FPSC reserves the right to require the payment by the provider of liquidated damages in the amount commensurate with the duration and extent of the system deficiencies.

Such liquidated damages may not exceed the revenue generated for the respective day. Similarly, liquidated damages for any particular month may not exceed the actual monthly revenue from the provision of services pursuant to this RFP for that month. Any liquidated damages may be paid by means of the Administrator deducting the amount of the liquidated damage from a monthly payment to the provider. Such action shall only occur upon order of the FPSC.

35. Cooperation with FPSC Inspector General

The bidder understands and will comply with Subsection 20.055(5), Florida Statutes, which requires cooperation with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to Section 20.055, Florida Statutes.

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B. THE SERVICE TO BE PROVIDED

1. Overview

This section of the RFP lists and describes the specific basic features of the relay service required to be provided.

2. Scope of Service

The relay service shall be designed to provide the means by which a deaf, hard of hearing, speech impaired, or dual sensory impaired person using a TTY can communicate over the existing telecommunications network with a non-TTY user (and vice-versa) through the use of the relay system. The service shall also provide other telecommunications services to persons with hearing and speech disabilities as further described below.

The FPSC is interested in procuring a relay service that is as cost efficient as possible while at the same time providing a service as equivalent to standard telecommunications service as possible.

3. Access Numbers

There shall be a single access number for TDD users, a single access number for voice users, a single access number for ASCII users, and a single access number for Spanish users. The TDD access number shall be (800) 955-8771, the voice access number shall be (800) 955-8770, and the ASCII access number shall be (800) 955-1339. The Spanish access number shall be (877) 955-8773. The provider must request FPSC authority to use additional numbers for relay access (e.g., Speech to Speech (STS), other foreign languages, etc.). If a caller calls the wrong access number, the system shall process the call without requiring the caller to redial.

Access shall also be provided via "711" which shall point to the (800) 955-8770 number.

4. Availability of the System to Users

The service shall be designed to relay local, intrastate, interstate, and international calls that originate or terminate in Florida. Relay service shall be available 24 hours per day every day of the year. No restrictions shall be placed on the length or number of calls placed by customers through the relay center.

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5. Minimum Communications Assistant (CA) Qualifications and Testing

The provider shall adequately supervise and train its employees to always be courteous, considerate, and efficient in their contact and dealings with its customers and the public in general, and shall conduct periodic evaluations to ensure that courteous service is being rendered.

Bidders shall specify how CAs will meet all necessary proficiency requirements. CAs shall be able to quickly and accurately type TDD relay messages. The provider shall use valid, unbiased tests for CAs on subjects including, but not limited to:

- a. Competent skills in typing, grammar, spelling, interpretation of typewritten American Sign Language (ASL), and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.
- b. A high school diploma or grade equivalent diploma. In addition, each candidate shall pass a high school level English comprehension and grammar test before being considered for employment.
- c. A minimum typing speed of 60 words per minute on live traditional relay calls. Technological aids may be used to reach the required typing speed. The provider shall conduct monthly test calls on live calls using a statistically valid sample of their Florida TRS calls, with test results being submitted to the contract administrator on a monthly basis. The provider shall use prepared scripts that reflect a typical conversation and calling through the relay system the same as other live calls. The purpose of these calls will be to ensure all federal and state requirements for relay service are met. The provider shall explain as part of its proposal how it will conduct the test calls to determine the adequacy of service provided by the relay service. The method to be used to determine the typing speed is as follows. Start timing the CA when the CA begins to type the message to the TTY user. Count the number of characters including spaces and divide that number by five to determine the number of words per minute. It shall be the objective of the provider to test each CA at least once yearly. If a CA does not meet the 60 words per minute requirement, the CA shall be taken off of live relay calls until further training and compliance can be accomplished.
- d. Ethics (e.g., how a CA interacts with clients).
- e. Confidentiality.

Any person who has not passed these tests shall not be utilized as a CA.

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6. Communications Assistant (CA) Training

Each bidder shall demonstrate in its proposal how ongoing CA training will be provided by including with its proposal an outline of a proposed CA training plan. The provisions for CA training shall include, but not be limited to, an understanding of limited written English and ASL, deaf culture, needs of hearing and speech disabled and dual sensory impaired users, ability to speak in a tone of voice consistent with the intent and mood of the conversation, operation of relay telecommunications equipment, how to handle hearing and Voice Carry-Over, ethics, confidentiality and other requirements of the provider's operating policies and procedures. Training shall include both simulated and live on-line call handling.

7. Staff Training

All relay center staff, including management, shall receive training in ASL, deaf culture, needs of hearing, speech and dual sensory impaired users, ethics, and confidentiality. Each proposal should include an outline of a staff training plan indicating training topics and time frames as well as explaining how individuals or organizations (such as deaf service centers, state agencies, Florida Telecommunications Relay, Inc., universities, etc.) representing the hearing and speech impaired community would be used to assist with the training.

8. Counseling of CAs and Staff

Bidders are required to outline a program for counseling and support that will help CAs and staff deal with the emotional aspects of relaying calls. Those providing this staff support shall have training in dealing with the emotional aspects of handling relay calls. However, in counseling sessions, the CA shall not give to the support person the names of callers involved. The counseling support system shall follow the confidentiality provisions of this RFP.

9. Procedures for Relaying Communications

The system shall be designed to convey the full content of the communications. Unless requested otherwise by a user, the CA shall relay all calls according to the following procedures.

- a. The CA is to be identified by a number (not name) followed by "M" if male and "F" if female. The provider shall establish a method which will allow identification of the CA in the event a complaint is filed or a user wants to praise the work of the CA.
- b. The user shall be kept informed on the status of the call, such as dialing, ringing, busy, disconnected, or on hold throughout the call session. The system shall provide feedback to callers on the call status within 10 seconds after a

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caller has provided the number to call and continue to provide feedback until the call is answered.

- c. All users shall have the option of telling the CA how to greet the called party and what aspects of the call that he/she will handle. For example, the TDD user may voice the call (Voice Carry-Over), rather than have the CA do it or the caller may ask that relay be explained as soon as someone answers the call.
- d. When the call is first answered, and at all times during the conversation, the system shall type to the TDD user or verbalize to the non-TDD user verbatim what is said or typed unless the relay user specifically requests summarization. If the CA summarizes the conversation, the CA shall inform both parties that the call is being summarized.
- e. When the CA is asked to explain relay to a user, the CA shall express the term "explaining relay" to the other user on the call to let them know what is happening rather than transmitting all of the explanation.
- f. When speaking for the TDD user, the CA shall adopt a conversational tone of voice appropriate to the type of call being made and conveying the intent and mood of the message. The CA shall also indicate identifiable emotions by typing those in parentheses, (e.g., he's laughing, he's crying). Any identifiable background noises shall be relayed to the TDD user in parentheses. The CA shall identify to the TDD user, if identifiable, the gender of voice users when they first come on the line. All of the above should be done automatically unless the user asks that it not be done.
- g. CAs shall indicate to the user, if known, if another person comes on the line.
- h. All comments directed to either party by the CA or to the CA by either party shall be relayed. These comments shall be typed in parentheses. However, comments between the CA and a relay user at the beginning of a call which deal with billing information need not be relayed to the other user.
- i. CAs shall verify spelling of unfamiliar proper nouns, numbers, addresses, information about drug prescriptions and other unfamiliar words that are spoken and are to be relayed.
- j. CAs shall stay on the line for a minimum of 10 minutes before allowing a change in CAs. For STS calls, the CA must stay on the line a minimum of 20 minutes. If a user requests that the same CA be used during the entire conversation, the system shall comply whenever possible until both parties have terminated the call.

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- k. CAs shall not counsel, offer advice, or interject personal opinions or additional information into any relay call. This also means the CAs shall not make any value judgments on the profanity or obscenity or legality of any messages. Furthermore, the CAs shall not hold personal conversations with anyone calling the system.
- l. Users shall not be required to give their names or the name of the party they are calling, unless needed for billing.
- m. The system shall transmit conversations between TTY and voice callers in real time.
- n. For each incoming call, the CA shall without delay make as many outgoing calls as requested by the caller.
- o. If a user requests that a CA of a specific gender be used, the provider shall make best efforts to accommodate the request when a call is initiated and at the time the call is transferred to another CA.
- p. The provider shall provide a customer profile database. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

10. Languages Served

At all times, the provider shall make available CAs with the capability to provide relay service to users who use either English, Spanish, or ASL on their relay call. Translation from one language to another is not required.

11. Additional Languages Served

The provider will not be required to serve languages other than English, Spanish, or ASL. However, additional evaluation points may be given for proposals that include how the provider would handle relay calls using one or more additional languages (e.g., French, Haitian Creole, etc.). Additional languages should be identified.

12. Shift Advisor/Consultant

On each shift the provider shall employ in the relay center at least one person who is highly knowledgeable of ASL in order to serve as an advisor/consultant to assist CAs in understanding the intent of messages and properly communicating the full content of communication.

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13. Confidentiality of Calls

As required by Section 427.704(1)(c), Florida Statutes, all calls shall be totally confidential; no written or electronic script shall be kept beyond the duration of the call. CAs and supervisory personnel shall not reveal information about the content of any call and, except for the minimum necessary for billing, complaint processing, statistical reporting or training purposes as further described in this RFP, shall not reveal any information about a call. CAs and supervisory personnel shall be required to sign a pledge of confidentiality promising not to disclose the identity of any callers (except for the reasons discussed in this section) or any information learned during the course of relaying calls, either during the period of employment as a CA or after termination of employment.

- a. When training new CAs by the method of sharing past experience, trainers shall not reveal any of the following information:
 - (1) Names of the parties on the call.
 - (2) Originating or terminating points of specific calls.
 - (3) Specifics of the information conveyed.
- b. CAs shall not discuss, even among themselves or their supervisors, any names or specifics of any relay call, except as necessary in instances of resolving complaints, bill processing, emergencies, or for training purposes. CAs may discuss a general situation with which they need assistance in order to clarify how to process a particular type of relay call. CAs should be trained to ask questions about procedures without revealing names or specific information that will identify the caller.
- c. Watching or listening to actual calls by anyone other than the CA is prohibited except for training or monitoring purposes or other purposes specifically authorized by the FPSC. FPSC staff shall be permitted to observe live calls for monitoring purposes, but shall also comply with the confidentiality provisions above.
- d. A copy of the FPSC rules on confidentiality shall be provided to a user upon request and at no cost.

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14. Types of Calls to be Provided

- a. Text-to-voice/voice-to-text. The provider shall transmit conversations between TTY and voice callers in real time.
- b. Voice carry-over (VCO), two-line VCO, VCO-to-TTY, and VCO-to-VCO.
- c. Hearing carry-over (HCO), two-line HCO, HCO-to-TTY, and HCO-to-HCO.

15. Call Release Functionality

Call release functionality is a feature that allows the CA to sign-off or “release” from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

The provider shall also immediately release a call when a TTY user using the relay system is inactive for more than 30 seconds.

16. Speed dialing

A feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a “short-hand” name or number for the user’s most frequently called telephone numbers.

17. Three-Way Calling Functionality

A feature that allows more than two parties to be on the telephone line at the same time with the CA.

18. Voicemail and Interactive Menus

CAs must alert the TRS user of the presence of a recorded message and interactive menus through a hot key on the CA’s terminal. The hot key will send text from the CA to the consumer’s TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. The provider may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

The bidder shall explain how messages will be left on or retrieved from answering machines and how interaction with voice response units will be accomplished. The bidder shall explain how any access code used to retrieve messages will be confidentially handled.

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The bidder shall explain if and how messages will be retrieved from an answering machine if the originating party calling the relay center is at the same location as the answering machine. For example, if a person is at home and cannot retrieve his messages from his own answering machine, how will the relay center accomplish retrieving the message and relaying the information to the deaf or hard of hearing person when only one telephone line exists to the residence?

19. Voice and Hearing Carry-Over

The provider shall provide both voice and hearing Carry-Over upon request of the user. A TDD user may request Voice Carry-Over (VCO) which will allow him/her to speak directly to the telephone user and receive the message typed back on the TDD. In addition, a TDD user may request Hearing Carry-Over (HCO) which will enable the TDD user to directly hear what the telephone user is saying and type back his/her message, which will be spoken by the operator.

As part of its proposal, the bidder shall describe in detail how incoming 2-line VCO calls will be handled. As part of its proposal the bidder shall also describe in detail how outgoing 2-line VCO calls will be handled.

The provider shall make provision for two persons who have a hearing loss to speak for themselves by means of Voice Carry-Over to Voice Carry-Over (VCO to VCO) and for two persons who are speech disabled to hear for themselves by means of Hearing Carry-Over to Hearing Carry-Over (HCO to HCO).

20. Turbocode™

The provider shall provide Turbocode™, or its functionally equivalent, service that allows the relay user to interrupt the CA or other TDD user as part of the basic relay system.

Pricing for this service shall be included in the basic relay price in the bidder's price proposal.

21. Speech to Speech

The provider must offer Speech to Speech (STS) users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA shall just repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

Pricing for STS service shall be included in the basic relay service price in the bidder's price proposal.

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22. Access to Pay Per Call Services (i.e. 900/976)

The provider shall provide access to pay per call services such as 900/976 numbers.

The bidder should explain how it will provide relay service users with access to pay per call services. Bidders are to describe how such access can be provided, how callers can disconnect without being charged, and a methodology for billing the user directly for any charges incurred from the pay per call service. The bidder should describe how it would deal with denied pay per call calls and high bill complaints for 900/976 calls. Before placing the call, the CA shall advise the caller that there will be a charge for the call.

The bidder shall explain in the proposal how interstate and intrastate pay per call charges shall be separated for end user payment purposes.

23. Caller ID

When a TRS facility is able to transmit any calling party identifying information to the public network, the provider must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

24. Last Number Redial

Last Number Redial allows the caller to have the system dial the last number called via relay without the caller having to give the number to the CA.

25. Obscenity Directed at the Operator

CAs do not have to tolerate obscenity directed at them. A proposal shall specify how the provider will handle these situations.

26. Emergency Calls

The provider must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

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27. Blockage

The provider is responsible for ensuring that 99 percent of all calls reaching the provider's relay center per day are either answered or continue to receive a ringing signal. Calls that are blocked must receive a network blockage signal of 120 interruptions per minute.

28. Answer Time

The provider is responsible for answering, except during network failure, 85 percent of all calls daily within 10 seconds of reaching the relay switch by any method which results in the caller's call immediately being placed, not put in a queue, or on hold. Elapsed time is calculated from the time inbound calls reach the relay switch. In calculating the percentage of calls meeting the answer time standard, the numerator shall be the total number of calls per day that are answered (with a CA ready to serve) in 10 seconds or less. The denominator shall be the total number of calls per day reaching the relay switch. Answer time shall not be reported as an average speed of answer or by using a weighted service level.

29. Equipment Compatibility

It is necessary for the system to be capable of receiving and transmitting in both Baudot and ASCII codes, as well as voice. It is also required that the relay system be capable of automatically identifying incoming TDD signals as either Baudot or ASCII. All equipment shall be compatible with the basic protocol of TDDs distributed in Florida through the Administrator.

30. Transmission Levels

Transmission levels must be maintained within industry standards as outlined in the American National Standards Institute (ANSI) – Network Performance – Switched Exchange Access Network Transmission specifications (ANSI T1.506-1997). The provider must provide updates to those standards as amended by ANSI during the term of the contract and must meet the amended standards.

31. Measuring Equipment Accuracy

Every meter, recording and ticketing device used to capture call details for billing subscribers or the FPSC/Administrator as well as for providing traffic information shall be tested prior to its installation and shall be accurate 97 percent of the time to within a one second grace period. All equipment shall be maintained in a good state of repair consistent with safety and adequate service performance. Quarterly testing of the measuring equipment accuracy shall be performed by the provider and files should be maintained for the duration of the contract for FPSC review upon request.

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32. Emergency Operations and Uninterruptible Power

The provider shall provide an uninterruptible power system sufficient to operate each relay center processing Florida relay traffic at busy season busy hour load. The uninterruptible power system shall support the switch system and its peripherals, switch room environmental (air conditioning, fire suppression system, emergency lights and system alarms), operator consoles/terminals, operator worksite emergency lights, and Call Detail Record recording. Provisions shall be made to meet emergencies resulting from failure of power service, sudden and prolonged increases in traffic, storms, lightning, etc. Employees shall be instructed as to the procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of relay service.

The bidder shall describe its plan for dealing with all types of natural and man-made problems (e.g., hurricanes, lightning strikes, fires, etc.) which either isolate the relay center and prevent calls from reaching the center or cause the center to be unable to operate. In addition, the plan should detail the steps which will be taken to deal with the problem and restore relay service.

The provider shall inform the contract manager of any major interruptions to the operation of the relay center extending beyond five minutes duration. The contract manager shall also be informed when it becomes known to the relay center that any portion of the state is isolated for more than five minutes from the relay center. The provider shall also provide a written (or e-mail) report to the contract manager after restoration of service.

Although it is not mandatory, the FPSC urges the provider to subscribe qualifying facilities for priority restoration under the Telecommunications Service Priority Program.

33. Intercept Messages

Appropriate intercept messages shall be provided if a system failure occurs.

34. Service Expansion

The bidder shall show the capability of expanding services in response to increasing demand. The bidder shall develop and illustrate in its proposal a detailed plan of how this expansion will be accomplished. The plan shall include, but not be limited to, trunking capacity, CA workstations, personnel, and equipment capacity. The plan shall also indicate how any time lag shall be avoided to meet any increased call volume. The above plans shall allow the provider to be able to maintain all standards listed in the RFP.

35. New Technology

The users should be allowed to benefit from advancing technology. The bidder should keep abreast of technological changes in the provision of relay service to inform the FPSC

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and Administrator when new enhancements are available and at what price, and to provide the FPSC the opportunity to purchase such enhancements or upgrades to the service.

36. Consumer Input and Participation in Advisory Committee and FPSC Proceedings

The telephone users shall have input on the quality of the delivery of service. Bidders shall develop a plan to include the FPSC and its Advisory Committee in any evaluation of the system. A bidder shall not include travel or per diem costs of the FPSC or its Advisory Committee in its bid price since those costs will be funded by the State. An outline of this plan shall be included with the bidder's proposal. The plan shall explain methods for consumer input and how the recommendations from these evaluations will be incorporated into the policies of the relay center. This does not preclude the provider from conducting additional internal evaluations which use relay staff. The results of any service quality evaluation shall be reported to the FPSC office within 15 calendar days after the last month in each quarter.

Bidders are encouraged to include in the consumer input plan, methods for working with organizations serving individuals with hearing and speech loss statewide to conduct periodic community forums. The community forums shall be for the purpose of gaining user input on the quality of relay service and for responding to user questions and problems on use of the relay service. The community forums shall be planned and conducted in conjunction with organizations serving people with hearing and speech loss.

The provider shall participate in all meetings of the Advisory Committee and all FPSC workshops and hearings relating to relay service unless excused by the contract manager.

37. Complaint Resolution

The provider shall establish procedures regarding complaints, inquiries, and comments regarding system services and personnel. The provider shall ensure that any caller to the relay center having a complaint will be able to reach a supervisor or administrator while still online during a relay call. All complaints received by supervisors, or in writing, shall be documented, including their resolution, and kept on file and available to the FPSC upon request. In addition, the relay center shall have a toll-free Customer Services telephone number available statewide and accessible to the public for the purpose of reporting service or other deficiencies. Records of such reports and copies of written reports regarding service or other deficiencies shall be maintained for the life of the contract and for 12 months after conclusion of the contract period. This record shall include the name and/or address of the complainant, the date, and time received, the CA identification number, the nature of the complaint, the result of any investigation, the disposition of the complaint, and the date of such disposition. Each signed letter of complaint shall be acknowledged in writing or by contact by a representative of the provider. The necessary replies to inquiries propounded by

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the FPSC's staff concerning service or other complaints received by the FPSC shall be furnished in writing within 15 days from the date of the FPSC inquiry.

A complaint log compliant with the FCC reporting requirements shall be provided to the FPSC's contract manager in a timely manner for filing with the FCC.

38. Charges for Incoming Calls

The provider shall make no charge to the users for making calls (incoming) to the relay service.

39. Special Needs

The provider is not required to provide Special Needs services. However, consideration will be given for additional evaluation points for proposals that include Special Needs services (beyond any other services for basic relay described elsewhere in their proposal) as a part of the basic relay service.

“Special Needs” means limiting factors of a physical or literacy nature that preclude a person who is hearing, speech or dual-sensory (both hearing and visually impaired) disabled from using basic relay service. Special Needs includes: (1) physical limitations, either temporary or permanent, which preclude use of a TDD with or without adaptations for persons with manual dexterity limitations (e.g., paralysis, severe arthritis, broken fingers) and (2) markedly limited ability either to read or write English or Spanish which precludes the user from being able to use the relay service. (However, relay service does not include translation from one language to another for the Special Needs population or for any other consumers).

Special Needs does not include: (1) unavailability of telephone service at the caller's home or business, (2) inability to communicate in either English or Spanish (i.e., where caller can only communicate in a language other than English or Spanish), or (3) handling complex calls (e.g., intervening in a call with a doctor to explain a medical procedure).

The bidder shall describe what steps will be taken to provide telecommunications assistance to persons with hearing, speech and dual-sensory impairments who have special needs. This description shall include the types of services that would be provided, the prices to end users (if any) for those services, how those services would operationally be provided, how parties other than the provider would be involved in providing Special Needs services, and how the provider would assure that those parties would fulfill their portion of the service obligation.

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40. Unsolicited Features in Basic Relay Service

The bidder will not be required to provide unsolicited features in its basic relay service. However, additional evaluation points will be considered for proposals that include unsolicited features. The cost to the state for these unsolicited features must be included within the basic relay service price proposal.

Any additional features not described elsewhere in the RFP, and which the bidder is including in its basic relay service and price proposal, which a bidder would like to propose shall be fully described indicating how the feature would work, how it would improve the system, which users would benefit from the feature and any other information which would allow the FPSC and PRC to evaluate the feature. Examples might include features such as: video interpreting; use of speech synthesis equipment instead of a CA to convert text to speech; use of voice recognition equipment instead of a CA to convert speech to text; enhanced transmission speed or any proposed service enhancements and technological enhancements which improve service.

41. IP-Relay, IP-Captioned Telephone, and Video Relay Services

If required by the FCC, the bidder shall be capable of providing IP-Relay service. If required by the FCC, the bidder shall be capable of providing IP-Captioned Telephone Service. If required by the FCC, the bidder shall be capable of providing Video Relay Service.

42. Redundancy

Please provide information regarding redundant coverage offered nationally, such as the number of call centers.

43. Performance Bond

The provider will be required to furnish an acceptable performance bond, certified or cashier's check, or bank money order equal to the estimated total first six months price of the contract. The bond may be renewed annually and shall be in effect for the entire duration of the contract and provided to the FPSC upon execution of the contract or upon request of the FPSC's contract manager.

To be acceptable to the FPSC as surety for performance bonds, a surety company shall comply with the following provisions:

- a. The surety company shall be authorized to do business in the state of Florida.
- b. The surety company shall have been in business and have a record of successful continuous operations for at least 5 years.

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- c. The surety company shall have minimum Best's Policy Holder Rating of A and Required Financial Rating of VIII from Best's Key Rating Guide.
- d. The surety company shall provide a duly authenticated Power of Attorney evidencing that the person executing the bond on behalf of the surety had the authority to do so on the date of the bond.

44. Submission of Monthly Invoice

By the 14th calendar day of the month (or the subsequent business day if the 14th falls on a Saturday, Sunday, or holiday), the provider shall submit a detailed invoice (showing billable minutes and rates) to the Administrator [defined in Section 427.703(1), Florida Statutes] at the contracted price for the previous month's activity. The accounting period used to prepare monthly invoices shall be the calendar month. Payment shall not exceed the prices contained in the contract. The invoice and supporting documentation shall be prepared in such a way as to allow the Administrator or the FPSC to audit the invoice. A copy of the monthly invoice shall be submitted to the contract manager at the same time it is submitted to the Administrator.

Payment is due within 30 days of receipt of a proper invoice. If payment is not received within the 30 day due date, the FPSC will be liable for interest charges at prime lending rates that will be incurred against the unpaid balance until such time as payment is received.

The invoices provided by relay provider for the FRS shall specify to whom payment shall be made and the address to which such remittance shall be mailed. If FPSC or its assigned Administrator disputes any portion of a monthly invoice, the disputing party shall provide to relay provider a detailed explanation of and manner of calculations of the disputed amounts. Relay provider will promptly address the claim with the FPSC or its Administrator and attempt to resolve the problem within 30 days. If the dispute is between relay provider's Administrator and relay provider and these two parties cannot resolve the issue within 30 days of the due date of the bill, relay provider shall so advise the FPSC. The FPSC will address the dispute as soon as possible. If relay provider overcharges the FPSC on any monthly invoice and the overage is paid, relay provider shall issue a credit in the amount of the overage plus interest charges at prime lending rates. Interest shall be calculated from the date such payment is received by relay provider ("Payment Date"), until the date such credit is issued.

45. Travel

The provider will not be entitled to a separate payment from the FPSC or the Administrator for any travel expenses which occur as a result of this contract.

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46. Reporting Requirements

The provider shall provide to the contract manager and the Administrator the following written reports by the 25th calendar day of each month reporting data for the previous month. More frequent or more detailed reports shall also be provided upon request.

- a. Total daily and monthly
 - (1) Number of incoming calls (separately stating whether incoming calls originate as Baudot, ASCII or voice calls, and also separately stating whether each type of call is English, Spanish, or other foreign language calls). The number of incoming calls which are general assistance calls shall be footnoted on the report.
 - (2) Number of incoming call minutes associated with each of the categories of incoming calls in a.(1) above.
 - (3) Number of outgoing calls (provide two breakdowns of this total: one separately stating completed calls and incomplete calls, and one separately stating whether calls terminate as Baudot, ASCII or voice calls).
 - (4) Number and percentage of incoming Florida calls received at each relay center handling Florida calls. Total should equal the number of incoming calls in item a.(1) above.
- b. Average daily and monthly blockage rate.
- c. Daily answer times for the month and daily number and percent of incoming calls answered within 10 seconds for the month.
- d. Total daily and monthly number of outgoing calls (including both completed and incomplete) of the following lengths:
 - (1) 0 – 10 minutes
 - (2) >10 – 20 minutes
 - (3) >20 – 30 minutes
 - (4) >30 – 40 minutes
 - (5) >40 – 50 minutes

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- (6) > 50 – 60 minutes
- (7) > 60+ minutes
- e. On a daily basis for the month, number of outgoing calls and average length of calls by hour of day. (Total should equal total of a.(3)).
- f. Number of outgoing local, intraLATA toll, intrastate interLATA, interstate and international calls for the month. (Total should equal total of a.(3)).
- g. Number of outgoing calls and average length of completed outgoing calls originated by TDD users and voice users (identified separately). (Total number of calls should equal total of a.(3)).
- h. The provider shall provide monthly summary reports to the FPSC and the Administrator regarding the number of complaints received categorized by topic areas. The provider shall also provide a complaint summary to the FPSC in the format necessary to submit to the FCC in compliance with 47 CFR 64.604(c)(1)(ii), by June 15 covering the previous 12 months of complaints ending May 31 of that year.
- i. The provider shall report monthly to the FPSC and the Administrator the results of any user evaluations conducted.
- j. The provider shall report monthly on new subcontractors being used to assist in providing relay service and shall identify the scope of their role in the process and the relationship of the subcontractor to the provider.
- k. By March 1, the provider shall provide to the Administrator and the contract manager forecasted relay usage figures and costs to the FPSC for the upcoming fiscal year (July 1 - June 30).
- l. The provider shall submit the necessary documentation to the FPSC that complies with the state certification requirements of 47 CFR 64.606 when required.
- m. The provider shall provide reports to the FPSC as necessary to complete the five-year re-certification of Florida Relay Service with the FCC.
- n. A provider opting to locate a call center in Florida shall file quarterly reports with the FPSC's contract manager demonstrating a minimum of 75 percent of Florida relay traffic is handled by the Florida located center except when emergency conditions exist at the Florida center.

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The bidder shall include information on its capability and willingness to provide ad hoc reports including new information in the bidder's database or new formats for existing information.

47. Transfer to New Provider

When relay service is transferred to a new provider, the provider shall make every effort to ensure that service is transferred to the new provider so that relay users do not experience an interruption in service. The relay service and consumer service 800 or other telephone numbers shall be made available to the new provider, with the new provider paying any costs associated with transferring the numbers to the new provider. Provision of customer profile data to the incoming provider shall be provided at least 60 days prior to the outgoing provider's last day of service.

48. Insurance Coverage

During the term of the Contract, the provider shall provide insurance coverage for itself and all of its employees used in connection with the performance of services under this Contract and ensure that all subcontractors shall be similarly covered as provided herein. Such policies shall be issued by a financially sound carrier and/or carriers duly authorized to do business in the State of Florida. Such insurance coverage shall hold the FPSC harmless from any act, negligence or omission on the part of provider, its employees, agents or subcontractors and their employees in the execution or performance of the obligations assumed hereunder. This insurance will include Worker's Compensation as required by law and comprehensive general liability and bodily injury insurance in amounts no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

49. Optional Florida Call Center

A bidder may, at its option, elect to place a call center in Florida through which relay traffic may be routed. A bidder proposing an optional call center shall maintain the call center throughout the term of the contract. A minimum of 75 percent of Florida relay traffic shall be handled by the Florida located center except when emergency conditions exist at the Florida center. Percentage of traffic routed through the Florida relay call center shall be reported to the FPSC's contract manager on a quarterly basis. The Florida call center shall be fully operational by March 1, 2025. Bidders meeting the criteria for a Florida call center will be awarded 100 points. Partial points will not be awarded in this category.

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C. TECHNICAL BID PROPOSAL FORMAT

1. Format

The bidder's proposal shall be organized in the same order as the items listed in the checklist form in Section E except Signature of Acceptance items require no response other than a signature on the checklist. Signing means that the item has been reviewed and the bidder agrees to comply with the item. The person signing shall be the person in the bidder's organization authorized to make the proposal. For items for which points may be awarded, the bidder shall explain how it will provide the service described in the RFP. For pass/fail items, the bidder shall provide the information requested.

- a. The original and eight two-sided copies of the technical proposal shall be filed. The original and five copies of the price proposal shall be filed.
- b. The technical proposal shall be contained in a three-ring binder indicating the name of the bidder and indicating that the contents of the binder is the technical bid proposal only. Price proposals are not eligible for FPSC electronic filing. (The price proposal shall be submitted in a separate sealed envelope - see Section D.)
- c. Each page of the technical proposal shall be numbered at the bottom center of each page and each page should be consecutively numbered with no repetition of page numbers, except attachments that can be numbered A-1, B-1, etc. For example, there shall only be one page 1, one page 50 and one page 500 in the technical proposal. Page numbering shall only be done in Arabic numerals with no pages numbered with other characters such as 5.7, iii, 6-a, XIX, or similar numbering systems, except attachments as described above. Attachments can have their own numbering system. Attachments shall be labeled by letters (e.g., A, B, C, etc.) and page numbers for attachments should begin with the attachment letter designator (e.g., A-1, B-1, C-1, etc.).
- d. In the top or bottom margin of each page, the name of the company shall be identified.
- e. To the extent possible, all pages of the proposal shall be on 8½" x 11" white paper. However, individual presentations which the bidder is unable to place on an 8½" x 11" page in a readable format may be presented on a larger page.
- f. Attachments can have their own numbering system. Attachments shall be labeled by letters (e.g., A, B, C, etc.) and page numbers for attachments shall begin with the attachment letter designator (e.g., A-1, B-1, C-1, etc.).

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2. Transmittal Letter

The transmittal letter on the original of the technical proposal shall contain the original manual signature of the person submitting the proposal on behalf of the bidder. The technical proposal copies shall also contain the typewritten signer's name and title. The transmittal letter shall clearly identify the complete legal name of the bidder. In the transmittal letter, the bidder shall state that it will comply with all requirements of the RFP. Any exceptions to the RFP's terms and conditions will result in disqualification from the solicitation process.

Each person signing a proposal certifies that he/she is the person in the bidder's organization authorized to make the proposal. The signer shall provide his/her affiliation with the bidder, address, telephone and facsimile numbers. If different from the person signing the proposal, the transmittal letter shall identify the person or persons (name, title, mailing address, e-mail address, telephone and facsimile number) authorized to make decisions or answer questions related to the proposal and any subsequent contract.

3. Public Entity Crimes Provision

Pursuant to Section 287.133, Florida Statutes, a person or affiliate who is on the convicted vendor list following a conviction for a public crime may not submit a bid on a contract to provide any goods or services to a public entity. The person or affiliate may not be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided for in Section 287.017, Florida Statutes, for Category Two (\$35,000) for a period of 36 months from the date of being placed on the convicted vendor list.

4. Financial Information

To allow the FPSC to evaluate the financial responsibility of the bidding company, the following items shall be submitted with the proposal for the bidding company (and its parent company, if applicable). Online access via a secure website¹ is an acceptable method to submit these items:

- a. Audited financial statements (or a SEC 10K Report) for the most recent two (2) years, including at a minimum:
 - (1) Statement of income and related earnings,

¹A bidder may file a claim of confidentiality pursuant to Rule 25-22.006(5), F.A.C., or the bidder may file a formal request for confidential classification pursuant to Rule 25-22.006(4), F.A.C. Documents received by means of the Internet cannot be considered confidential.

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- (2) Cash flow statement,
- (3) Balance sheet, and,
- (4) Opinion concerning financial statements from an outside CPA;
- b. Primary Banking source letter of reference.

5. Experience and Customer References

For each state in which the bidder is providing relay service, the bidder shall indicate:

- a. When the bidder began operating the system.
- b. The number of outgoing calls for the most recent month.
- c. The total duration of the contract.

If the bidder's relay service in other states is available for testing by means of a number that can be dialed from within Florida, the bidder shall provide the telephone numbers that can be used to dial the bidder's relay service.

The bidder shall provide the names of the contract administrator for the active contracts requested above. Also provide a specific phone number and e-mail address for each contract administrator. The FPSC will contact these administrators for customer references.

6. Subcontractors

If the bidder proposes to use subcontractors, the bidder shall identify those subcontractors and indicate the scope of their role in the provision of relay service. The bidder shall also indicate what experience the subcontractor has in providing the service for which it would contract with the provider. Once the contract is awarded, any change in subcontractors shall be reviewed and acknowledged by the FPSC.

7. Bid Security Deposit

A \$500,000 bid security deposit shall be furnished to the FPSC with the original of the proposal. The bid security deposit shall be in the form of a bond, a certified or cashier's check, or bank money order that is valid through the point of execution of the contract, and is payable to the Florida Telecommunications Relay, Inc. The bid security deposit will be held without cashing.

If a bond is used, the bond shall be issued from a reliable surety company acceptable to the FPSC, licensed to do business in the state of Florida. Such a bond shall be

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accompanied by a duly authenticated Power of Attorney evidencing that the person executing the bond on behalf of the surety had the authority to do so on the date of the bond. Please clearly identify the expiration date of the bond if a bond is submitted as the bid security instrument.

The unsuccessful bidders' security deposits shall be returned, without interest, within 30 days after disqualification, withdrawal, or signing of the contract with the successful bidder. The successful bidder's bid security shall be returned, without interest, upon signing of the contract and furnishing the Performance Bond as specified herein. If the successful bidder fails to sign a contract within 30 days after the Letter of Intent or fails to deliver the Performance Bond as specified herein, the bid security shall be forfeited to the Florida Telecommunications Access System Fund.

8. Check List of Proposal Content

As a part of the bidder's proposal, the transmittal letter should be followed by the evaluation checklist in Section E. In the blank beside each item on the checklist, except items requiring a Signature of Acceptance, the bidder's company contact person who is responsible for the proposal and any subsequent contract and who signs the transmittal letter shall initial (not check) each item in the check list which is contained within the proposal. The person initialing the checklist shall ensure that each item in the checklist is also contained in its proposal and in the same order as the item appears in the checklist. The bidder shall also indicate beside each item in the checklist the page number in its proposal where the item in the checklist can be found.

For items requiring a Signature of Acceptance, the same person shall sign each item indicating that the item has been reviewed and the bidder agrees to comply with the item.

NOTE: For filing part of a bid proposal electronically, please contact the Commission Clerk at (850) 413-6770 to discuss your filing. CONFIDENTIAL INFORMATION MAY NOT BE FILED ELECTRONICALLY.

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D. THE PRICE PROPOSAL FORMAT

Bidders must submit their bid on the basis of a charge per billable minute for services described. Bid price must be on a flat rate basis per billable minute for all billable minutes and not vary depending upon the volume of traffic. The price proposal must be filed in a separate sealed envelope. The envelope should include the following text:

“SEALED – RELAY PRICE PROPOSAL – TO BE OPENED ONLY BY THE PROPOSAL REVIEW COMMITTEE CHAIRMAN.”

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E. THE EVALUATION METHOD AND FILING CHECK LIST

Technical proposals will be evaluated using a pass or fail criteria for some elements, a point rating criteria for some elements, and a signature of acceptance for some elements. The PRC Chairman reserves, at his discretion, the right to notify and allow a bidder a minimum time period to cure minor irregularities in items rated on a pass/fail basis. Failure to cure such minor irregularities may result in elimination of the proposal from further evaluation. For items that are rated on a point basis, each member of the PRC will rate each item giving it a rating of between zero and the maximum point rating shown on the check list on the following pages.

The technical ratings will be based on the PRC member's evaluation of the evaluated item using the following scale.

Where maximum points equals	Poor	Fair	Good	Excellent
10	0-2.5	2.6-5.0	5.1-7.5	7.6-10
25	0-6.3	6.4-12.5	12.6-18.8	18.9-25
50	0-12.5	12.6-25	25.1-37.5	37.6-50
75	0-18.8	18.9-37.5	37.6-56.3	56.4-75
100	0-25	26-50	51-75	76-100
200	0-50	51-100	101-150	151-200

Total points from each PRC evaluator on the technical proposal will be added together for a total technical score. Proposals that do not receive at least 75 percent of the total available technical points in aggregate to achieve a level of Excellent, will be eliminated from further evaluation and the bidder's price proposal will not be considered. The technical score totals for each bidder will be compared by using the point total for the bidder with the highest point total as the denominator of a fraction with each bidder's individual point total as the numerator. Each bidder's percentage will then be multiplied by 50 percent to arrive at the weighted score for each bidder's technical proposal.

Next, a weighted score for each eligible bidder's price proposal shall be calculated as follows. Each eligible bidder's price will be compared by using the lowest eligible bidder's bid price for basic relay service as the numerator of a fraction with each eligible bidder's price as the denominator. Each eligible bidder's percentage will then be multiplied by 50 percent to arrive at the weighted percentage score for each eligible bidder's price proposal.

Each eligible bidder's weighted percentage score for its technical proposal and for its price proposal will be added together and the eligible bidder with the highest total will be recommended by the PRC to the FPSC. However, the FPSC reserves the right to reject the PRC's recommendation, and reject all bids.

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Evaluation Example

The following is an example of how the PRC would evaluate the bidders if the total technical points available equal 2,775. The numbers used are strictly for illustrative purposes and not intended to provide any guidance regarding price.

Assumptions:

Technical Points Awarded

Bidder A (2,775 points) - $2,775/2,775 = 1.000 \times 50\% = .5000$

Bidder B (2,590 points) - $2,590/2,775 = .9333 \times 50\% = .4667$

Bidder C (2,035 points) - $2,035/2,775 = .7333 \times 50\% = .3667$

In the example above, Bidder C failed to obtain a score equal to 75 percent of the total technical points available and as a result, Bidder C's price proposal would not be considered.

Bidders' price proposals for basic relay service:

Bidder A - \$1.80 per billable minute

Bidder B - \$1.09 per billable minute

Price Points Awarded

Bidder A (\$1.80 per billable minute) - $\$1.09/\$1.80 = .6056 \times 50\% = .3028$

Bidder B (\$1.09 per billable minute) - $\$1.09/\$1.09 = 1.000 \times 50\% = .5000$

Total Points Awarded

Bidder A – $.5000$ (technical) + $.3028$ (price) = $.8028$

Bidder B – $.4667$ (technical) + $.5000$ (price) = $.9667$

In this example, Bidder B's proposal would be the most attractive based on having the highest score.

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FILING CHECK LIST

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
1.	_____	Format (RFP ref. Sections C and D)	N/A	N/A
2.	_____	Transmittal Letter, Address, Contact Person, Tel. and Fax No., Legal Name of Bidder, and Statement of Compliance with or lack of Compliance with RFP requirements (RFP ref. C-2)	_____	P/F
3.	_____	Check List (RFP ref. C-8 and E)	_____	P/F
4.	N/A	FCC Authority to Provide Relay Services (RFP ref. A-5)	Signature of Acceptance _____	
5.	N/A	Public Bidder Meetings and Proprietary/Confidential Information (RFP ref. A-24)	Signature of Acceptance _____	
6.	N/A	Conflict of Interest/Standards of Conduct (RFP ref. A-28) – State Name(s) or None Below Name(s) Disclosed: _____	Signature of Acceptance _____	
7.	N/A	Dispute Resolution (RFP ref. A-30)	Signature of Acceptance _____	

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
8.	N/A	Waiver (RFP ref. A-31)	Signature of Acceptance _____	
9.	N/A	Severability (RFP ref. A-32)	Signature of Acceptance _____	
10.	_____	Commencement Date (RFP ref. A-8)	_____	P/F
11.	N/A	Term of Contract (RFP ref. A-9)	Signature of Acceptance _____	
12.	N/A	Scope of Service (RFP ref. B-2)	Signature of Acceptance _____	
13.	N/A	Access Numbers (RFP ref. B-3)	Signature of Acceptance _____	
14.	N/A	Availability of the System to Users (RFP ref. B-4)	Signature of Acceptance _____	
15.	_____	Minimum CA Qualifications/Testing (RFP ref. B-5)	_____	100
16.	_____	CA Training (RFP ref. B-6)	_____	100

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Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
17.	_____	Staff Training (RFP ref. B-7)	_____	100
18.	_____	Counseling of CAs and Staff (RFP ref. B-8)	_____	25
19.	_____	Procedures for Relaying Communications (RFP ref. B-9)	_____	100
20.	N/A	Languages Served (RFP ref. B-10)	Signature of Acceptance _____	
21.	_____	Additional Languages Served (RFP ref. B-11)	_____	25
22.	N/A	Shift Advisor/Consultant (RFP ref. B-12)	Signature of Acceptance _____	
23.	N/A	Confidentiality of Calls (RFP ref. B-13)	Signature of Acceptance _____	
24.	N/A	Types of Calls to be Provided (RFP ref. B-14)	Signature of Acceptance _____	
25.	_____	Call Release Functionality (RFP ref. B-15)	_____	50
26.	_____	Speed Dialing (RFP ref. B-16)	_____	50
27.	_____	Three-Way Calling Functionality (RFP ref. B-17)	_____	50

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
28.	_____	Voicemail and Interactive Menus (RFP ref. B-18)	_____	50
29.	_____	Voice and Hearing Carry-Over (RFP ref. B-19)	_____	100
30.	_____	Turbocode™ (RFP ref. B-20)	_____	100
31.	_____	Speech to Speech (RFP ref. B-21)	_____	100
32.	_____	Access to Pay Per Call Services (RFP ref. B-22)	_____	100
33.	_____	Caller ID (RFP ref. B-23)	_____	100
34.	_____	Last Number Redial (RFP ref. B-24)	_____	25
35.	_____	Obscenity Directed at the Operator (RFP ref. B-25)	_____	25
36.	_____	Emergency Calls (RFP ref. B-26)	_____	100
37.	_____	Blockage (RFP ref. B-27)	_____	200
38.	_____	Answer Time (RFP ref. B-28)	_____	200
39.	N/A	Equipment Compatibility (RFP ref. B-29)	Signature of Acceptance _____	

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
40.	N/A	Transmission Levels (RFP ref. B-30)	Signature of Acceptance _____	
41.	N/A	Measuring Equipment Accuracy (RFP ref. B-31)	Signature of Acceptance _____	
42.	_____	Emergency Operations and Uninterruptible Power (RFP ref. B-32)	_____	100
43.	_____	Intercept Messages (RFP ref. B-33)	_____	P/F
44.	_____	Service Expansion (RFP ref. B-34)	_____	50
45.	N/A	New Technology (RFP ref. B-35)	Signature of Acceptance _____	
46.	_____	Consumer Input and Participation in Advisory Committee and FPSC Proceedings (RFP ref. B-36)	_____	100
47.	_____	Complaint Resolution (RFP ref. B-37)	_____	200
48.	N/A	Charges for Incoming Calls (RFP ref. B-38)	Signature of Acceptance _____	

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
49.	_____	Special Needs (RFP ref. B-39)	_____	25
50.	_____	Unsolicited Features in Basic Relay Service (RFP ref. B-40)	_____	200
51.	_____	IP Relay, IP-Captioned Telephone Service, and Video Relay Service (RFP ref. B-41)	_____	P/F
52.	_____	Redundancy (RFP ref. B-42)	_____	P/F
53.	N/A	Performance Bond (RFP ref. B-43)	Signature of Acceptance _____	

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
54.	N/A	Submission of Monthly Invoice (RFP ref. B-44)	Signature of Acceptance _____	
55.	N/A	Travel (RFP ref. B-45)	Signature of Acceptance _____	
56.	_____	Reporting Requirements (RFP ref. B-46)	_____	50
57.	N/A	Transfer to New Provider (RFP ref. B-47)	Signature of Acceptance _____	
58.	N/A	Insurance Coverage (RFP ref. B-48)	Signature of Acceptance _____	
59.	_____	Optional Florida Call Center (RFP ref. B-49)	_____	100
60.	N/A	Public Entity Crimes Provision(RFP ref. C-3)	Signature of Acceptance _____	
61.	_____	Financial Information (RFP ref. C-4)	_____	P/F

Check List Item No.	Initials of Bidder's Contact Person	Brief Title	Page No. of Bidder's Proposal	Pass/Fail, Signature, or Maximum Points
62.	_____	Experience and Customer References (RFP ref. C-5)	_____	200
63.	_____	Subcontractors (RFP ref. C-6)	_____	50
64.	_____	Bid Security Deposit (RFP ref. C-7)	_____	P/F
65.	_____	The Price Proposal Format (RFP ref. Section D) must be filed in a separate sealed envelope marked: "Sealed – Relay Price Proposal – To Be Opened Only By The Proposal Review Committee Chairman."	_____	See RFP Sec. D & Sec. E
66.		MAXIMUM TOTAL TECHNICAL POINTS		2,775

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F. BILLABLE MINUTES DATA

TABLE 1
INTRASTATE BILLABLE SESSION MINUTES
(March 2022 – February 2023)

Monthly Invoice	TRS Minutes	TRS STS Minutes	TRS Spanish Minutes
March 2022	76,494	2,012	6,675
April 2022	61,107	2,087	5,137
May 2022	61,140	1,571	4,636
June 2022	57,612	1,640	5,264
July 2022	60,808	1,961	5,655
August 2022	59,980	1,804	5,546
September 2022	56,385	1,019	6,391
October 2022	62,632	3,478	6,640
November 2022	61,126	4,332	6,267
December 2022	54,625	2,518	5,250
January 2023	66,353	1,956	7,775
February 2023	52,883	1,185	5,171

Source: T-Mobile

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TABLE 2
INTRASTATE BILLABLE SESSION MINUTES
(March 2023 – February 2024)

Monthly Invoice	TRS Minutes	TRS STS Minutes	TRS Spanish Minutes
March 2023	43,546	612	4,164
April 2023	38,503	1,681	2,827
May 2023	39,027	974	2,744
June 2023	41,914	3,382	2,994
July 2023	46,116	6,786	2,602
August 2023	45,470	860	2,989
September 2023	47,806	1,545	3,092
October 2023	43,727	1,242	3,044
November 2023	46,272	994	3,837
December 2023	46,489	486	6,684
January 2024	53,430	1,254	4,486
February 2024	49,324	1,570	4,096

Source: T-Mobile

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TABLE 3
TOTAL BILLABLE SESSION MINUTES
(Intrastate and Interstate)
(March 2022 – February 2023)

Monthly Invoice	TRS Minutes	TRS STS Minutes	TRS Spanish Minutes
March 2022	87,672	3,134	7,301
April 2022	71,297	3,582	5,389
May 2022	72,330	2,708	4,744
June 2022	66,542	2,556	5,677
July 2022	70,512	2,808	6,004
August 2022	68,456	3,058	6,113
September 2022	66,504	1,878	7,094
October 2022	71,351	5,213	6,939
November 2022	68,617	5,456	6,657
December 2022	64,395	3,573	5,754
January 2023	78,602	3,397	8,403
February 2023	64,465	1,755	5,922

Source: T-Mobile

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TABLE 4
TOTAL BILLABLE SESSION MINUTES
(Intrastate and Interstate)
(March 2023 – February 2024)

Monthly Invoice	TRS Minutes	TRS STS Minutes	TRS Spanish Minutes
March 2023	51,881	1,038	4,933
April 2023	46,861	2,324	3,144
May 2023	46,567	1,393	2,856
June 2023	50,097	4,692	3,378
July 2023	54,561	9,879	2,742
August 2023	53,986	1,345	3,440
September 2023	57,872	2,592	3,755
October 2023	53,452	2,247	3,463
November 2023	55,620	1,664	4,131
December 2023	56,134	865	4,048
January 2024	65,364	2,190	4,925
February 2024	60,089	2,729	4,541

Source: T-Mobile

Item 2

REVISED 06/27/2024

FILED 6/27/2024

DOCUMENT NO. 06989-2024

FPSC - COMMISSION CLERK

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sapoznikoff) *SMC*
Division of Accounting and Finance (Cicchetti) *ALM*
Division of Economics (Guffey) *EJD*

RE: Docket No. 20240019-PU – Proposed amendment of Rule 25-14.004, F.A.C.,
Effect of Parent Debt on Federal Corporate Income Tax.

AGENDA: 07/09/24 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

RULE STATUS: May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-14.004, Florida Administrative Code (F.A.C.), Effect of Parent Debt on Federal Corporate Income Tax, addresses how to assess the income tax expense of a regulated entity that is a subsidiary company and which files a consolidated tax return with a parent company. Under the current rule, which applies to all regulated industries, if the regulated utility is a subsidiary of one or more parent companies, the income tax effect of any parent debt invested in the equity of the subsidiary utility reduces the income tax expense of the regulated utility. There is a rebuttable presumption that a parent company's investment in any subsidiary or in its own operations shall be considered to have been made in the same ratios as exist in the parent's overall capital structure.

History of the Rule

Before Rule 25-14.004, F.A.C., was adopted, to determine the tax amount to be used in ratemaking for a regulated subsidiary that filed a consolidated income tax return with one or more parent companies, the Commission typically used only the subsidiary's income (subsidiary approach), rather than the combined income reflected on the consolidated return (consolidated approach). That policy was challenged by OPC in *Citizens of Fla. v. Hawkins*, 356 So. 2d 254 (Fla. 1978). OPC argued that use of the subsidiary approach resulted in double-leverage¹ as the regulated entity was able "to receive an allowance for income tax expense greater than the actual income tax liability for which it would be properly responsible under [the] consolidated return." *Id.* at 259.

In *Hawkins*, the Court found that there was insufficient record evidence to support the subsidiary approach and that the evidence in the record supported the consolidated approach as being more accurate. *Id.* at 259-260 (citations omitted).

Thereafter, in 1983, the Commission adopted the current rule reflecting the consolidated approach. The rule was challenged and upheld as a valid exercise of legal authority in *General Tele. Co. of Fla. v. Fla. Pub. Serv. Comm'n*, 446 So. 2d 1063 (Fla. 1984). However, as discussed further below, *General Telephone* was not a substantive endorsement of the consolidated approach over the subsidiary approach. Rather, the Court only evaluated whether the rule was "reasonably related to the purposes of the enabling legislation, and. . . not arbitrary or capricious." *General Tele.*, 446 So. 2d at 1067 (quoting *Agrico Chem. Co. v. State, Dep't of Env. Reg.*, 365 So. 2d 759 (Fla. 1st DCA 1978), *cert. den'd*, 376 So. 2d 74 (Fla. 1979)).

In 1988, the Commission considered whether the rule was necessary or whether the litigation process would resolve the tax matter, and whether the rule should be repealed. The staff recommendation provided argument both in support of the current rule and also in support of its repeal.² The Commission did not affirmatively reject repeal of the rule. Rather, the Commission order simply stated, "[w]e do not wish to revisit the rule at this time."³

No further efforts to repeal or amend the rule have been made since that time.

Procedural Matters

Staff initiated this rulemaking to amend Rule 25-14.004, F.A.C., to update the rule to change the method by which the tax expense of a regulated subsidiary utility is determined to a stand-alone basis to reflect current, nationally recognized best practices, and to clarify and simplify the rule by deleting reference to a repealed rule.

The Notice of Development of Rulemaking appeared in the June 23, 2023, edition of the Florida Administrative Register, Volume 49, Number 122. Following publication of the Notice of Development of Rulemaking, the Office of Public Counsel (OPC) requested a workshop. The rule development workshop occurred on August 15, 2023. Representatives of OPC, Duke Energy

¹ Financial leverage involves using debt to increase earnings. Shareholders benefit from financial leverage to the extent that the return on the borrowed money exceeds the interest cost. Double leverage implies a parent company issued debt to invest in the equity of a subsidiary that also issued its own debt. Hence, the leverage is doubled.

² Docket No. 870386-PI, DN09448, Sept. 8, 1988.

³ Order No. 20206, issued Oct. 24, 1988, in Docket No. 870386-PU, *In re: Repeal of Rule 25-14.004, F.A.C., Effect of Parent Debt on Fed. Corp. Income Tax*.

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Date: June 27, 2024

Florida (DEF), Florida Power & Light Company (FPL), Florida City Gas (FCG), Florida Public Utilities Company (FPUC), People's Gas System, Inc. (PGS), and Tampa Electric Company (TECO) attended the workshop. All stakeholders submitted comments.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-14.004, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54 and 350.127(2), Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-14-004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-14.004, F.A.C., as set forth in Attachment A. The Commission should certify the rule as a minor violation rule. (Sapoznikoff, Cicchetti, Guffey)

Staff Analysis: Currently the rule considers the debt of a parent company invested in a regulated, subsidiary utility. Following adoption of the rule in 1983, regulatory theory and practice, accounting principles, finance theory, economic theory, corporate structure, and legal rulings have evolved. FERC uses the stand-alone approach,⁴ and Florida is one of only a handful of states that still use a consolidated approach. Consequently, use of consolidated parent company data to set utility rates is no longer generally accepted and the method in the recommended amendments has become the prevailing national standard over time. The Commission is tasked with setting fair, just, and reasonable rates. That not only means that customers should only pay for their actual cost of service, but also that utilities be allowed to recover their actual revenue requirements. By imputing a parent's debt, the current rule results in an inaccurate revenue requirement which ultimately results in artificially low rates that can increase the frequency of requests for rate increases. The current rule is the only instance in which the Commission does not use actual cost of service in determining revenue requirements and setting rates. Accordingly, the time has come to make a change. Staff recommends that the rule be amended as set forth in Attachment A. Below is a detailed discussion of staff's recommended amendments to the rule.

Rule 25-14.004, F.A.C., Determination of Total Corporate Income Tax⁵

The initial paragraph of the current rule is unnumbered and requires that when a regulated utility is a subsidiary of one or more parent companies and files a consolidated tax return with a parent company, the subsidiary's income tax must be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary. Under the current rule, the tax benefits associated with the parent company's interest expense are attributed to the subsidiary utility. This inappropriately lowers utility rates, distorts price signals, and contributes to the inefficient allocation of resources. Under the recommended amendments to Rule 25-14.004, F.A.C., the Commission would use only the interest expense inherent in the capital structure of the regulated utility to compute income tax expense, rather than reducing the tax expense in accordance with the parent's capital structure.

⁴ See *Trailblazer Pipeline Co. LLC*, 166 F.E.R.C. P 61141, 2019 WL 830962, at *10 (F.E.R.C. Feb. 21, 2019); *Constellation Mystic Power, LLC*, 165 F.E.R.C. P 61267, 2018 WL 6720402 at *14 (F.E.R.C. Dec. 20, 2018); *System Ener. Resources, Inc.*, 57 F.E.R.C. P 63012, 1991 WL 307023, **11 (F.E.R.C. Nov. 21, 1991); *City of Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. den'd*, 475 U.S. 1108 (1986); *In re: Columbia Gulf Trans. Co.*, 54 P.U.R. 4th 31, 1983 WL 874322 (F.E.R.C. June 22, 1983).

⁵The rule is currently named "Effect of Parent Debt on the Federal Corporate Income Tax." Staff recommends that if the Commission votes to approve the recommended amendments of the rule, that the title of the rule also be amended to accurately reflect the rule's content. The recommended amendment of the title of the rule is "Determination of Total Corporate Income Tax" because the recommended amendments change the policy for making tax determinations from incorporating parent debt to only using the tax expense of the regulated utility.

Date: June 27, 2024

The recommended amendments to the unnumbered introductory paragraph require that the income tax expense of a regulated utility be determined using only its income, regardless of any parent-subsidiary relationship that may exist. This policy is referred to as the stand-alone approach. The stand-alone approach sets utility rates as if the subsidiary utility were an independent entity. With regard to income tax expense, the stand-alone approach ensures that the revenue requirement is based upon operations of the regulated utility and that the tax benefits associated with the debt are both an expense of the regulated utility and borne by that utility's customers. The stand-alone approach is different from the current rule in that by not considering the income of the parent company invested in the subsidiary there are no cross-subsidies between regulated and non-regulated operations, which contributes to a more accurate picture of the utility's financial health.

Overall, staff recommends changing Commission policy on how to determine the income tax expense of a regulated utility that is a subsidiary of one or more parent companies to align the rule with the current national standard.⁶ FERC uses the stand-alone approach reflected in the recommended amendments to the rule,⁷ and Florida is one of only a handful of states that still use a consolidated approach.

If the Commission votes to approve the recommended policy change, the recommended amendments to subsections (1) through (4) and the addition of subsection (5) are necessary to reflect the change in the process of making tax determinations from incorporating parent debt to only using the tax expense of the regulated utility. Staff's recommendations for the amendment of each subsection of the rule is below.

Subsection (1)

Subsection (1) of the current rule addresses how to calculate the income tax effect of the parent's debt when there is only one parent company.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (1) deletes the prior language in its entirety. In its place the recommended rule language of subsection (1) sets forth the method of determining state corporate current income tax of the regulated, subsidiary utility. This amount is calculated by multiplying the regulated utility's state taxable income before state and federal income taxes by

⁶ See, e.g., *Constellation Mystic Power, LLC v. Fed. Energy Reg. Comm'n*, 45 F.4th 1028 (D.C. 2022), *McCloskey v. Penn. Pub. Util. Comm'n*, 255 A.3d 416 (Pa. 2021), *Oncor Elect. Del. Co. LLC v. Pub. Util. Comm'n of Texas*, 507 S.W.3d 706 (Tex. 2017), *SFP, L.P. v. Pub. Utils. Comm'n*, 217 Cal. App. 4th 784 (2013), *In re North. States Power Co.*, 2008 WL 131201 (2008), *Stumbo v. Ky. Pub. Serv. Comm'n*, 243 S.W.3d 374 (Ky. App. 2007), *Litchfield Park Serv. Co. v. Az. Corp. Comm'n*, 874 P.2d 988 (1994), *Pittman v. Miss. Pub. Serv. Comm'n*, 538 So. 2d 387 (Miss. 1989), *General Tele. Co. of the Southwest v. Corp. Comm'n*, 852 P.2d 1200 (N.M. 1982), *General Tele. Co. of SW v. Ark. Pub. Serv. Comm'n*, 616 S.W.2d 1 (Ark. 1981), *New York Water Serv. Corp. v. Pub. Serv. Comm'n*, 72 A.D.2d 841 (N.Y. App. 3d 1979), *United Tele. Co. of Iowa v. Iowa State Comm. Comm'n*, 257 N.W.2d 466 (Iowa 1977).

⁷ See *Trailblazer Pipeline Co. LLC*, 166 F.E.R.C. P 61141, 2019 WL 830962, at *10 (F.E.R.C. Feb. 21, 2019); *Constellation Mystic Power, LLC*, 165 F.E.R.C. P 61267, 2018 WL 6720402 at *14 (F.E.R.C. Dec. 20, 2018); *System Ener. Resources, Inc.*, 57 F.E.R.C. P 63012, 1991 WL 307023, **11 (F.E.R.C. Nov. 21, 1991); *City of Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. den'd*, 475 U.S. 1108 (1986); *In re: Columbia Gulf Trans. Co.*, 54 P.U.R. 4th 31, 1983 WL 874322 (F.E.R.C. June 22, 1983).

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Florida's corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations.

Subsection (2)

Subsection (2) of the current rule addresses how to calculate the income tax effect of the parent's debt when there is more than one parent company.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (2) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (2) sets forth the method of determining the federal taxable income of the regulated, subsidiary utility after state corporate income tax. This amount is calculated by deducting the state corporate income tax amount calculated pursuant to the recommended amendment of subsection (1) from the regulated utility's federal income before taxes.

Subsection (3)

Subsection (3) of the current rule addresses what is included in the capital structure of the parent and notes that it is a rebuttable presumption that "a parent's investment in any subsidiary or in its own operations shall be considered to have been made in the same ratios as exist in the parent's overall capital structure."

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (3) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (3) sets forth the method of determining the federal current corporate income tax of the regulated, subsidiary utility. This amount is calculated by multiplying the federal taxable income after state taxes (which amount was calculated pursuant to the recommended amendment of subsection (2)), by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations.

Subsection (4)

Subsection (4) of the current rule addresses how to calculate the parent debt adjustment using debt ratio and debt cost of the parent, the statutory tax rate applicable to the consolidated entity, and the equity dollars of the regulated subsidiary, excluding its retained earnings.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (4) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (4) clarifies that applicable temporary adjustments to taxable income multiplied by the respective federal and state corporate income tax rates, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulation, shall be used in determining federal and state income tax expenses for the regulated utility.⁸

⁸ Even though OPC opposes a change to the rule policy, it recommended an edit to the wording of subsection (4), which edit was also suggested by the other stakeholders who commented. That edit is incorporated into the recommended amendments.

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Subsection (5)

The current version of the rule does not contain a subsection (5). The recommended amendment of the rule adds subsection (5), which states that total income tax expense for the regulated utility will be determined by adding the amounts calculated pursuant to the recommended amendments of subsections (1), (3), and (4) of the rule.

Stakeholder Comments

All stakeholders who commented, except for OPC, support the recommended amendments to Rule 25-14.004, F.A.C. OPC's objections to the recommended amendment of the rule fall into two main categories. First, OPC opposes the recommended amendment of the rule because it alleges the stand-alone method will inappropriately increase rates and result in double-leverage. Next, OPC alleges that precedent disallows the stand-alone method contained in the recommended amendments to the rule. As discussed below, staff disagrees with OPC's comments.

The recommended amendments align the rule with current national standards and will not inappropriately increase rates or result in double leverage.

While there will be a rate impact associated with the recommended amendments, not amending the rule also has rate impacts and the recommended amendments make certain that appropriate revenue requirements are being set based on actual cost of service to customers. In essence, the parent-debt adjustment (recognizing double leverage) perverts the calculation of return on equity (ROE). In a rate proceeding, the Commission determines the appropriate ROE and capital structure (i.e., the appropriate debt and equity ratios), which reflect the utility's cost of obtaining funds. The parent-debt adjustment imputes the tax deduction associated with parent company debt to the regulated utility. However, because the regulated utility did not incur the parent's interest expense, the regulated utility cannot claim that expense on its taxes and reduce its costs. Therefore, there is no tax benefit to the regulated utility from the current rule and application of the parent-debt adjustment only serves to set artificially low rates at the expense of accurate revenue requirements.

When the current rule is applied, the utility does not collect the actual cost of providing utility service. Consequently, the utility may seek rate increases more frequently incurring additional rate case expense. The recommended amendments will make certain that revenue requirements are not artificially reduced, as is the case under the current rule. This should lessen the frequency with which utilities seek rate increases as the rates set using the recommended amendments to the rule will be based on actual cost of service to customers. Moving away from the parent debt adjustment and adopting the stand-alone approach is also beneficial to rate payers. Setting rates on a stand-alone basis ensures only the costs associated with the provision of utility service are charged to customers.

Under [the] stand-alone methodology, a regulated entity's income tax allowance is based on the income and deductions specifically attributable to the regulated entity's jurisdictional cost of service and the income tax allowance does not incorporate potentially offsetting losses and deductions of the parent owner not reflected in the regulated entity's jurisdictional cost of service.

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Trailblazer Pipeline Co., LLC, 166 F.E.R.C. P61141, 61674, 2019 WL 830962, at *10 (FERC Feb. 21, 2019) (citing *City of Charlottesville v. Fed. Energy Reg. Comm'n*, 774 F.2d 1205, 1215 (1985), cert. den'd, 475 U.S. 1108 (1986)).⁹

While some cases have described the stand-alone approach as relying on a “hypothetical” calculation, using the parent debt adjustment artificially decreases the regulated utility’s tax expense and lowers the regulated subsidiary’s revenue requirement. While the parent debt adjustment approach lowers rates, it results in a revenue requirement based upon tax benefits associated with debt that is neither an expense of the utility nor borne by the utility’s customers. If taxes are allocated in a manner other than on a stand-alone basis, utility customers may pay rates that reflect costs or benefits of other nonregulated members of the consolidated group.

In its written comments, OPC alleges that staff’s concern that application of the rule results in “double leverage” is unfounded. However, contrary to OPC’s allegations, the cases that advance a parent-debt adjustment do so for double-leverage. *See, e.g., New England Tele. & Teleg. Co. v. Pub. Utils. Comm’n*, 390 A.2d 8, 28-47 (Me. 1978). Double leverage occurs when a subsidiary enjoys its own leverage (use of debt instead of all equity capital) plus the leverage factor of its parent company (which also uses some debt instead of all equity capital). *See id.* at 41.

OPC asserts that while the rule states it is to calculate the income tax expense to be used in Commission proceedings to establish revenue requirements or addressing over-earnings, the rule is essentially a “consumer protection rule” and “is not really based on an income tax issue.” OPC asserts the rule “is a protection from affiliate transaction abuse” in that “it keeps customers from being forced to subsidize the parent’s income tax expenses by having to pay a taxable equity return on the amount of debt that makes up the parent and grandparent investment in the equity recorded on the regulated utility’s books.” However, staff disagrees with OPC’s assessment as to the purpose and nature of the rule.

The plain language of the rule states it addresses the calculation of the income tax expense in proceedings to establish revenue requirements or address over-earnings. The rule is part of the section of the Florida Administrative Code in which the Commission lists rules related to policy determinations affecting the rates, charges, and tariffs of all companies subject to its rate-setting jurisdiction. Moreover, a parent company issuing debt to invest in a regulated subsidiary is not “affiliate transaction abuse.” In fact, a parent company issuing debt to invest in a regulated utility subsidiary could be of vital importance, in the public interest, and should not be penalized.

How much equity a regulated utility has in its capital structure is an issue in every rate case. In cases in which the leverage formula is not used, all parties have the opportunity to provide expert testimony regarding the appropriate capital structure and equity ratio. A utility’s required return on equity is a function of the risk to which capital is exposed, not the source of the funds.

Of the utilities providing comments, DEF, FPL,¹⁰ FCG, FPUC, PGS, and TECO¹¹ agree with staff’s rationale for the recommended amendment of the rule. FPL and its affiliates note the

⁹ In *City of Charlottesville*, *supra*, at 1213, 1221, then Judge Antonin Scalia, writing for the Federal District Court for Washington, D.C., upheld the stand-alone method.

¹⁰ FPL filed comments on behalf of itself, Florida Public Utilities Company, and Florida City Gas.

¹¹ TECO file comments on behalf of itself and Peoples Gas.

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rule's effect is that the "parent company's debt is imputed to the benefit of customers even though customers are not obligated to pay rates reflecting the interest expense on the parent's debt in rates" which may result in the need to file requests for "more frequent and costly base rate increases, which will further increase rates paid by customers." They assert that "to mitigate this costly and time-consuming potential that rates should reflect the taxes associated with only the items that are included in the cost of service and net operating income directly attributable to them." TECO's comments generally adopt those submitted by FPL and its affiliates.

DEF agrees that "the better approach is to compute the regulated utility's tax expense on a stand-alone basis without making the adjustment currently called for in the Rule." DEF asserts that the stand-alone approach "provides a match between capital structure interest and the tax effect considered in the regulated utility's cost of service." Because capital structure is always determined in a base rate proceeding, DEF contends that the "Commission is assured that the capital structure has been properly set."

There is no precedent disallowing the stand-alone method.

In its oral and written comments, OPC argues "there is no basis to change a 40-year old consumer protection rule that has survived challenges in the Florida Supreme Court, the United States Treasury Department and the United States Congress." OPC further argues that the Commission has twice considered and denied repeal of the rule. OPC states the rule is "a fundamental bedrock principle of Florida utility regulation that has been applied to keep Florida customer utility rates low for 45 years."

Staff believes there is no indication that the rule was designed with consumer protection in mind nor that the recommended amendments to the rule would harm consumers. Just because the rule has survived challenges does not mean it has been endorsed as the only or proper way to assess tax liability. In fact, as discussed in more detail below, the cases to which OPC cites support the stand-alone method contained in the recommended amendments to the rule.

Florida Supreme Court precedent does not preclude the stand-alone method.

OPC asserts the current version of the rule was unequivocally upheld by the Florida Supreme Court in *General Tele. Co. of Fla. v. Fla. Pub. Serv. Comm'n*, 446 So. 2d 1063 (Fla. 1984). OPC further argues *General Telephone* supported the Court's prior decision in *Citizens of Fla. v. Hawkins*, 356 So. 2d 254 (Fla. 1978), which OPC alleges stands for the proposition that "the regulated utility's tax deductible debt may cause customers to overpay on the income tax component imbedded in their rates." As explained below, staff believes OPC has misconstrued the holdings of those cases.

Citizens of Fla. v. Hawkins, 356 So. 2d 254 (Fla. 1978), was the first Florida Supreme Court case to address the Commission's computation of the income tax for a regulated entity that was a subsidiary and filed a consolidated return with a parent company. At that time, the Commission did not have a rule on that matter, but traditionally used what was referred to as a "subsidiary approach" rather than a "consolidated approach." The "subsidiary approach" was described as using "an allowance for federal income tax expense equal to the hypothetical tax which would have been paid if [the subsidiary] had filed a separate federal income tax return." *Hawkins*, 356 So. 2d at 259. In *Hawkins*, OPC argued that use of the "subsidiary approach" resulted in double-

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leverage as the regulated entity was able “to receive an allowance for income tax expense greater than the actual income tax liability for which it would be properly responsible under [the] consolidated return.” *Id.*

In *Hawkins*, the Commission noted that OPC did not object to using the “subsidiary approach” to calculate the cost of capital and, accordingly, it would be consistent also to do so in determining tax effect. *Id.* However, unable “to discern a rationale for a rule of consistency” and finding that the Commission’s order “nowhere identified a record basis for preferring...the subsidiary approach over a calculation on the consolidated approach,” the Court held that “each [tax] determination must be based on specific independent findings supported by competent substantial evidence” and that “what evidence there is in the record supports the consolidated approach as being more accurate.” *Id.* at 259-260 (citations omitted).

Thus, contrary to OPC’s suggestions, *Hawkins* did not mandate application of the consolidated approach. Rather, the Court merely held that under the facts of that case, the consolidated approach was supported by the record evidence. *See id.*

Thereafter, the current rule (mandating the consolidated approach) was adopted in 1983. Although the Florida Supreme Court upheld the validity of the rule in *General Tele. Co. of Fla. v. Fla. Pub. Serv. Comm’n*, 446 So. 2d 1063 (Fla. 1984), it was not necessarily a substantive endorsement. Rather, the Court evaluated whether the rule was “reasonably related to the purposes of the enabling legislation, and. . . not arbitrary or capricious.” *General Tele.*, 446 So. 2d at 1067 (quoting *Agrico Chem. Co. v. State, Dep’t of Env. Reg.*, 365 So. 2d 759 (Fla. 1st DCA 1978), *cert. den’d*, 376 So. 2d 74 (Fla. 1979)).

While the Court acknowledged that it had previously “instructed the PSC to apply this type of adjustment in a ratemaking case,” it qualified that statement by stating:

There is no single correct method of dealing with the income tax expense of a subsidiary-utility joining in the filing of a consolidated return. By choosing this particular method, the PSC is merely acting within the scope of its discretion.

General Tele., 446 So. 2d at 1067. Therefore, the recommended amendments to the rule are within the discretion of this Commission and reflect nationally recognized best practices.

Moreover, while *General Telephone* noted that the Federal Energy Regulation Commission (FERC) and “at least eighteen jurisdictions” had adopted the consolidated approach,¹² that is no longer the case. FERC now uses the stand-alone approach reflected in the recommended amendments to the rule,¹³ and Florida is one of only a handful of states that still use a consolidated approach. States that have adopted the stand-alone approach have done so “due to the increasing structural complexity of regulated utility entities and the expansion of non-utility activities by subsidiaries.” *SFPP, L.P. v. Public Utils. Comm’n*, 217 Cal. App. 4th 784, 795

¹² *Id.* at 1069.

¹³ *See Trailblazer Pipeline Co. LLC*, 166 F.E.R.C. P 61141, 2019 WL 830962, at *10 (F.E.R.C. Feb. 21, 2019); *Constellation Mystic Power, LLC*, 165 F.E.R.C. P 61267, 2018 WL 6720402 at *14 (F.E.R.C. Dec. 20, 2018); *System Ener. Resources, Inc.*, 57 F.E.R.C. P 63012, 1991 WL 307023, **11 (F.E.R.C. Nov. 21, 1991); *City of Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. den’d*, 475 U.S. 1108 (1986); *In re: Columbia Gulf Trans. Co.*, 54 P.U.R. 4th 31, 1983 WL 874322 (F.E.R.C. June 22, 1983).

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(2013). In addition, “without the stand-alone treatment of the regulated entity, the non-utility activities could result in a tax expense or savings unrelated to the costs of providing utility service.” *ARCO Prods. Co. v. Santa Fe Pacific Pipeline, L.P.*, Dec. No. 11–05–045, 2011 WL 2246059 at 8 (Cal. P.U.C. 2011).

United States Treasury and Congressional inaction do not preclude the stand-alone method.

OPC also asserts that inaction by the U.S. Treasury and Congress indicated that the stand-alone method is improper. OPC states that in 1990, the U.S. Treasury proposed a regulation that many interpreted “as an indication that the [parent debt adjustment] could be deemed a consolidated tax savings adjustment and a normalization violation.” According to OPC, it and the Commission joined in filing comments at a 1991 IRS hearing on the matter and were in agreement that the parent debt adjustment was not a consolidated tax savings adjustment or a normalization violation. According to OPC, of the hundreds of parties (which OPC asserts included utilities, consumers, and regulatory agencies), no one supported the regulation. OPC further states that the IRS eventually withdrew the proposed regulation. OPC advises that Congress also was “concerned about whether normalization was costing the United States Treasury tax revenue” and held hearings. According to OPC, it and the Commission testified before Congress “in support of the rule and the Commission’s practice to recognize the tax effect of parent company debt in ratemaking.” OPC states that Congress took no action. OPC does acknowledge that by that time FERC had retreated from a parent debt adjustment.

OPC’s reliance on the failure of the IRS to change its consolidated return rule as validation of the parent debt rule is misplaced. The proposed Treasury regulation may have resulted in the Commission’s parent debt adjustment rule violating a normalization method of accounting. However, the failure of the IRS to change its policy (regarding the flow-through of tax savings arising from the filing of a consolidated return) does not mean the IRS endorsed the parent debt adjustment contained in the rule, or that the rule was the proper or only way for the Commission to determine a subsidiary’s taxes when setting rates.

Moreover, federal tax policy and rate setting by a utility commission are two distinct regulatory mechanisms. *See Federal Power Comm’n v. United Gas Pipe Line Co.*, 386 U.S. 237, 243 (1967). The Court noted that a commission has the power “to limit cost of service to real expense” and that doing so would not frustrate tax laws. *Id.* at 245-47.

Prior Commission orders do not preclude the stand-alone method.

In its oral comments, OPC asserts that the Commission had twice previously been asked to repeal the parent-debt adjustment and had twice rejected that request. That is not correct. The Commission has never substantively rejected repeal of the parent-debt adjustment.

In 1987, staff submitted a recommendation to repeal the rule asserting that the rule was unnecessary and that the litigation process would resolve the tax matter.¹⁴ The Commission deferred ruling and requested that staff submit a new recommendation.¹⁵

¹⁴ Docket No. 870386-PI, DN08216, Sept. 3, 1987.

¹⁵ Docket No. 870386-PI, DN08570, Sept. 15, 1987.

Date: June 27, 2024

In 1988 the Commission considered the new recommendation which provided argument both in support of the rule and also in support of its repeal.¹⁶ Again, the Commission did not affirmatively reject repeal of the rule. Rather, the Commission order simply stated, “[w]e do not wish to revisit the rule at this time.”¹⁷

Moreover, in contrast to the options previously submitted of either repealing or keeping the parent debt adjustment, the current recommended amendment of Rule 25-14.004, F.A.C., sets forth an alternative approach which updates the rule to conform to best practices.

Minor Violation Rule Certification

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-14.004, F.A.C., is currently listed as a minor violation rule by the Commission. This rule is a minor violation rule because the violation of this rule would not result in economic or physical harm to a person, cause an adverse effect on the public health, safety, or welfare, or create a significant threat of such harm. Violations of Rule 25-14.004, F.A.C., with the recommended amendments would continue to be minor violations. Therefore, for the purposes of filing the proposed amended rules for adoption with the Department of State, staff recommends that the Commission certify Rule 25-14.004, F.A.C., as a minor violation rule.

Statement of Estimated Regulatory Costs

Section 120.54(3)(b)1., F.S., encourages agencies to prepare a Statement of Estimated Regulatory Costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule amendments are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation. None of the impact/cost criteria will be exceeded as a result of the recommended amendments.

The SERC concludes that the amendments to the rule will likely not directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the recommended rule amendments will not likely increase regulatory costs, including any transactional costs, or have an adverse impact on business competitiveness, productivity, or innovation, in excess of \$1 million in the aggregate within five years of implementation. Thus, pursuant to Section 120.541(3), F.S., the recommended amendment of the rule does not require legislative ratification.

In addition, the SERC states that the recommended amendments to the rule would have no impact on small businesses, would have no implementation or enforcement costs on the Commission or any other state or local government entity, and would have no impact on small cities or small counties. The SERC states that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements.

¹⁶ Docket No. 870386-PI, DN09448, Sept. 8, 1988.

¹⁷ Order No. 20206, issued Oct. 24, 1988, in Docket No. 870386-PU, *In re: Repeal of Rule 25-14.004, F.A.C., Effect of Parent Debt on Fed. Corp. Income Tax.*

Date: June 27, 2024

Conclusion

The Commission should propose the amendment of Rule 25-14.004, F.A.C., as set forth in Attachment A. Staff also recommends that the Commission certify the rule as a minor violation rule.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule should be filed for adoption with the Department of State, and the docket should be closed. (Sapoznikoff)

Staff Analysis: If no requests for hearing or comments are filed, the rule should be filed for adoption with the Department of State, and the docket should be closed.

1 **25-14.004 Determination ~~Effect of Parent Debt on Federal~~ Total Corporate Income**
2 **Tax.**

3 In Commission proceedings to establish revenue requirements or address over-earnings,
4 ~~other than those entered into under Rule 25-14.003, F.A.C., the income tax expense of a~~
5 regulated utility company must shall be determined using only the income of the regulated
6 utility regardless of any adjusted to reflect the income tax expense of the parent debt that may
7 be invested in the equity of the subsidiary where a parent-subsidiary relationship that may
8 exists, and the parties to the relationship join in the filing of a consolidated income tax return.

9 The regulated utility's stand-alone income tax expense will be calculated as follows:

10 (1) State corporate current income taxes will be determined by multiplying the regulated
11 utility's state taxable income before state and federal income taxes by Florida's corporate
12 income tax rate, plus or minus any applicable tax adjustments or credits in accordance with
13 applicable state income tax laws and regulations. ~~Where the regulated utility is a subsidiary of~~
14 ~~a single parent, the income tax effect of the parent's debt invested in the equity of the~~
15 ~~subsidiary utility shall reduce the income tax expense of the utility.~~

16 (2) The state current corporate income taxes as calculated in subsection (1) will then be
17 deducted from the regulated utility's federal income before income taxes to yield the federal
18 taxable income after state income taxes. ~~Where the regulated utility is a subsidiary of tiered~~
19 ~~parents, the adjusted income tax effect of the debt of all parents invested in the equity of the~~
20 ~~subsidiary utility shall reduce the income tax expense of the utility.~~

21 (3) The federal taxable income after state current income taxes as calculated in subsection
22 (2) will then be multiplied by the federal corporate income tax rate, plus or minus any
23 applicable tax adjustments or credits in accordance with applicable federal income tax laws
24 and regulations, to yield the federal current corporate income tax for the regulated utility. The
25 capital structure of the parent used to make the adjustment shall include at least long term
 debt, short term debt, common stock, cost free capital and investment tax credits, excluding

~~retained earnings of the subsidiaries. It shall be a rebuttable presumption that a parent's investment in any subsidiary or in its own operations shall be considered to have been made in the same ratios as exist in the parent's overall capital structure.~~

(4) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the respective federal and state corporate income tax rates, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulations. ~~The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the statutory tax rate applicable to the consolidated entity. This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.~~

(5) Total income tax expense for the regulated utility will be determined by adding the amounts calculated in subsections (1), (3), and (4) of this rule.

Rulemaking Authority 350.127(2) FS. Law Implemented 366.05(1), 367.121(1)(a) FS.

History—New 1-25-83, Formerly 25-14.04. Amended _____

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 21, 2023

TO: Susan Sapoznikoff, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst IV, Division of Economics *SKG*

RE: Statement of Estimated Regulatory Costs (SERC) for proposed Amendments to Rule 25-14.004, Florida Administrative Code (F.A.C.), Determination of Total Corporate Income Tax

Current Rule 25-14.004, F.A.C., Determination of Total Corporate Income Tax, provides that in proceedings to establish revenue requirements or address overearnings, the income tax expense of a utility shall be adjusted to reflect the income tax expense benefit of the parent company's debt that may be invested in the equity of the utility subsidiary where a consolidated income tax return is filed.

By amending this rule, utilities will be treated on a stand-alone basis regarding income taxes, and no portion of the interest expenses benefit of a parent company will be attributed to a utility subsidiary.

Staff held a rule development workshop on August 15, 2023, pursuant to Section 120.54(2)(c), Florida Statutes (F.S.). Staff issued a SERC data request on November 28, 2023. Responding electric, natural gas, and water and wastewater utilities stated that they do not expect incremental costs of any significance as a result of the proposed revisions to Rule 25-14.004, F.A.C. The SERC analysis indicates that none of the adverse impact/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the proposed amendments to Rule 25-14.004, F.A.C.

cc: SERC file

Attachment B

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-14.004, F.A.C., Determination of Total Corporate Income Tax

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐

No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐

No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth Yes ☐ No ☒

Private-sector job creation or employment Yes ☐ No ☒

Private-sector investment Yes ☐ No ☒

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a) 2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes ☐ No ☒

Productivity Yes ☐ No ☒

Innovation Yes ☐ No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis: Current Commission policy and practice regulate subsidiary utilities, and their associated tax expense, on a stand-alone basis. The proposed revisions to Rule 25-14.004, F.A.C., are to ensure that the Florida Public Service Commission (FPSC) rules are consistent with current FPSC policy and practice regarding taxes.

In response to staff's data request, two of the responding water and wastewater utilities stated that they do not expect any incremental costs as a result of the proposed revisions to Rule 25-14.004, F.A.C. One responding water utility stated that they expect an annual incremental cost of approximately \$10,000 as a result of the proposed methodology to calculate its stand-alone income tax expense.

In response to staff's data request, the electric and natural gas investor-owned utilities (IOUs) stated that they do not expect incremental costs of any significance as a result of the proposed revisions to Rule 25-14.004, F.A.C.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

A total of 154 utilities are required to comply with the rule. The proposed rule amendments will affect 4 investor-owned electric companies, 5 investor-owned natural gas companies, and 145 water and wastewater utilities.

(2) A general description of the types of individuals likely to be affected by the rule.

The types of individuals likely to be affected by the rule are the ratepayers of the above listed utilities.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

- ☒ None. To be done with the current workload and existing staff.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- ☒ None.
- ☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small Business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

☐ No adverse impact on small business.

☒ Minimal. Provide a brief explanation. Small businesses will be affected to the extent that revenue requirements, for utilities with parent companies that have debt at the parent level, will no longer reflect the tax benefit provided by the parent debt adjustment and the proposed rule revisions would help ensure small businesses receive proper price signals.

☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- ☒ No impact on small cities or small counties.
- ☐ Minimal. Provide a brief explanation.
- ☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.
[120.541(2)(f), F.S.]

- ☐ None.

Additional Information: In response to staff's data request, two electric IOUs and one natural gas IOU stated that the proposed revisions to Rule 25-14.004, F.A.C., would eliminate costs associated with calculating a parent debt adjustment in a rate case and the associated costs of preparing supportive testimony. However, the above stated cost savings will not be materially significant as stated by the utilities.

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- ☒ No regulatory alternatives were submitted.
- ☐ A regulatory alternative was received from
 - ☐ Adopted in its entirety.
 - ☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

Item 3

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Day, Deas, Fogleman, Mallow) *CH*
Office of the General Counsel (Farooqi, Imig) *ACH*

RE: Docket No. 20240096-TP – Application for designation as an eligible telecommunications carrier in the State of Florida, by Amerimex Communications Corp. d/b/a SafetyNet Wireless.

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 10, 2024, Amerimex Communications Corp. d/b/a SafetyNet Wireless (Amerimex or Company) filed a petition with the Florida Public Service Commission (Commission or FPSC) seeking designation as an eligible telecommunications carrier (ETC) for the sole purpose of providing Lifeline service to qualifying consumers throughout Florida. Amerimex is a provider of commercial mobile radio service (CMRS) and offers prepaid wireless telecommunications services to consumers as a reseller. Specifically, Amerimex uses the network infrastructure and wireless transmission facilities of T-Mobile USA, Inc. (T-Mobile) and AT&T Mobility, LLC (AT&T) to operate as a Mobile Virtual Network Operator. Amerimex is currently designated as an ETC providing Lifeline service in 17 other states.

As a CMRS provider, Amerimex is regulated as a common carrier pursuant to 47 U.S.C. § 153(11).¹ Amerimex is a Georgia corporation that has authority to conduct business in Florida. Amerimex does not have a parent company or subsidiaries.

Amerimex asserts that it meets all applicable federal requirements for designation as a Lifeline only ETC in Florida pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201. Amerimex acknowledges and asserts that, if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.) and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for customers who no longer qualify for Lifeline. In addition to the federal rules and statutes discussed above, the Commission has jurisdiction in this matter pursuant to Section 364.10, F.S.

Section 214(e)(2) of the Telecommunications Act of 1996 (the Act) provides state public utility commissions with “primary responsibility” for the designation of ETCs. The Commission initially exercised this authority to designate both wireline and wireless carriers as ETCs. In 2011, the Florida Legislature removed the FPSC authority to designate wireless ETC providers.² However, the Florida Legislature amended Section 364.10, F.S., in 2024 to specifically grant the Commission jurisdiction to address wireless ETC petitions for Lifeline purposes only.³

¹ 47 U.S.C. § 153(11) (defining a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio”; 47 U.S.C. §332(c)(1)(A) (treating commercial mobile service providers as common carriers).

² House Bill 1231 (2011), effective July 1, 2011.

³ Senate Bill 478 (2024), effective April 15, 2024.

Discussion of Issues

Issue 1: Should Amerimex be granted ETC designation to provide Lifeline service throughout the state of Florida?

Recommendation: Yes. Amerimex should be granted ETC designation to provide Lifeline service throughout the State of Florida. Staff also recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission to demonstrate that it is in the public interest to maintain the Company's ETC designation. (Day, Deas, Fogleman, Mallow)

Staff Analysis: ETC designation is necessary for telecommunications companies to participate in the federal Lifeline program.⁴ Section 364.10, F.S., allows the Commission to approve Lifeline ETC petitions filed by requesting carriers. Specifically, Sections 364.10(3)(a) and (b), F.S., provide that the Commission has authority to designate a commercial mobile radio service provider as an ETC for the limited purpose of providing Lifeline service.

Federal rules outline the requirements for ETC designation.⁵ To obtain ETC designation to provide Lifeline services, federal rules require that carriers:

- 1) Be a common carrier;
- 2) Offer the services that are supported by the federal universal support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services;
- 3) Advertise the availability of its Lifeline service through a media of general distribution;
- 4) Provide voice grade access to the public switch network or its functional equivalent;
- 5) Offer minutes of use for local service at no additional charge to end users;
- 6) Provide access to the emergency services available by local government or other public safety organizations;
- 7) Provide Broadband Internet Access Service;⁶
- 8) Demonstrate financial and technical capability to provide Lifeline service; and

⁴ 47 C.F.R. § 54.201(a).

⁵ 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, and 47 C.F.R. § 54.401; While 47 C.F.R. § 54.101(a) also includes requirements addressing toll limitation services to qualifying low-income consumers, the FCC in its 2012 Lifeline and Link Up Reform Order (FCC 12-11) stated that: "ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls."

⁶ Broadband Internet Access Service (BIAS) is defined as a mass-market retail service that provides the capability to transmit and receive data, but excluding dial-up service.

- 9) Not charge Lifeline customers a monthly number-portability charge.

In addition, Florida law requires ETCs to:

- 1) Offer a discounted transitional basic telecommunications service;⁷ and
- 2) Participate in the Lifeline Promotion Process.⁸

Forbearance of Facilities Requirements

Amerimex plans to offer all of the supported services enumerated under Section 254(c) of the Act through its wireless resale agreements with T-Mobile and AT&T. Therefore, it sought forbearance of the facilities requirement from the FCC. On December 26, 2012, the FCC approved Amerimex's compliance plan as a condition of obtaining forbearance from the facilities requirement for the provision of Lifeline service. As part of its compliance plan Amerimex committed to do the following:⁹

- 1) Provide the supported services throughout the carriers' designated areas;
- 2) Remain functional in emergency situations;
- 3) Comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service;
- 4) Demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with federal rules; and
- 5) Describe the terms and conditions of the broadband Internet access service plans offered to Lifeline subscribers.

Because Amerimex will offer the supported services and is compliant with the FCC requirements pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, as well as the Florida specific requirements, Amerimex is eligible for designation as a Lifeline only ETC in Florida.

Financial, Managerial, and Technical Capabilities

As noted in its petition, Amerimex has offered service since 1998 and has not filed for any form of bankruptcy relief. The company has operated as an ETC in 17 states and has not been subject

⁷ Section 364.105, F.S. states that each ETC shall offer a residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline for a period of 1 year after the date the subscriber ceases to qualify for Lifeline.

⁸ Rule 25-4.0665(3), F.A.C. The Lifeline Promotion Process is an electronic system developed in collaboration with the Florida Department of Children and Families, ETCs and the FPSC. This system helps assist ETCs and the FPSC in providing information on how to apply for Lifeline assistance to eligible customers.

⁹ 47 C.F.R. § 54.202(a)

Date: June 27, 2024

to ETC revocation proceedings in any state except for Wisconsin, which was reinstated.¹⁰ The company has over 20 years of technical and managerial experience, and it does not rely exclusively on Lifeline reimbursements for its operating revenues. As Amerimex will be providing resold wireless service, it will also rely upon the managerial and technical expertise of its underlying carriers.

Public Interest

State commissions are required to find that ETC designation is in the public interest.¹¹ Amerimex asserts granting its ETC designation will bring Lifeline eligible consumers more choice in providers without creating an additional burden on the federal high-cost programs. In Florida, consumers are currently limited to three wireless Lifeline providers. These three companies represent 98 percent of the Lifeline market in Florida.¹² The FPSC's estimated Lifeline participation rate in Florida for the last two years has hovered around 18 percent of eligible households.¹³ Staff believes an increase in carriers servicing this market may increase participation through additional marketing and would serve the public interest.

Conclusion

Staff has reviewed Amerimex's petition for ETC designation in Florida. Amerimex meets all the requirements for designation as an ETC. Additionally, the company has demonstrated sufficient financial, managerial, and technical capabilities. Therefore, staff recommends Amerimex should be granted an ETC designation throughout the State of Florida as identified in Attachment A of this recommendation. Staff further recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission to demonstrate that it is in the public interest to maintain the Company's ETC designation.

¹⁰The Public Service Commission of Wisconsin (WI PSC) granted Amerimex designation as an ETC by Order effective June 5, 2014 in Docket No. 17090-TI-100. The WI PSC rescinded Amerimex's ETC designation in Docket No. 5-TI-2723 effective July 30, 2020 because the Company had not yet offered Lifeline service in Wisconsin and did not respond to certain data requests issued by Staff. The Commission granted Amerimex's petition for re-designation as an ETC in WI effective January 12, 2024 in Docket No. 17090-TI-101.

¹¹ 47 U.S.C. § 214(e)(2)

¹² 2023 Florida Lifeline Assistance Report, December 2023, Appendix C, p 24.

¹³ Ibid, p 13.

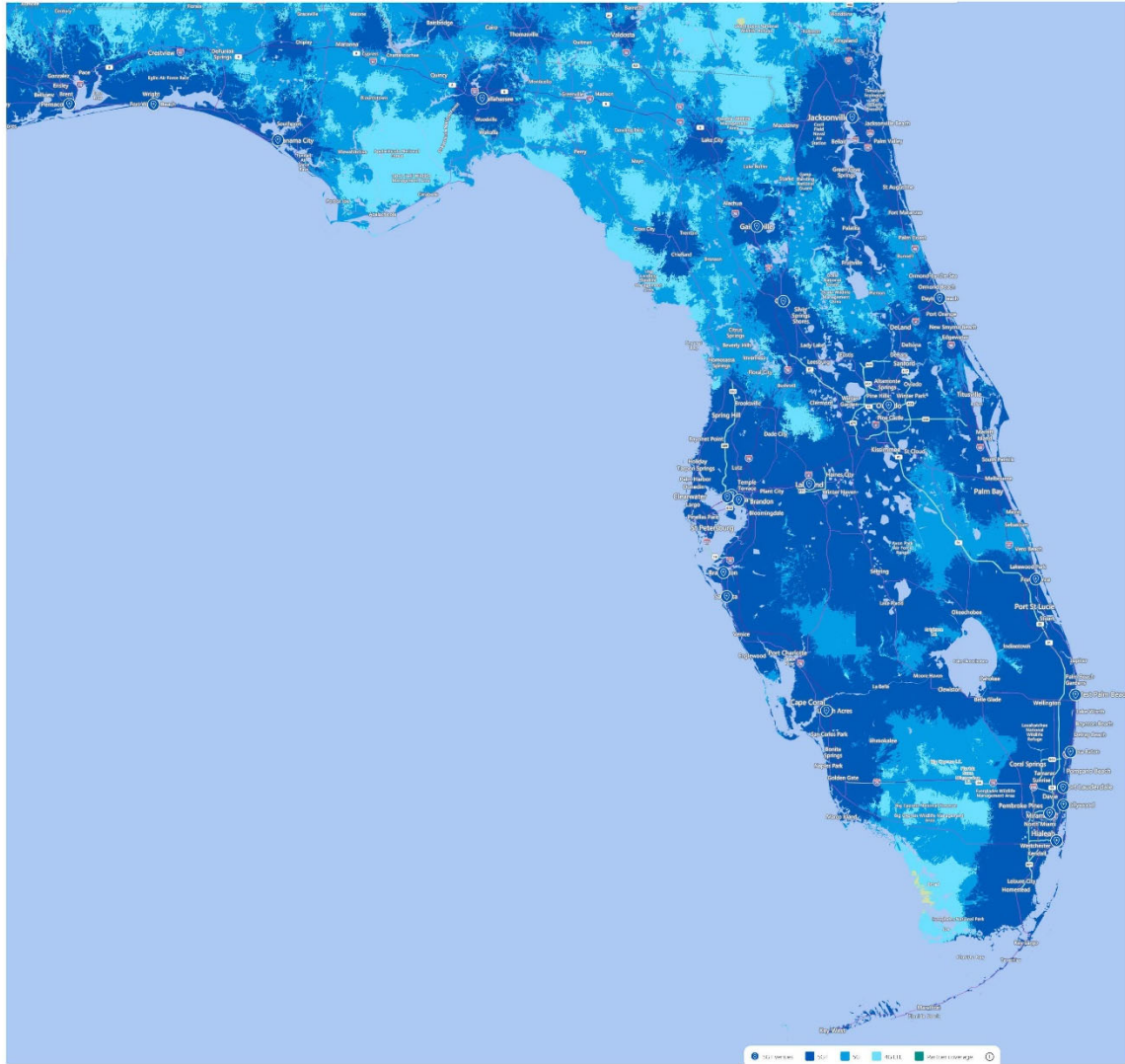
Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Farooqi)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

[illegible]

AT&T Coverage



Item 4

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Davis, Ellis, King, Sanchez, Thompson, Wooten) *TB*
Division of Economics (Barrett, Kaymak, McNulty) *CP*
Office of the General Counsel (Imig, Rubottom) *ACH*
Office of Industry Development and Market Analysis (Hitchins, Rogers) *CH*

RE: Docket No. 20240018-EG – Commission review of numeric conservation goals (Peoples Gas System, Inc.)

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: Pursuant to 366.82(6), F.S., the Commission must review conservation goals at least once every five years. New conservation goals must be set by January 1, 2025.

SPECIAL INSTRUCTIONS: None

Case Background

Sections 366.80 through 366.83, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Originally enacted in 1980, FEECA emphasizes the utilization of efficient and cost-effective demand-side renewable energy and conservation systems. Pursuant to Section 366.82, F.S., the Florida Public Service Commission (Commission) must review the conservation goals of each utility subject to FEECA at least every five years. Collectively, those utilities subject to FEECA are referred to as the FEECA Utilities. These include Peoples Gas System, Inc. (PGS or Company), the only natural

gas utility subject to these requirements, all four investor-owned electric utilities and two municipal electric utilities.¹

In 1980, the Commission adopted rules that set statewide conservation goals; however, these rules were repealed in 1990, following the sunset provision in FEECA. In 1996, the Commission adopted Rule 25-17.009, Florida Administrative Code (F.A.C.), which established a methodology for assessing the cost-effectiveness of demand-side management (DSM) programs for natural gas utilities. Since 1981, PGS has offered a variety of conservation programs that have been reviewed by the Commission pursuant to Rule 25-17.015, F.A.C., the Energy Conservation Cost Recovery (ECCR) clause. Conservation goals were last established for PGS by Order No. PSC-2019-0361-PAA-GU, issued August 28, 2019.² Therefore, new goals must be established by January 2025.

An informal meeting was held on November 1, 2023, with Commission staff and PGS, as well as other interested persons to discuss the current numeric goals cycle. Parties discussed the issues to be addressed, the usage of a proposed agency action (PAA) proceeding, and the timeline of the upcoming goals docket. On January 5, 2024, the instant docket was established to set numeric goals for PGS.

On March 8, 2024, PGS filed a petition for approval of its natural gas DSM goals for the period 2025-2034. The Commission has jurisdiction over this matter, pursuant to Sections 366.80 through 366.83, and 403.519, F.S.

¹The FEECA electric Utilities include Florida Power & Light Company; Duke Energy Florida, LLC; Tampa Electric Company; Florida Public Utilities Company; JEA; and Orlando Utilities Commission.

²See Order No. PSC-2019-0361-PAA-GU, issued August 28, 2019, in Docket No. 20180186-EG, *In re: Petition for approval of demand side management goals and residential customer assisted and commercial walk-through energy audit programs, by Peoples Gas System*.

Discussion of Issues

Issue 1: Are the Company's proposed goals based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems?

Recommendation: Yes. PGS has analyzed the maximum system-wide therm savings theoretically possible from implementation of DSM measures available in Florida. As such, staff recommends that the updated technical potential, seen in Table 1-1, is an adequate assessment of the full technical potential, and serves as an acceptable basis for the Company's annual therm savings goals. (Davis)

Staff Analysis: Section 366.82(3), F.S., requires the Commission, in developing conservation goals, to evaluate the technical potential of all available DSM measures applicable to a utility's system. To facilitate this evaluation, PGS has provided an analysis of the maximum system-wide therm savings theoretically possible from implementation of DSM measures, regardless of cost and other barriers that may prevent installation or adoption. Staff has evaluated the development of this therm savings analysis, termed the Technical Potential, by reviewing each of its four parts: (1) the identification of the DSM measures to be evaluated; (2) the calculation of the theoretical per-site therm savings for each DSM measure; (3) the calculation of the system-wide therm savings for each DSM measure; and (4) the determination of system-wide therm savings in consideration of measure interactions.

DSM Measure Identification

PGS identified the DSM measures for inclusion in the Technical Potential by first compiling a list of technologies known by the Company to be commercially available in Florida and that, when applied in a residential, commercial, or industrial setting, yield reductions in the use of natural gas. The Company started by using its technical potential study developed in its prior goalsetting proceeding, then compared this list against other utility, state, and federal technical potential studies and technical reference manuals to identify additional measures, including demand-side renewable energy systems. Those measures found to be missing were filtered by commercial availability in Florida before being added to the list of DSM measures evaluated in PGS's Technical Potential. Ultimately, 33 residential, 31 commercial, and 25 industrial measures addressing water heating, cooking, HVAC, laundry, and industrial process cases were evaluated. Compared to the prior goalsetting proceeding, PGS added two residential and commercial measures, and three industrial measures.³ Staff recommends that the methodology used to compile the list of DSM measures evaluated in PGS's Technical Potential is adequate.

Per-Site DSM Measure Savings

PGS calculated theoretical per-site therm savings for each DSM measure. Similar to the methodology used by electric FEECA utilities, only the savings from new, replaced, or retrofitted measures that surpassed those savings based on minimum appliance energy efficiencies in the Florida Building Code or the associated Federal Appliance Efficiency Standards, whichever is greater, were counted. Energy consumption parameters used in savings

³New measures added are Energy Star Tankless Water Heater and Energy Star Furnaces for each customer class (residential, commercial, and industrial) and Tank Water Heaters for industrial customers.

calculations were derived from a combination of state and national industry sources, current building code and appliance standards, and a review of historical DSM program activity. Staff recommends that the methodology used by PGS in the updated calculations adequately assesses the theoretical per-site therm savings of the DSM measures evaluated.

System-wide DSM Measure Savings

PGS calculated system-wide theoretical therm savings on a per-measure basis by applying the per-site therm savings to modified counts of its sector-specific customer populations to determine the applicable populations. PGS then modified the baseline applicable populations for each DSM measure to account for existing measure prevalence and incompatibility with a customer's premises, as indicated by the Company's recent residential equipment market survey and a review of the characteristics of its commercial and industrial customer populations. For the industrial sector, PGS analyzed individual customer annual usage to determine that sector's technical potential, instead of equipment ratings used in the prior technical potential study. Staff recommends that the methodology used by PGS to calculate system-wide theoretical therm savings on a per-measure basis is adequate.

Technical Potential Results

Since goals were last established, PGS's total technical potential decreased by approximately 33.4 percent, from 456.5 million therms to 304.0 million therms. This is primarily due to a decrease in the industrial technical potential related to the change of methodology discussed above. In contrast, commercial technical potentials increased by 11.7 percent, from 150.0 million therms to 167.6 million therms, and residential technical potential increased by 89.5 percent, from 60.1 million therms to 114.0 million therms. PGS attributes the increase in residential goals to an increase in the residential population by 33 percent since the last goals proceeding, improved therm savings, or applicability for furnace and pool measures. Using the updated therm savings calculations, PGS developed the Technical Potential seen in Table 1-1.

Table 1-1
2025 Technical Potential

Sector	Therm Savings
Residential	113,956,673
Commercial	167,632,935
Industrial	22,430,474
Total	304,020,082

Source: Document No. 01357-2024

Conclusion

PGS has analyzed the maximum system-wide therm savings theoretically possible from implementation of DSM measures available in Florida. As such, staff recommends that the updated Technical Potential seen in Table 1-1 is an adequate assessment of the full technical potential, and serves as an acceptable basis for the Company's annual therm savings goals.

Date: June 27, 2024

Issue 2: What residential and commercial annual therm savings goals should be established for the period 2025-2034?

Recommendation: Staff recommends that the Commission establish the annual therm savings seen in Table 2-1 as PGS's annual conservation goals for the period 2025-2034. The Company's proposed conservation goals adequately address the considerations enumerated in Section 366.82(3), F.S. (Davis)

Staff Analysis: Section 366.82(2), F.S., requires the Commission to adopt appropriate conservation goals to promote energy efficiency and the development of DSM programs. Section 366.82(3), F.S., states that, in establishing these goals, the Commission shall take into consideration: (1) the costs and benefits to customers participating in a program; (2) the costs and benefits to the general body of ratepayers; (3) the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and (4) the costs imposed by state and federal regulations on the emission of greenhouse gases.

PGS has proposed annual conservation goals for the years 2025-2034 which focus on achieving overall therm usage reductions at residential and small-commercial end-use sites, incorporating the technical potential measures into its residential and commercial programs. Because the Company's current and potential DSM programs serve as the basis for its proposed annual conservation goals, staff reviewed these programs, taking into consideration those factors enumerated in Section 366.82(3), F.S. Staff then evaluated PGS's proposed achievable therm savings goals by reviewing each proposed DSM program's projection of achievable annual therm savings over the 2025-2034 period.

Staff notes that PGS did not propose commercial goals, nor did it incorporate any DSM measures into its DSM portfolio for large commercial or industrial customers. This is because these customers are entirely either natural gas fired co-generators or interruptible customers and, per Order No. 23576, these two rate classes are excluded from cost recovery through the ECCR clause.⁴

Benefits and Costs to Participants and the General Body of Ratepayers

Section 366.82(3)(a), F.S., requires the Commission take into consideration the costs and benefits to customers participating in a program. Section 366.82(3)(b), F.S., requires the Commission take into consideration the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions. Per Rule 25-17.009, F.A.C., utilities seeking cost recovery for an existing, new, or modified demand side management program must file the cost effectiveness test results of the Participants Test and the Gas Rate Impact Measure (G-RIM) Test. The Participants Test measures the impact of a program on the participating customers. The G-RIM Test is an indirect measure of the program impact on customer rates that addresses utility incentives and participation. A score of 1.0 or greater indicates a program is cost-effective for a particular test. Based on the Company's analyses, all of PGS's programs upon which its proposed goals are based are cost-effective and passed the

⁴Order No. 23576, issued October 3, 1990, in Docket No. 19900002-EG, *In re: Conservation Cost Recovery Clause*.

Date: June 27, 2024

Participants Test and G-RIM Test with scores above 1.0. Therefore, staff recommends that both Sections 366.82(3)(a) and (b), F.S., are adequately addressed by the proposed DSM goals.

Need for Incentives

Section 366.82(3)(c), F.S., requires the Commission take into consideration the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems. As stated previously, the proposed DSM goals are based upon PGS's current Commission-approved DSM programs. The current DSM programs were approved in 2019, and the Commission found that the cash incentive allowances were cost-effective and did not impose an undue rate impact on PGS customers' monthly bills.⁵ The proposed incentives continue to be cost-effective with no undue rate impact to PGS customers. The design of the incentives for both residential and small commercial programs included consideration of free ridership and, thus, in staff's opinion, reasonably balanced incentive effectiveness with the ability of these programs to contribute to the defrayal of the costs associated with the installation of natural gas supply lines, internal piping, venting and equipment. Therefore, staff recommends that Section 366.82(3)(c), F.S., is adequately addressed by the proposed DSM goals.

Greenhouse Gas Emissions

Section 366.82(3)(d), F.S., requires the Commission take into consideration the costs imposed by state and federal regulations on the emission of greenhouse gases. Currently, there are no costs imposed on PGS by state and federal regulations on the emissions of greenhouse gases. If any regulations on the emission of greenhouse gases are established that impact PGS, the Commission may review and, if appropriate, modify PGS's goals to account for any associated costs.

Achievable Annual Therm Savings

By combining projected yearly DSM measure participation with the updated DSM measure achievable per-site therm savings, PGS derived achievable annual therm savings over the 2025-2034 period. Overall, PGS proposed a cumulative 10-year therm goal of 8.0 million therms, 29.9 percent greater than its prior goal of 6.2 million therms. These savings can be seen in Table 2-1, alongside a cumulative count of projected savings, and are the Company's proposed annual conservation goals for the period 2025-2034. Staff recommends that the Commission establish the annual therm savings shown in Table 2-1 as PGS's annual conservation goals for the period 2025-2034.

⁵See Order No. PSC-2019-0361-PAA-GU, issued August 26, 2019, in Docket No. 20180186-EG, *In re: Petition for approval of demand side management goals and residential customer assisted and commercial walk-through energy audit programs*, by Peoples Gas System.

Table 2-1
2025-2034 Achievable Therm Savings Goals

Year	Residential Annual	Residential Cumulative	Commercial Annual	Commercial Cumulative	Total Annual	Total Cumulative
2025	344,604	344,604	434,348	434,348	778,952	778,952
2026	349,768	694,372	443,868	878,216	793,636	1,572,588
2027	355,274	1,049,646	412,777	1,290,993	768,051	2,340,639
2028	359,537	1,409,183	419,761	1,710,754	779,298	3,119,937
2029	362,084	1,771,267	427,445	2,138,198	785,529	3,909,465
2030	366,351	2,137,618	434,429	2,572,627	800,780	4,710,245
2031	370,926	2,508,543	441,413	3,014,040	812,339	5,522,584
2032	374,198	2,882,741	451,291	3,465,331	825,488	6,348,072
2033	375,107	3,257,848	458,275	3,923,606	833,382	7,181,454
2034	376,334	3,634,182	465,259	4,388,865	841,593	8,023,047

Source: Document No. 01357-2024

Conclusion

Staff recommends that the Commission establish the annual therm savings seen in Table 2-1 as PGS's annual conservation goals for the period 2025-2034. The Company's proposed conservation goals adequately address the considerations enumerated in Section 366.82(3), F.S, and staff therefore recommends that the Company's proposed goals are appropriate.

Date: June 27, 2024

Issue 3: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued and the docket should be closed. (Imig, Rubottom)

Staff Analysis: If no person whose substantial interests are affected by the PAA files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued, and the docket should be closed.

Item 5

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Ramirez-Abundez, Ramos) *TB*
Office of the General Counsel (Dose, Crawford) *JSC*

RE: Docket No. 20240095-WS – Resolution of the Board of County Commissioners of Citrus County declaring Citrus County subject of the provisions of Sections 367, F.S.

AGENDA: 07/09/24 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On May 28, 2024, the Board of County Commissioners of Citrus County (County) adopted Resolution No. 2024-040 (Resolution, Attachment A), transferring regulation of the privately-owned, for profit water and wastewater utilities in the County to the Florida Public Service Commission (Commission). Effective upon the adoption of the resolution, all non-exempt water and wastewater systems in the County became subject to the provisions of Chapter 367, Florida Statutes (F.S.). Therefore, the effective date of the transfer of jurisdiction is May 28, 2024. This recommendation addresses the acknowledgement of that Resolution. The Commission has jurisdiction pursuant to Section 367.171, F.S.

Date: June 27, 2024

Discussion of Issues

Issue 1: Should the Commission acknowledge Resolution No. 2024-040 by the Board of County Commissioners of Citrus County?

Recommendation: Yes. The Commission should acknowledge Resolution No. 2024-040 by the Board of County Commissioners of Citrus County, effective May 28, 2024. All non-exempt, privately-owned water and wastewater utilities in Citrus County should be directed to comply with the provisions of Chapter 367, F.S. (Ramirez-Abundez, Dose)

Staff Analysis: On May 28, 2024, the Board of County Commissioners of Citrus County passed and adopted Resolution No. 2024-040, which transfers jurisdiction over the County's privately-owned water and wastewater utilities to the Commission. In addition, staff has contacted the County requesting information on each utility's current rates, charges, and territory served. As part of its response to staff, the County provided a list of its 13 privately-owned water and wastewater utilities, which is appended to this recommendation as Attachment B. Since they are now subject to Chapter 367, F.S., each utility must continue to collect the rates and charges for water and wastewater service which were being collected on May 28, 2024, until changed by the Commission.

Staff has contacted the Florida Department of Environment Protection (DEP) to advise it of the Resolution, and to obtain a list of all privately-owned water and wastewater facilities in Citrus County, which the DEP monitors for environmental compliance. The utilities identified by the County and the DEP will receive a letter from Commission staff advising them of the transfer of jurisdiction and providing them with information to determine whether or not they are exempt from Commission regulation, pursuant to Section 367.022, F.S.

Entities which are not exempt from Commission regulation will receive instruction for filing an application for grandfather certificates. The resulting applications will be processed in individual dockets. These applicants will also be advised of their responsibility to file an annual report for 2024, pursuant to Rule 25-30.110, Florida Administrative Code (F.A.C.), as well as their responsibility to remit Annual Regulatory Assessment Fees (RAFs). The applicants will also be advised of their right to file for a pass-through of RAFs should they not be currently collecting RAFs, or if they are collecting a lesser amount than they would be paying to the Commission.

Staff recommends that the Commission acknowledge Resolution No. 2024-040 by the Board of County Commissioners of Citrus County, effective May 28, 2024. All non-exempt, privately-owned water and wastewater utilities in Citrus County should be directed to comply with the provisions of Chapter 367, F.S.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open to process letters to water and wastewater operators and their subsequent responses. Upon staff's verification that the final response from a water or wastewater system operator affirming exemption status has been received and that no further action is necessary, this docket should be closed administratively. (Dose)

Staff Analysis: This docket should remain open to process letters to water and wastewater operators and their subsequent responses. Upon staff's verification that the final response from a water or wastewater system operator affirming exemption status has been received and that no further action is necessary, this docket should be closed administratively.



ANGELA VICK

CLERK OF THE CIRCUIT COURT AND COMPTROLLER
CITRUS COUNTY, FLORIDA

Clerk of the County Court
Recorder of Deeds
Clerk and Accountant of the Board of County Commissioners
Custodian of County Funds
County Auditor

110 North Apopka Avenue
Inverness, Florida 34450
Telephone: (352) 341-6455
Fax: (352) 341-6477
CommissionRecords@citrusclerk.org
www.citrusclerk.org

May 29, 2024

Office of Records and Reporting of the
Florida Public Service Commission
2450 Shumard Oak Blvd
Tallahassee Florida 32399-0850

To Whom It May Concern:

Please find enclosed a certified copy of Resolution Number 2024-040, which was adopted by the Citrus County Board of County Commissioners at their meeting held on May 28, 2024.

Respectfully,

A handwritten signature in blue ink, appearing to read "Amy Novinger". The signature is fluid and cursive, with a large loop at the end. Below the signature, the text "Angela Vick, Clerk" is printed in a standard font.

By: Amy Novinger, Deputy Clerk

Enclosure

RESOLUTION NO. 2024- 040

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, FLORIDA, DECLARING THAT CITRUS COUNTY IS SUBJECT TO ALL PROVISIONS OF CHAPTER 367, FLORIDA STATUTES; RE-ESTABLISHING CHAPTER 367 JURISDICTION OF THE FLORIDA PUBLIC SERVICE COMMISSION OVER WATER AND WASTEWATER UTILITIES WITHIN CITRUS COUNTY; RESCINDING RESOLUTION NO. 99-111; RESCINDING RESOLUTION NO. 99-142; RESCINDING RESOLUTION NO. 2007-015; RESCINDING RESOLUTION NO. 2008-052; REPEALING RULES OF THE BOARD SUPPLEMENTAL TO THE CITRUS COUNTY WATER AND WASTEWATER UTILITIES REGULATORY ORDINANCE.

WHEREAS, on July 27, 1999, pursuant to Section 367.171(1), Florida Statutes, the Board adopted Resolution No. 99-111 and assumed jurisdiction over private water and wastewater facilities located in Citrus County;

WHEREAS, on August 24, 1999, the Board adopted Citrus County Ordinance No. 99-07, entitled "Citrus County Water and Wastewater Regulatory Ordinance," establishing the standards for regulation of water and wastewater facilities in Citrus County;

WHEREAS, on September 14, 1999, the Board adopted Resolution No. 99-142, establishing Rules of the Board supplemental to the Citrus County Water and Wastewater Regulatory Ordinance;

WHEREAS, on June 12, 2007, the Board adopted Resolution No. 2007-015, amending Resolution No. 99-142 and the Rules of the Board supplemental to the Citrus County Water and Wastewater Regulatory Ordinance;

WHEREAS, on February 26, 2008, the Board adopted Resolution No. 2008-052, further amending the Rules of the Board supplemental to the Citrus County Water and Wastewater Regulatory Ordinance;

WHEREAS, the Board has determined that the interest of the citizens of Citrus County would be best served if the local utilities were hereafter regulated by the Florida Public Service Commission;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Citrus County, Florida in regular session this 28th day of May, 2024, as follows:

1. Resolution No. 99-111, removing Citrus County from the Chapter 367, Florida Statutes, jurisdiction of the Florida Public Service Commission is hereby rescinded.
2. Citrus County private water and wastewater utilities are hereafter subject to the provisions of Chapter 367, Florida Statutes, and the jurisdiction of the Florida Public Service Commission.
3. Resolutions No. 99-142, 2007-015 and 2008-052, adopting the Rules of the Board supplemental to the Citrus County Water and Wastewater Utilities Regulatory Ordinance are hereby rescinded and the Rules are hereby repealed.
4. The Clerk of the Board shall, as soon as possible, notify the Florida Public Service Commission of the adoption of this Resolution and mail a certified copy of this Resolution to the Office of Records and Reporting of the Florida Public Service Commission, 2450 Shumard Oak Blvd., Tallahassee, Florida 32399-0850.
5. This Resolution shall become effective immediately upon its adoption.

ATTEST:

Angela Vick
for ANGELA VICK, CLERK



BOARD OF COUNTY COMMISSIONER
OF CITRUS COUNTY, FLORIDA

Holly L. Davis
HOLLY L. DAVIS, CHAIRMAN

APPROVED AS TO FORM ONLY
FOR RELIANCE OF COUNTY

Denise A. Dymond Lyn
Denise A. Dymond Lyn

APPROVED

MAY 28 2024

BOARD OF COUNTY
COMMISSIONERS

**CITRUS COUNTY
OFFICE OF UTILITY REGULATION**

<u>BUSINESS NAME</u>	<u>ADDRESS</u>	<u>POC</u>	<u>PHONE #</u>	<u>EMAIL</u>
Central States Water Resource (CSWR)	P.O. Box 674538 Dallas, TX 75267-4538	Aaron Silas	Phone: 314-380-8510 314-323-3174 (mobile)	asilas@cswrgrgroup.com
Cinnamon Ridge Utilities	6909 Beach Blvd. Hudson, Florida 34667-1995	Paula Paxton Jennifer Smith	Phone: 727-863-2560 Emergency: 352-628-6608 Fax: 727-863-36370	jensmith6909@aol.com
Citrus Waterworks	4939 Cross Bayou Boulevard New Port Richey, Florida 34652	Troy Rendell	Phone: 727-848-8292 314-323-3174 (mobile) Fax: 727-848-7701	trendell@uswatercorp.net
Dunnellon Hills Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Forest Hills Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Haggerty Point Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Indian Springs Utilities	P.O. Box 518 Crystal River, Florida 34423	Jeff Schrade	Phone: 352-795-5205 Emergency: 352-634-0726	jschrade1@tampabay.rr.com
La Prima Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Lucky Hills Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Meadow Wood Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Pinewood Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Springhorn Water System	P.O. Box 4 Inglis, Florida 34449-0004	Marshal Hash	Phone: 352-613-0103	marshall@hash.com
Tarawood Utilities, LLC	P.O. Box 1018 Floral City, Florida 34436-1018	John Thrumston	Phone: 352-302-5330 Phone: 407.970.7705	tarawoodutilities@gmail.com

Item 6

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (McClelland, Hampson, Hudson) *EJD*
Division of Accounting and Finance (Vogel, Norris) *ALM*
Office of the General Counsel (Stiller, Crawford) *JSC*

RE: Docket No. 20200039-GU – Petition for approval to implement a temporary storm cost recovery surcharge, by St. Joe Natural Gas Company.

AGENDA: 07/09/24 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 24, 2020, St. Joe Natural Gas Company (SJNG or Company) filed its petition to recover incremental storm restoration costs related to Hurricane Michael through a temporary storm cost recovery surcharge. SJNG's service area includes Mexico Beach and Port St. Joe, and its natural gas distribution system sustained significant damage as a result of Hurricane Michael. The Company requested the recovery of \$381,512 in incremental storm costs, as it had incurred incremental costs of \$321,012 and projected \$60,500 in remaining costs to complete the restoration of its gas system. The Office of Public Counsel (OPC) subsequently filed a notice of intervention in the docket, as acknowledged by Order No. PSC-2020-0066-GU, issued March 2, 2020.

On April 20, 2020, the Commission issued an order approving the collection of an interim storm cost recovery surcharge over a period of 48 months.¹ On February 19, 2021, SJNG filed a request to approve final costs based on an actual amount of \$402,720 in incremental storm restoration costs. Shortly thereafter, the Company and OPC filed a Joint Petition for Approval of Stipulation and Settlement (Settlement Agreement), which the Commission approved by Order No. PSC-2021-0196-AS-GU.²

The Settlement Agreement permitted the Company to recover a total of \$330,115 in storm costs through the surcharge that had been previously approved on an interim basis, by Order No. PSC-2020-0117-PCU-GU. The surcharge was to extend through December 2024, at which time it would cease, with any under or over-recovery handled through the Natural Gas Conservation Cost Recovery Clause. At the conclusion of the surcharge, SJNG would record \$77,761 associated with the remaining life value of lost capital assets in a regulatory asset and recover the amount over a period of 10 years through an increase to the Company's base rates, with an anticipated implementation of January 1, 2025.

On May 30, 2024, SJNG filed a letter stating that as of May 2024 the Company has recovered more than the amount permitted in the Settlement Agreement. SJNG is requesting to terminate the storm cost recovery surcharge early, as it has collected the agreed-upon amount, and will handle any over or under-recovery consistent with the Settlement Agreement. The Company subsequently also provided an update of the current and projected over-recovery amounts.³ The Company has also filed a Fourth Revised Sheet No. 83 reflecting termination of the surcharge, which is included as Attachment A to this recommendation.

This docket was closed June 2, 2021, when the Commission entered Order No. PSC-2021-0196-AS-GU approving the Settlement Agreement. On June 4, 2024, staff requested that this docket be reopened for the Commission to consider the requests made in the Company's May 30, 2024 letter.

On June 12, 2024, the Company's legal counsel provided clarification on the process to increase base rates for the recovery of the remaining \$77,762 through a regulatory asset. Counsel confirmed that the regulatory asset would be addressed as a base rate increase to be implemented in January 2025 as set forth in the Settlement Agreement, and would remain separate and apart from SJNG's pending base rate proceeding in Docket No. 20240046-GU. Accordingly, this recommendation addresses only the Company's request for early termination of the surcharge tariff.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

¹ Order No. PSC-2020-0117-PCO-GU, issued April 20, 2020, in Docket No. 20200039-GU, *In re: Petition for approval to implement a temporary storm cost recovery surcharge, by St. Joe Natural Gas Company.*

² Order No. PSC-2021-0196-AS-GU, issued June 3, 2021, in Docket No. 20200039-GU, *In re: Petition for approval to implement a temporary storm cost recovery surcharge, by St. Joe Natural Gas Company.*

³ Document No. 06898-2024

Date: June 27, 2024

Discussion of Issues

Issue 1: Should the Commission approve SJNG's tariff modifications to remove its temporary storm cost recovery surcharge?

Recommendation: Yes, the Commission should approve SJNG's tariff modifications as shown in Attachment A to the recommendation. SJNG has recovered more than the amount of incremental storm restoration costs permitted in its Settlement Agreement and should terminate the surcharge, effective on the date of the Commission vote. (McClelland)

Staff Analysis: As stated in the Case Background, the Settlement Agreement permitted the Company to recover a total of \$330,115 in storm costs through the surcharge that had been previously approved on an interim basis, by Order No. PSC-2020-0117-PCU-GU.

As affirmed in its letter dated May 30, 2024, SJNG has recovered more than the amount of storm costs permitted in the Settlement Agreement. Per the Company's update on June 12, 2024, SJNG has collected \$338,259.71 as of May 31, 2024, and expects to recover \$12,600 in June and July. Termination of the surcharge will prevent further over-recovery. As stated in the Settlement Agreement, the over-recovery amount will be handled through the Natural Gas Conservation Cost Recovery Charge.

Staff has reviewed the Fourth Revised Sheet No. 83 and believes it is appropriate. The clean and legislative copies of the tariff are included as Attachment A to the recommendation.

Conclusion

Based on the information provided, staff recommends that the Commission approve the proposed tariff modifications to terminate the temporary storm cost recovery surcharge, effective on the date of the Commission vote.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: Yes. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Stiller)

Staff Analysis: If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

ST. JOE NATURAL GAS COMPANY, INC.
Original Volume No. 4

Fourth Third Revised Sheet No. 83
Cancels Third Second Revised Sheet No. 83

RESERVED FOR FUTURE USE
~~RATE SCHEDULE TEMPORARY STORM COST RECOVERY SURCHARGE~~

~~APPLICABILITY~~

~~Applicable to Customers receiving Gas Service under the following rate schedule:~~

~~DETERMINATION OF TEMPORARY STORM COST RECOVERY SURCHARGE~~

~~The Temporary Storm Cost Recovery Surcharge will be a per therm rate per month for the bills rendered for meter readings taken on or after May 1, 2020, beginning with the first or applicable billing cycle through the last billing cycle for December 31, 2024. The Customer's monthly bill for Gas Service shall be increased by the Temporary Storm Cost Recovery Surcharge determined in accordance with this tariff.~~

~~Temporary Storm Cost Recovery Surcharge factors are shown below:~~

ADJUSTMENT FACTOR	
RATE CLASS	\$ Per Therm
RS-1	\$0.21038
RS-2	\$0.12684
RS-3	\$0.09689
GS-1	\$0.08345
GS-2	\$0.04014
GS-4/PTS-4	\$0.02125

~~This rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.~~

Issued By: Stuart L. Shoaf, President
Issued On:

Effective: May 4, 2021

ST. JOE NATURAL GAS COMPANY, INC.
Original Volume No. 4

Fourth Revised Sheet No. 83
Cancels Third Revised Sheet No. 83

RESERVED FOR FUTURE USE

Issued By: Stuart L. Shoaf, President
Issued On:

Effective:

Item 7

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Barrett) *JP*
Division of Engineering (Ellis, Thompson)
Office of the General Counsel (Imig) *JSC*

RE: Docket No. 20230121-EG – Petition for approval of conservation demonstration and development program, by Associated Gas Distributors of Florida.

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The Associated Gas Distributors of Florida (AGDF) is a trade association that represents the five investor-owned natural gas utilities operating in Florida: Florida City Gas (FCG), Florida Public Utilities Company (FPUC), Peoples Gas System (PGS), Sebring Gas System (Sebring), and St. Joe Natural Gas Company (SJNG). These companies are local distribution companies (LDCs) and are all subject to the jurisdiction of the Florida Public Service Commission (Commission).

On October 16, 2023, AGDF filed a petition on behalf of the above-mentioned LDCs, with the exception of PGS, seeking approval of new Conservation Demonstration and Development (CDD) program. AGDF asserts that the instant petition is similar to the petition it submitted in Docket No. 20090122-EG, wherein the Commission approved in Order No. PSC-2010-0113-PAA-EG (2010 AGDF Order), AGDF's request for approval of its then-proposed CDD Program

on behalf of its member companies.¹ AGDF states that in that proceeding, the Commission determined that the CDD Program met the Commission's historic tests set forth in Order No. 22176 for evaluating such programs.² In approving the CDD Program, the Commission also accepted the AGDF's proposal for a five (5)-year cap on expenditures under the program, as well as individual project caps.³

AGDF states the Commission has recognized and historically supported reasonable research and development activities for electric utilities, and has likewise recognized that the provisions of Rule 25-17.001(5)(f), Florida Administrative Code, which encourage the aggressive pursuit of research, development and demonstration projects, should also generally apply to natural gas utilities.⁴ The Commission has also found that coordinated research efforts of the AGDF member LDCs can lead to economic efficiencies.⁵

On October 3, 2014, before the expiration of the 5-year term set forth in the 2010 AGDF Order, the AGDF sought to extend the term of the program by a little more than 2.5 years, with the request of allowing expenditure of the existing balance under the caps. By Order No. PSC-2015-0095-PAA-EG (AGDF Extension Order) the Commission granted the extension, but imposed modifications to address specific concerns raised by staff.

In regards to the instant petition, AGDF also supplied additional information in responses to staff data requests on December 15, 2023, February 26, 2024, and April 2, 2024⁶, respectfully. In addition, AGDF issued a letter to the Commission on April 18, 2024, including certain modifications and clarifications to its proposal and providing additional information pertaining to Energy Conservation Cost Recovery Factor impacts associated with the proposed CDD programs.⁷

The Commission has jurisdiction over this matter and is authorized to take action pursuant to Sections 366.80-366.83, Florida Statutes (collectively, Florida Energy Efficiency and Conservation Act, or FEECA Statutes), and also in accordance with Rules 25-17.009 and 17.015, Florida Administrative Code.

¹ Order No. PSC-2010-0113-PAA-EG, issued February 25, 2010, in Docket No. 090122-EG, *In re: Petition for approval of modifications to approved energy conservation programs, by Associated Gas Distributors of Florida*.

² Order No. 22176, issued November 14, 1989, in Docket No. 890737-PU, *In re: Implementation of Section 366.80 - .85, Florida Statutes, Conservation Activities of Electric and Natural Gas Utilities*.

³ The AGDF Order became effective March 25, 2010, and the effective date of for capping the CDD Program was March 25, 2015.

⁴ *See*, Order No. PSC-2015-0095-PAA-EG, at page 4, citing Order No. PSC-10-0113-PAA-EG.

⁵ *Id.*

⁶ Document No. 06618-2023, AGDF's Responses to Staff's First Data Request, Document No. 00929-2024, AGDF Responses to Staff's Second Data Request, and Document No. 01530-2024, Associated Gas Distributors of Florida's Responses to Staff's Third Data Request.

⁷ Document No. 02056-2024, AGDF's letter to William McNulty, Bureau Chief for the Florida Public Service Commission, dated April 18, 2024.

Date: June 27, 2024

Discussion of Issues

Issue 1: Should the Commission approve the AGDF's petition, subject to certain modified conditions, allowing for its proposed Conservation Demonstration and Development (CDD) program for the participating LDCs: FCG, FPUC, Sebring, and SJNG?

Recommendation: Yes, staff recommends the Commission approve AGDF's petition, subject to modified conditions agreed to by AGDF, allowing for a CDD program for FCG, FPUC, Sebring, and SJNG. Such modified conditions include:

1. The program is limited to five years, and may be extended beyond the initial term, if requested by AGDF at least six months prior to the end of the five-year period;
2. FCG and FPUC may participate in as many as three qualified research projects in any calendar year, with expenditures limited to \$75,000 per project per year; Sebring and SJNG may likewise participate in as many projects limited to \$1,000 per year limit;
3. Any single CDD program project must meet the following minimum eligibility requirements: (a) the proposed measure or program must have an affect on rate-paying customers; (b) there is a lack of available research or insufficient data on the proposed measure or program being evaluated; and (c) there is insufficient Florida-specific data on the proposed program or measure.

In addition, staff recommends that AGDF comply with the following additional provisions:

4. AGDF members must not undertake commercial/industrial class CDD research projects/technologies to the exclusion of residential CDD projects/technologies during the five year period, and should take actions to strike a reasonable balance between the two types of CDD projects;
5. Within 6 months following the conclusion of the 5-year term of the CDD program, or concurrent with a request for CDD program extension, AGDF must file a CDD program status report with the Commission, detailing AGDF's research findings, impacts on cost effectiveness, and how the utilities plan to or have effectively implemented such findings in new and/or existing DSM programs.
6. In accordance with Sections 366.81 and 366.82, F.S., the focus of all CDD projects undertaken by member utilities must be increasing energy efficiency and/or conservation via advances in technologies and/or their implementation in utility gas distribution systems, end-use gas equipment, or demand side renewable energy systems. (Barrett)

Staff Analysis: In its instant petition, AGDF indicates that its proposed CDD program is similar in many ways to the CDD program approved in the 2010 AGDF Order, which was originally approved by the Commission for a five-year period ending March 25, 2015. Thereafter, an extension for the CDD program was approved through December 31, 2017.⁸ In the instant and former petitions, AGDF asserts that the purpose of the CDD program is to

⁸ Supra, fn 7.

Date: June 27, 2024

support research and development, demonstration, and monitoring projects designed to promote energy efficiency, conservation, and reductions in climate change emissions.

Summary of Instant Petition

AGDF claims that while the proposed demonstration development program is intended to identify new gas energy conservation measures, it will also serve a critical role in enhancing and updating existing gas conservation programs. Many of the existing gas conservation programs that are administered by AGDF utilities require updating to reflect various energy and cost assumptions that change over time. AGDF asserts that this CDD program would allow funding to complete the analysis required to file updated conservation programs, most notably, the cost-effectiveness data inputs that are required for gas conservation program approval.⁹

AGDF asserts that in its new proposed CDD program, the participating members have addressed the potential rate impact concerns mentioned in the AGDF Extension Order, and the other concern about the consistency of the proposed research objectives and conservation efforts with FEECA. AGDF believes it has done so by developing minimum eligibility requirements for CDD funding. These requirements include:

- (1) the proposed measure or program must have an affect on rate-paying customers;
- (2) there is a lack of available research or insufficient data on the proposed measure or program being evaluated; and
- (3) there is insufficient Florida-specific data on the proposed program or measure.¹⁰

AGDF states that after the minimum eligibility requirements have been met, the proposed CDD funding project would then have to comport with one of three CDD categories.¹¹ The first category, efficiency, is proposed to include research projects that focused on appliance efficiency, and would include demonstration projects that seek to quantify the efficiency and cost effectiveness of emerging gas end-use equipment and technologies when installed in Florida. The second category, resiliency, would include CDD research projects that focus on smaller, on-site, backup electric generation technologies for home and/or commercial use that are fueled by gas, configured on a standalone basis, or as a combined heat and power configuration. The third and final category, renewable, is proposed to include research efforts that seek to identify and encourage the proliferation of customer-owned renewable natural gas opportunities among commercial and industrial customers across Florida.

In its petition, AGDF asserts that each participating LDC will report any CDD-related expenses and information on program participation through the company's annual conservation cost recovery clause expense review. AGDF proposed annual, estimated program expense limits for each LDC, based upon the assumption of approval to offer one (1), two (2), or three (3) CDD

⁹ See petition at paragraph 15.

¹⁰ See petition at paragraphs 18-19.

¹¹ See petition, Appendix A.

Date: June 27, 2024

projects in a calendar year.¹² Based on those limits, AGDF also estimated the corresponding cost recovery clause impacts for residential customers that would result if the spending limits it proposed were implemented.¹³

Per its petition, AGDF believes the research projects it proposes will be specifically designed to determine whether the programs and technologies analyzed have the technical potential to meet the statutory provision of forth in Section 366.82(2), F.S., which is to “. . . increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources.”

Comparing Instant and Prior Petitions

Staff has identified the following notable differences between AGDF’s 2009 CDD petition (Docket No. 20090122-EG) and the instant petition:

- a. In the prior docket, AGDF’s request was for a temporary CDD program, and that is what the Commission approved. The instant petition sought approval of a permanent CDD program, but as discussed below, AGDF later agreed to other temporary options.
- b. In the former docket, PGS was a full participant, whereas in the instant case, it is not a full participant, but may engage jointly on some of AGDF’s CDD projects. AGDF explained that the reason PGS is not included in its proposal is that PGS already has an established CDD program approved by the Commission.¹⁴
- c. In the instant petition, AGDF is proposing individual and program total caps based on a maximum of 3 projects in any one year, whereas in 2009, the maximum number of projects was not specified.
- d. The instant petition sets forth minimum eligibility requirements and proposes three CDD categories, which are features that were not included in the AGDF’s petition filed in Docket No. 20090122-EG.

Analysis

Discussed below are topic areas that concerned staff as it considered AGDF’s petition and data request responses.

Initial Request for Permanent Program

As referenced above, AGDF initially sought a permanent CDD program via its petition. Staff’s main concern with this request was that no other DSM programs have been conferred permanent status and, moreover, all FEECA utilities’ goals are subject to review every five years per Rule

¹² In its petition AGDF sought approval to allow FPUC and FCG to have an annual spending limit of \$75,000 per year, per project, for up to a maximum of three projects, which adds up to a maximum annual incremental amount of \$225,000. Additionally, in its petition, AGDF proposed an annual spending limit of \$5,000 per year, per project for SJNG, and a limit of \$2,000 per year, per project for Sebring.

¹³ Since the AGDF’s petition was filed, the spending limits originally proposed have been revised, and those changes resulted in changes to the calculations that estimate the cost recovery clause impacts. In its analysis below, the most current information is presented.

¹⁴ Document No. 06618-2023, AGDF’s Response to Staff’s First Data Request, No. 1.B.

25-17.0021(1), F.A.C, at which time all programs are simultaneously under review. In discussions with staff on March 6, 2024, staff relayed its concern that a permanent program would not appear to comport with our existing rule. Staff also conveyed that, because CDD research programs have not been pursued in any meaningful way by any Florida gas investor-owned utilities since the expiration of the prior CDD program in 2018, instituting a permanent program at this stage of CDD program development did not seem to be well supported.

On April 18, 2024, in response to staff concerns regarding this issue and other matters, AGDF submitted a letter to staff that stated that AGDF is amenable to a 5-year program limitation, as long as it is not precluded from seeking an extension.¹⁵ Alternatively, the letter sets forth that a 5-year reporting requirement may be more administratively efficient, and would provide staff with sufficient information to initiate a docket if needed to address program concerns. Staff agrees with the former approach, wherein the proposed CDD program would have a 5 year program limitation and AGDF would have the option to seek Commission approval for a program extension. Staff believes there is much to be learned about any new CDD program, and that the better approach would be to limit the CDD program to set time period, with an option to extend the program based upon the level of success achieved as reported and reviewed. Therefore, staff recommends that the modifications set forth by the April 18, 2024 letter be incorporated into the order approving the program.

Cost Caps and Rate Impacts

In its petition, AGDF sought approval to allow FPUC and FCG to each have an annual spending limit of \$75,000 per project, for up to a maximum of three projects, or a maximum annual incremental amount of \$225,000 per utility. Additionally, the petition proposed an annual spending limit of \$5,000 per project for SJNG, and an annual spending limit of \$2,000 per project for Sebring. AGDF presented expected residential natural gas cost recovery clause factor (rate) impacts resulting from these limits which, upon consultation with staff, AGDF agreed resulted in rate impacts that were excessive, especially for Sebring and SJNG. In AGDF's April 18, 2024 response letter to staff, it reduced its requested annual spending limits for Sebring and SJNG to \$1,000 for each utility, regardless of the number of projects undertaken. Table 1-1 below reflects the most current spending limits AGDF proposes:

Table 1-1
AGDF's Proposed CDD Program Expense Limits (per year)

LDC	One (1) CDD Project	Two (2) CDD Projects	Three (3) CDD Projects
FPUC	\$75,000	\$150,000	\$225,000
FCG	\$75,000	\$150,000	\$225,000
Sebring	\$1,000	\$1,000	\$1,000
SJNG	\$1,000	\$1,000	\$1,000

In addition, AGDF corrected a cost allocation error to the residential rate impacts appearing in its petition, in which all costs were assigned to the residential class. With the cost allocation corrected and with an annual spending limit of \$1,000 for Sebring and SJNG, the proposed incremental rate impacts have been substantially moderated. The percent increase in for

¹⁵ Supra, fn 11.

Sebring's residential rate under the new limit would be about 2.5 percent for up to three CDD projects, while the percent increase for SJNG residential rate would be under 1 percent for up to three projects. With these revisions, staff agrees that the new spending limits for each of the member utilities are reasonable. Table 1-2 below shows the rate impacts with the allocation correctly applied and with the \$1,000 limits in place for Sebring and SJNG:

Table 1-2
Updated Proposed Cost Recovery Impacts for CDD Programs

Rate Class	2024 Clause Factor	One Project			Two Projects			Three Projects		
		Increm. cost	Increase (percent)	Revised 2024 Clause Factor	Increm. cost	Increase (percent)	Revised 2024 Clause Factor	Increm. cost	Increase (percent)	Revised 2024 Clause Factor
FPUC		\$ 75,000	2.27%		\$ 150,000	4.54%		\$ 225,000	6.81%	
Res. (1)	13.035			13.331			13.627			13.923
Res. (2)	6.657			6.808			6.959			7.110
Res. (3)	3.655			3.738			3.821			3.904
FCG		\$ 75,000	1.16%		\$ 150,000	2.32%		\$ 225,000	3.48%	
RS1	29.484			29.826			30.167			30.509
RS100	14.192			14.356			14.521			14.685
RS600	8.522			8.621			8.720			8.818
Sebring		\$ 1,000	2.50%		\$ 1,000	2.50%		\$ 1,000	2.50%	
TS-1	12.985			13.309			13.309			13.309
SJNG		\$ 1,000	0.71%		\$ 1,000	0.71%		\$ 1,000	0.71%	
RS-1	33.922			34.162			34.162			34.162
RS-2	24.049			24.219			24.219			24.219
RS-3	18.16			18.288			18.288			18.288

All Clause factors shown in Table 1-2 are cents per therm.

Program Approvals by Category

AGDF states that its three categories for CDD projects (i.e. efficiency, resiliency, and renewable) showcase the range of potential research projects that could be undertaken. AGDF asserts that the objective for the efficiency category will be for studying technologies that improve the efficiency of appliances and gas end-use equipment. Research for the resiliency category is aimed at increasing a building's resiliency by studying gas-fired back-up electric generating and/or combined heat-and-power systems and technologies that may be developed for residential or commercial applications. Research under the renewable category seeks to evaluate technologies and opportunities for the cost-effective use of renewable natural gas in place of, or in combination with, traditionally-sources gas in order to achieve greater efficiency and/or to reduce overall methane emissions.

Despite the framework presented in AGDF's petition, staff is concerned that no specific project proposal for any category was provided. Via data requests, staff sought detailed and descriptive information on projects to be pursued under these categories, and none were provided.¹⁶ AGDF stated that it sought program approvals first (before project details were developed or available)

¹⁶ Document No. 06618-2023, AGDF's Response to Staff's First Data Request, No. 4.A.

Date: June 27, 2024

because its member companies “require the program account[s] to allocate costs associated with prioritizing CDD projects and soliciting research proposals.”¹⁷

Also, staff is uncertain whether projects under the resiliency or the renewable categories could rightfully be described as conservation. In the April 18, 2024 letter, AGDF stated that any potential technology or program studied in the resiliency category would be subject to the data inputs outlined in the cost-effectiveness tests of other conservation programs.¹⁸ Staff has concerns that projects under the resiliency and renewable categories could result in load building without a demonstration that such research is designed to result in conservation. In accordance with Sections 366.81 and 366.82, F.S., staff believes the focus of all CDD projects undertaken by member utilities must be increasing energy efficiency and/or conservation via advances in technologies and/or their implementation in utility gas distribution systems, end-use gas equipment, or demand side renewable energy systems. All proposed projects for any category must comply with the FEECA Statutes as relates to conservation in order to qualify for cost recovery. Staff believes that, if AGDF is uncertain whether a planned CDD project meets the statutory requirements, it should seek affirmation of the acceptability of the project from the Commission before engaging in such a project and seeking related cost recovery.

Reporting Requirements

In light of the concerns that staff has regarding the cost and rate impacts and program categories, staff recommends reporting requirements be included in the order approving the program. In as much as the proposed CDD program represents a new program for the AGDF member utilities included in the instant petition, staff believes the Commission would benefit from relevant program implementation and results information from AGDF provided subject to a reporting requirement. As referenced earlier, the AGDF Extension Order included a reporting requirement,¹⁹ and staff believes a similar provision should be applied to the instant case. Within 6 months following the conclusion of the 5-year term of the CDD program, or concurrent with a request for CDD program extension, staff believes AGDF should be compelled to file a CDD program status report with the Commission, detailing the successes and limitations of each CDD project and the CDD program in general. Staff believes the program status report should clearly delineate what AGDF’s research findings have been, impacts on cost effectiveness, and how the utilities have effectively implemented such findings in new and/or existing DSM programs.

Conclusion

Staff recommends the Commission approve AGDF’s petition, subject to modified conditions agreed to by AGDF, allowing for a CDD program for FCG, FPUC, Sebring, and SJNG. Such modified conditions include:

1. The program is limited to five years, and may be extended beyond the initial term, if requested by AGDF at least six months prior to the end of the five-year period;

¹⁷ Document No. 00929-2024, AGDF’s Responses to Staff’s Second Data Request, No. 4.A.

¹⁸ AGDF stated that programs studied under the “resiliency” category would require all of the data inputs outlined in Part One of the Gas Rate Impact measure (G-RIM) cost-effectiveness test.”

¹⁹ Supra, fn 7.

Date: June 27, 2024

2. FCG and FPUC may participate in as many as three qualified research projects in any calendar year, with expenditures limited to \$75,000 per project per year; Sebring and SJNG may likewise participate in as many projects limited to \$1,000 per year limit (total, all projects);

3. Any single CDD program project must meet the following minimum eligibility requirements: (a) the proposed measure or program must have an affect on rate-paying customers; (b) there is a lack of available research or insufficient data on the proposed measure or program being evaluated; and (c) there is insufficient Florida-specific data on the proposed program or measure.

In addition, staff recommends that AGDF comply with the following additional provisions:

4. AGDF members must not undertake commercial/industrial class CDD research projects/technologies to the exclusion of residential CDD projects/technologies during the five year period, and should take actions to strike a reasonable balance between the two types of CDD projects;

5. Within 6 months following the conclusion of the 5-year term of the CDD program, or concurrent with a request for CDD program extension, AGDF must file a CDD program status report with the Commission, detailing AGDF's research findings, impacts on cost effectiveness, and how the utilities plan to or have effectively implemented such findings in new and/or existing DSM programs.

6. In accordance with Sections 366.81 and 366.82, F.S., the focus of all CDD projects undertaken by member utilities must be increasing energy efficiency and/or conservation via advances in technologies and/or their implementation in utility gas distribution systems, end-use gas equipment, or demand side renewable energy systems.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved, and no protest is filed within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed. (Imig)

Staff Analysis: If Issue 1 is approved, and no protest is filed within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed.

Item 8

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *GP*
Office of the General Counsel (Stiller) *JSC*

RE: Docket No. 20240039-GU – Petition for approval of transportation service agreements between Peninsula Pipeline Company, Inc. and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas.

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 29, 2024, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of three firm transportation service agreements (Transportation Agreements) between Peninsula and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas (FCG), collectively the Parties. The Parties state the purposes of the Transportation Agreements are to diversify and introduce additional gas supply sources, enhance transmission access, and increase system resiliency to address increased interest in gas service from customers in the project areas. The Parties state that the three proposed projects would introduce supply from locally produced alternative natural gas sources and expand FCG's distribution system in Brevard, Indian River, and Miami-Dade Counties. The sources of the renewable natural gas (RNG) are landfills located in Cocoa, Vero Beach, and Medley.

Peninsula, a wholly owned subsidiary of Chesapeake Utilities Corporation (CUC), operates as an intrastate natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).¹ FCG, which recently became a subsidiary of CUC, is a local distribution company subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S. FCG provides natural gas service to residential, commercial, and industrial customers in Brevard, Indian River, and Miami-Dade Counties, and receives deliveries of natural gas to serve these customers over the interstate transmission pipelines owned by Florida Gas Transmission Company, LLC (FGT).

By Order No. PSC-07-1012-TRF-GP, Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers.² Peninsula provides gas transportation service only; it does not engage in the sale of natural gas to customers. Pursuant to the Order, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval.³ However, Peninsula is requesting Commission approval of the proposed firm Transportation Agreements as they do not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.⁴ The Parties are subsidiaries of CUC, and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S.

Pursuant to the proposed Transportation Agreements and project maps (Attachments A, B, and C to this recommendation), Peninsula would construct, own, and operate the new gas pipelines allowing for the delivery of natural gas purchased by FCG via interconnection agreements with third party gas producers.⁵ The interconnection agreements were entered into between FCG and the RNG producers prior to FCG being acquired by CUC.

Regarding the commodity purchase agreements between FCG and the RNG producers, pursuant to response 1 in staff's fourth data request, to date, only the Indian River County commodity purchase agreement (confidential) has been finalized for gas supply. The Parties state that the commodity purchase agreements for Brevard and Miami-Dade Counties are expected to be finalized pending the approval of the proposed Transportation Agreements by the Commission. FCG should provide a status update of the commodity purchase agreements for Brevard and Miami-Dade counties in the upcoming PGA docket.⁶

For all three firm Transportation Agreements, the Parties assert that it is beneficial to the customers having the affiliated Peninsula construct, own, and operate the new natural gas pipeline because of timing, cost, business corporate structure, administrative and operational coordination efficiencies.

¹ 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, F.S., et seq.*

² Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

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

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

⁵ Response No. 1 in Staff's Fourth Data Request, Document No. 05188-2024 and Response No. 1 in Staff's Second Data Request, Document No. 01786-2024.

⁶ Docket No. 20240003-GU, *In re: Purchased Gas Adjustment (PGA) True-Up.*

Docket No. 20240039-GU

Date: June 27, 2024

During the evaluation of the petition, staff issued four data requests to the Parties for which responses were received on April 9th, April 11th, May 13th, and on June 10th, 2024. The Commission has jurisdiction over this matter pursuant to Sections 368.104 and 368.105, F.S.

Date: June 27, 2024

Discussion of Issues

Issue 1: Should the Commission approve the proposed firm Transportation Agreement dated February 26, 2024, between Peninsula and FCG in Brevard County?

Recommendation: Yes, the Commission should approve the proposed Transportation Agreement associated with the Brevard County project dated February 26, 2024, between Peninsula and FCG. The Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual Purchased Gas Adjustment (PGA) proceeding. FCG should provide a status update of the commodity purchase agreement for Brevard County in the upcoming PGA docket. (Guffey)

Staff Analysis:

Proposed Transportation Service Agreement in Brevard County

The Parties have entered into the proposed firm Transportation Agreement that they describe as enabling FCG to reinforce its Brevard County distribution system and meet the increased demand for natural gas from population growth and large industrial customers related to the space and cruise industries. The Parties state that the proposed Transportation Agreement has the added benefit of providing FCG with an additional source of gas (via the Peninsula pipeline) and installing a city gate.

The proposed Transportation Agreement specifies an initial term of 20 years with automatic extensions on an annual basis, unless either party gives no less than 90 days of written notification of termination. If either party desires to negotiate modifications to the rates or terms of this Transportation Agreement, they may do so no less than 120 days prior to expiration of the current active term, subject to Commission approval of the amendment.

Brevard County Expansion Project

For the Brevard County expansion project, as shown by the blue line on Map A, Peninsula will construct an approximately five mile, 12-inch Medium Density Polyethylene (MDPE) pipeline, sized to meet FCG's supply needs. It should be noted that the Transportation Agreement refers to steel pipelines; however, the Parties confirmed that the pipeline will be built from MDPE as stated in paragraph 12 of the petition.⁷ The starting point of the new pipeline is near Adamson Road and Sorrel Drive at a new gate station near the landfill located in Cocoa and owned by Brevard County. The new pipeline will terminate at a new interconnection near SR 524 and Cox Road and tie in with FCG's distribution system.

In response to staff's first data request, the Parties stated that the alternative natural gas will be treated and converted by the associated producer, who has the responsibility of developing and owning the gas production facilities, to meet Peninsula's tariff pipeline standards. Peninsula will analyze the gas quality in real time in five-minute intervals to assure specifications are met. FCG

⁷ Response No. 11 in Staff's First Data Request, Document No. 01728-2024.

Date: June 27, 2024

will purchase the gas from the third party gas producer. The proposed Brevard County Expansion Project is estimated to be completed in the third quarter of 2024.

The estimated total cost for the Brevard County project is \$6.1 million of which FCG's portion is \$1.54 million. The remainder of the total cost will be borne by the RNG producer as it has the ability to receive RNG credits. Of the total cost, 33 percent is for materials and equipment and 67 percent is labor related costs.⁸ In paragraph 23 of the petition, Parties state that in the event circumstances arise that make the project uneconomical to Peninsula, the Parties will endeavor to negotiate a revised rate and acknowledge that the revised rate would require Commission approval as an amendment to the Transportation Agreement.

FCG states that its distribution system in Brevard County would receive additional reinforcement by having two sources of gas supply. In paragraph 14 of the petition, the Parties assert that the proposed project would ensure that FCG will have sufficient capacity and supply to meet the increasing future demand in the Brevard County. The Parties assert that Brevard County has been experiencing an average growth rate of 2 percent mostly driven by the expansion of the aerospace industry. Additionally, they state the project would alleviate constraints and allow FCG to make flow design changes to their system when needed.

Monthly Reservation Payments to Peninsula

In paragraph 10 of the petition, the Parties expressed that the rates contained in the proposed Transportation Agreement are consistent with market rates, because the rates are substantially the same as rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. The Parties explained that Peninsula would recover the pipeline construction costs through the monthly reservation charge from FCG, as shown in Exhibit A to the proposed Transportation Agreement. The monthly reservation charge is designed to recover costs such as, but not limited to, engineering, permitting (Florida Department of Environmental Protection, Florida Department of Transportation, Brevard County, and the City of Cocoa) acquiring land use permits and rights of way, materials, installation costs associated with the pipeline and related facilities, ongoing maintenance including Pipeline and Hazardous Materials Safety Administration compliance, safety requirements, property taxes, gas control, and Peninsula's return on investment.

Pursuant to Article III of the Transportation Agreement, the monthly reservation charge will be paid by FCG to Peninsula as shown in Exhibit A of the Transportation Agreement. Peninsula will charge FCG beginning on the In-Service Date (when Peninsula has commenced commercial operations). The project costs are exclusive to facilities needed for the receipt and transportation of the gas. If Peninsula were to incur new taxes or capital expenditures after the execution of this agreement, then FCG's monthly reservation charge will be adjusted accordingly. The revised reservation charge shall be subject to Commission approval.

FCG asserts that it will be only purchasing the gas commodity at market rate and that the environmental attributes which make RNG "renewable" will be managed by the producer of the

⁸ Response Nos. 9 and 10 in Staff's First Data Request, Document No. 01728-2024.

Date: June 27, 2024

natural gas and sold on the secondary market. FCG states it intends to file for cost recovery for its payments to Peninsula and to the gas producer through the PGA mechanism.⁹

FCG states that it will be purchasing the natural gas at parity to other gas flows out of Florida Zone 3 and that the gas commodity costs are expected to be equivalent to that of out of state gas supply.¹⁰ The Parties further assert that purchasing locally sourced gas is less expensive compared to purchasing out of state gas as capacity costs on FGT are being avoided.¹¹ In response to staff data requests, the Parties provided an analysis (confidential) showing that the estimated cost of gas supply provides savings compared to the estimated cost of traditional supply.

Conclusion

Based on the petition and the Parties' responses to staff's data requests, the Commission should approve the proposed firm Transportation Agreement associated with the Brevard County project dated February 26, 2024, between Peninsula and FCG. The Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual PGA proceeding. FCG should provide a status update of the commodity purchase agreement for Brevard County in the upcoming PGA docket.

⁹ Response No. 7 in Staff's First Data Request, Document No. 01728-2024 and Response 3 in Staff's Second Data Request, Document No. 01786-2024.

¹⁰ Response Nos. 1c. and 1d. in Staff's Fourth Data Request, Document No. 05188-2024.

¹¹ Response No. 1c in Staff's Fourth Date Request, Document No. 05188-024.

Date: June 27, 2024

Issue 2: Should the Commission approve the proposed firm Transportation Agreement dated February 26, 2024, between Peninsula and FCG in Indian River County?

Recommendation: Yes, the Commission should approved the proposed firm Transportation Agreement associated with the Indian River County project dated February 26, 2024, between FCG and Peninsula. The Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual PGA proceeding. (Guffey)

Staff Analysis:

Proposed Transportation Service Agreement in Indian River County

The Parties have entered into the proposed firm Transportation Agreement that they describe as enabling FCG to reinforce its Indian River County distribution system and meet the significant increased natural gas demand due to population growth.

This agreement consolidates two existing agreements (entered into in 2012 and 2021) and two amendments (2021, 2023), which were entered into by Peninsula and FCG when FCG was a non-affiliated separate entity. As stated in paragraph 18 of the petition, with the new pipeline project, Peninsula and FCG entered into this new agreement reflecting the Parties' prior agreements and understandings. Pursuant to Sections 9.3 and 9.13, this Transportation Agreement, including exhibits attached, supersedes and replaces two prior agreements and the two amendments. The Parties explained that the above referenced pipeline projects did not require Commission approval at the time contracts were entered into because FCG and Peninsula were not affiliates at that time.¹² The new consolidated Transportation Agreement will ensure that the agreement term lengths are aligned for the projects and that all the projects are covered by this single agreement.

The proposed Transportation Agreement specifies an initial term of 30 years with automatic extensions on an annual basis, unless either party gives no less than 90 days of written notification of termination. If either party desires to negotiate modifications to the rates or terms of this Agreement, they may do so no less than 120 days prior to expiration of the current active term, subject to Commission approval of the amendment.

Indian River County Expansion Project

As shown on the map in Attachment B to this recommendation, Peninsula will begin the expansion project from a new interconnect near Oslo Road, where the landfill/gas producer is located. From the interconnect, Peninsula will construct approximately 14 miles of 6-inch steel pipeline along 82nd Avenue, and terminate at a new district regulator station which will directly interconnect with three existing portions of Peninsula's system in the area of 77th Street. The pipeline will terminate at a district regulator and tie in with FCG's distribution system. The estimated total cost for the project is \$17.75MM and is being paid for by FCG through the

¹² Response No. 22 in Staff's First Data Request, Document No. 01728-2024.

Date: June 27, 2024

reservation charge. Of the total cost, materials and equipment account for approximately 24 percent and labor costs account for approximately 76 percent. The proposed Indian River County gas supply project is estimated to be completed in the third quarter of 2024.

In response to staff's data request, the Parties stated that additional capacity is needed to meet the demand associated with the Beachside Expansion project on the barrier island.¹³ Data indicates that FCG has experienced a 12 percent growth in customers in the last three years and expects this trend to continue.¹⁴ As stated in paragraph 17 of the petition, the proposed Indian River County project would interconnect three existing systems in the area; two segments of FCG's distribution system and a separate Peninsula pipeline project. These projects did not require Commission approval as FCG and Peninsula were not affiliates at that time. The proposed Transportation Agreement has the added benefit of providing FCG with an additional source of capacity and supply (via the Peninsula pipeline). The additional supply obtained from the landfill owned by the City of Vero Beach, will allow FCG to meet the expected future demand for natural gas.

Monthly Reservation Payments to Peninsula

In paragraph 10 of the petition, the Parties expressed that the negotiated monthly reservation charge contained in the proposed Agreement is consistent with market rates, because the rates are substantially the same as rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. The Parties explained that Peninsula would recover the pipeline construction costs through the monthly reservation charge from FCG, as shown in Exhibit A to the proposed Agreement. The monthly reservation charge is designed to recover costs such as, but not limited to, engineering, permitting, materials, installation costs associated with the pipeline and related facilities, ongoing maintenance including Pipeline and Hazardous Materials Safety Administration compliance, safety requirements, property taxes, gas control, and Peninsula's return on investment.

Pursuant to Article IV of the Transportation Service Agreement, the monthly reservation charge will be paid by FCG to Peninsula as shown in Exhibit A of the Agreement. Peninsula will charge FCG beginning on the In-Service Date (Peninsula has commenced commercial operations). If Peninsula were to incur new taxes or capital expenditures after the execution of this agreement, then FCG's monthly reservation charge will be adjusted accordingly. The revised reservation charge shall be subject to Commission approval.

FCG asserts that it will be only purchasing the gas commodity at market rate and that the environmental attributes which make RNG "renewable" will be managed by the producer of the natural gas and sold on the secondary market. FCG states it intends to file for cost recovery for its payments to Peninsula and to the gas producer through the PGA mechanism.¹⁵

FCG states that it will be purchasing the natural gas at parity to other gas flows out of Florida Zone 3 and that the gas commodity costs are expected to be equivalent to that of out of state gas

¹³ Response No. 5 in Staff's Third Data Request, Document No. 02970-2024.

¹⁴ Response No. 23 in Staff's First Data Request, Document No. 01728-2024.

¹⁵ Response No. 7 in Staff's First Data Request, Document No. 01728-2024 and Response 3 in Staff's Second Data Request, Document No. 01786-2024.

Date: June 27, 2024

supply.¹⁶ The Parties further assert that purchasing locally sourced gas is less expensive compared to purchasing out of state gas as capacity costs on FGT are being avoided.¹⁷ In response to staff data requests, the Parties provided an analysis (confidential) showing that the estimated cost of gas supply provides savings compared to the estimated cost of traditional supply.

Conclusion

Based on the petition and the Parties' responses to staff's data requests, staff recommends that the Commission should approved the proposed firm Transportation Agreement associated with the Indian River County project dated February 26, 2024, between FCG and Peninsula. The Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual PGA proceeding.

¹⁶ Response Nos. 1c. and 1d. in Staff's Fourth Data Request, Document No. 05188-2024.

¹⁷ Response No. 1c in Staff's Fourth Date Request, Document No. 05188-024.

Date: June 27, 2024

Issue 3: Should the Commission approve the proposed firm Transportation Agreement dated February 26, 2024, between Peninsula and FCG in Miami-Dade County?

Recommendation: Yes, the Commission should approve the proposed firm Transportation Agreement associated with the Miami-Dade County project dated February 26, 2024, between FCG and Peninsula. The Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual PGA proceeding. FCG should provide a status update of the commodity purchase agreement for Miami-Dade County in the upcoming PGA docket. (Guffey)

Staff Analysis:

Proposed Transportation Service Agreement for Miami-Dade County

The Parties have entered into the proposed firm Transportation Agreement on February 26, 2024, to enable FCG (the shipper) to serve customers within its service area. The proposed Agreement specifies an initial period of 20 years from the In-Service Date (Initial Term) and thereafter shall be extended on a year-to-year basis, unless either party gives no less than 90 days of prior written notification of termination. If either party desires to negotiate modifications to the rates or terms of this Agreement, they may do so no less than 120 days prior to expiration of the current active term, subject to Commission approval of the amendment.

Miami-Dade County Project

The Miami-Dade County project will include Peninsula extending steel pipelines, one from a new interconnect with local alternated natural gas supply, and another from a district regulator station, to connect with the shipper's (FCG's) local distribution system. As shown on the map on Attachment C to this recommendation, from a new interconnect at NW 93rd Street, near the landfill in Medley, Peninsula will extend approximately eight miles of 8-inch steel pipe along NW 87th Avenue and NW 72nd Avenue and will terminate at NW 12th Street at a new district regulator station connecting to FCG distribution system. The estimated total cost of the project is \$22MM of which the allocated cost to FCG is \$8.33MM. The remainder of the cost will be borne by the producer of the RNG.¹⁸ FCG's portion of the cost is for facilities necessary for receipt and transportation of the alternative gas. As in the Indian River County project, materials and equipment account for 24 percent of the total cost while labor accounts for 76 percent of the total cost. Pursuant to paragraph 21 of the petition, the new pipeline is sized to meet future demands without having to make additions in the near term.

FCG states the Miami-Dade County project would reinforce and enhance gas supply to FCG's distribution system through a direct interconnection enabling FCG to bring another source of gas to Miami-Dade County which is experiencing capacity and supply constraints as there is only one transmission line supplying to Miami-Dade County. The proposed project is in area of Miami-Dade County that features multiple high usage commercial and industrial customers. The Parties assert that the project directly driven by the need to serve new growth and demand.

¹⁸ Response No. 17 in Staff's Third Data Request, Document No. 02970-2024.

Date: June 27, 2024

Monthly Reservation Payments to Peninsula

The Parties assert that the negotiated monthly reservation charge is consistent with the market rate and is within the range of rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. The Parties explained that Peninsula would recover the pipeline construction costs through the monthly reservation charge from FCG, as shown in Exhibit A to the proposed Agreement. The monthly reservation charge is designed to recover costs such as, but not limited to, engineering, permitting, materials, installation costs associated with the pipeline and related facilities, ongoing maintenance including Pipeline and Hazardous Materials Safety Administration compliance, safety requirements, property taxes, gas control, and Peninsula's return on investment

Pursuant to Article IV of the Transportation Agreement, the monthly reservation charge will be paid by FCG to Peninsula as shown in Exhibit A of the Agreement. Peninsula will charge FCG beginning on the In-Service Date (Peninsula has commenced commercial operations). If Peninsula were to incur new taxes or capital expenditures after the execution of this agreement, then FCG's monthly reservation charge will be adjusted accordingly. The revised reservation charge shall be subject to Commission approval.

FCG asserts that it is only purchasing the gas commodity at market rate and that the environmental attributes which make RNG "renewable" will be managed by the producer of the natural gas and sold on the secondary market. FCG states it intends to file for cost recovery for its payments to Peninsula and to the gas producer through the PGA mechanism.¹⁹

FCG states that it will be purchasing the natural gas at parity to other gas flows out of Florida Zone 3 and that the gas commodity costs are expected to be equivalent to that of out of state gas supply.²⁰ The Parties further assert that purchasing locally sourced gas is less expensive compared to purchasing out of state gas as capacity costs on FGT are being avoided.²¹ In response to staff data requests, the Parties provided an analysis (confidential) showing that the estimated cost of gas supply provides savings compared to the estimated cost of traditional supply.

Conclusion

Based on the petition and the Parties' responses to staff's data requests, staff recommends that the Commission should approve the proposed the Transportation Agreement, which sets rates for Peninsula's charges to FCG, is reasonable and meets the requirements of Section 368.105, F.S. The approval of this Transportation Agreement does not reflect approval of future cost recovery of the monthly reservation charges FCG will incur. The Commission will have the opportunity to review FCG's request for cost recovery of the charges pursuant to the Transportation Agreement in its annual PGA proceeding. FCG should provide a status update of the commodity purchase agreement for Miami-Dade County in the upcoming PGA docket.

¹⁹ Response No. 7 in Staff's First Data Request, Document No. 01728-2024 and Response 3 in Staff's Second Data Request, Document No. 01786-2024.

²⁰ Response Nos. 1c. and 1d. in Staff's Fourth Data Request, Document No. 05188-2024.

²¹ Response No. 1c in Staff's Fourth Date Request, Document No. 05188-024.

Date: June 27, 2024

Issue 4: Should this docket be closed?

Recommendation: Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Stiller)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

ATTACHMENT A

Transportation Service Agreement – Brevard County Project

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is entered into this February 26, 2024, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a New Jersey corporation (herein called "Shipper" or "FCG"). PPC and FCG are sometimes referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH

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

WHEREAS, Company desires to provide FTS to Shipper, in accordance with the terms hereof; and

WHEREAS, Shipper desires Company to construct a project that will allow Shipper to serve customers within its service area with natural gas service, and Company is willing to construct the project and points of delivery; and

WHEREAS, Company intends to construct the desired project, called the Brevard Expansion ("Project"), in Brevard County, Florida. As specified in Exhibit A attached hereto, the Project will include extending steel pipelines from a new interconnect with local alternate natural gas supply, and one district regulator station to the Shipper's local distribution system.

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
DEFINITION

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

"In-Service Date" for the Project means the date that Company has commenced commercial operations, that construction has been completed, and that the Project has been inspected and tested as required by applicable law.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

2.1 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 Agreement on any one Gas Day.

2.2 If, on any Day, the Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this 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 in Exhibit A of this Agreement and shall be charged to the Shipper beginning on the In-Service Date and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional tax charges (including, without limitation, income taxes and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

3.3 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation,

mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

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 by both Parties (the "Execution Date") and shall continue in full force for an initial period of twenty (20) years from the In-Service Date ("Initial Term"). After the Initial Term, the Agreement shall be extended on a year-to-year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Current 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 No less than 120 days before the expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

4.3 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 expiration or termination of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff or 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.

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 ("Company's Tariff"), 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), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The 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 recognize the desirability of maintaining a uniform rate of flow of

Gas to Shipper's facilities over each Gas Day throughout each Gas Month. 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 Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

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. 500 Energy Lane, Suite 200 Dover, Delaware 19901 Attention: Contracts
Shipper:	Pivotal Utility Holdings, Inc. d/b/a Florida City Gas 208 Wildlight Avenue Yulee, FL 32097 Attention: Energy Logistics Contracts

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 Exhibit attached hereto, sets forth the full and complete understanding of the parties as of the Execution Date, 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 the place to which notices pursuant to this Agreement must be sent 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 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 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, subject to the provisions of Sections 3.2 and 3.3 of this Agreement, 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 Execution Date. 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.

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.2 or 3.3 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, 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 firm 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.
- (ii) 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, without regard for conflict of laws provisions. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

By: William Hancock

William Hancock

Title: Assistant Vice President

Date: 02/27/2024

SHIPPER
Pivotal Utility Holdings, Inc. d/b/a Florida City
Gas

By: Jeffrey Sylvester

Jeffrey S. Sylvester

Title: President and Chief Operating Officer
of Pivotal Utilities Holdings, Inc

Date: 02/27/2024

EXHIBIT A TO
FIRM TRANSPORTATION SERVICE
AGREEMENT BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
PIVOTAL UTILITY HOLDINGS, INC. d/b/a FLORIDA CITY GAS
DATED
February 26, 2024

Description of Transporter Delivery Point(s)

1. At or near Adamson Road and Sorrel Drive

Description of Point(s) of Delivery

1. At or near Route 524 and Cox Road

Total MDTQ (Dekatherms): Dt/Day [REDACTED]

MHTP: [REDACTED]

Total Monthly Reservation Charge: [REDACTED]

This charge is subject to adjustment pursuant to the terms of this Agreement.

Unauthorized Use Rate (In addition to Monthly Reservation Charge): [REDACTED]

Each Day Unauthorized Use



ATTACHMENT B

Transportation Service Agreement – Indian River County Project

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is entered into this February 26, 2024, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a New Jersey corporation (herein called "Shipper" or "FCG"). PPC and FCG are sometimes referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, the Parties entered into a certain Firm Transportation Agreement, dated as of August 31, 2012 (the "First Firm Transportation Agreement"); and

WHEREAS, the Parties entered into a certain Firm Transportation Agreement, dated as of June 8, 2021 (the "Second Firm Transportation Agreement"); and

WHEREAS, the Parties have amended the First Transportation Agreement, dated June 8, 2021 (the "First Amendment No.1"); and

WHEREAS, the Parties have amended the Second Transportation Agreement, dated March 24, 2023 (the "Second Amendment No.1"); and

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

WHEREAS, Company desires to continue to provide FTS to Shipper; and

WHEREAS, Shipper desires Company to construct an additional project that will allow Shipper to serve customers within its service area with natural gas service, and Company is willing to construct the project and points of delivery; and

WHEREAS, Company intends to construct the desired project, the Indian River County Expansion ("Project"), in Indian River County, Florida. As specified in Exhibit C attached hereto, the Project will include extending steel pipelines from a new interconnect with the existing PPC pipeline in Indian River County, a local alternate natural gas supply, and two district regulator stations to the Shipper's local distribution system.

WHEREAS, the Parties have recently become corporate affiliates which changes the regulatory requirements for agreements between the Parties that existed at the time of the above referenced agreements and amendments were entered into; and

WHEREAS, the Parties desire to consolidate the First Firm Transportation Agreement, Second Firm Transportation Agreement, First Amendment No.1, Second Amendment No.1. and Project ("Indian River Expansion") and restate the terms of these agreements as and between the

Parties recognizing the regulatory requirements that now apply and include the additional terms for the new project noted herein.

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 **DEFINITION**

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

"In-Service Date" for the Project means the date that Company has commenced commercial operations for the Segment III identified in Exhibit C hereto, that construction has been completed for such Project, and that the Project has been inspected and tested as required by applicable law.

ARTICLE II **TERM AND TERMINATION**

2.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution by both Parties (the "Execution Date") and shall continue in full force for an initial period of thirty (30) years from the In-Service Date ("Initial Term"). After the Initial Term, the Agreement shall be extended on a year-to-year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Current Term. This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the Parties' respective rights under applicable law.

2.2 No less than 120 days before the expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

2.3 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 expiration or termination of this Agreement until such time as such monthly balancing and operational controls have been resolved.

2.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the

Rules and Regulations of the Company's Tariff or 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.

ARTICLE III
QUANTITY & UNAUTHORIZED USE

3.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibits A & B 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 Agreement on any one Gas Day.

3.2 If, on any Day, the Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibits A and B, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibits A and B of this Agreement.

ARTICLE IV
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

4.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth in Exhibits A and B of this Agreement and shall be charged to the Shipper beginning on the Effective Date and shall thereafter be assessed in accordance with the terms and conditions set forth herein, unless and until Exhibits A and B are superseded in their entirety by Exhibit C as described herein.

4.2 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional tax charges (including, without limitation, income taxes and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibits A and B updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

4.3 If, at any time after the Execution Date and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

4.4 Upon the In-Service Date, the specific terms as set forth in Exhibits A and B and as referenced in Articles VII and VIII below, shall terminate and be replaced in their entirety by Exhibit C through the completion of the Initial Term and any Renewed Term of this 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 ("Company's Tariff"), 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 Exhibits A and B attached hereto until superseded by Exhibit C as described herein

7.2 The Point(s) of Delivery shall be as set forth on Exhibits A and B attached hereto, until superseded by Exhibit C as described herein.

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), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The 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 Exhibits A and B until superseded by Exhibit C as described herein.

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 recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. 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 Exhibits A and B, until superseded by Exhibit C and subject to any restrictions imposed by the Transporter, as well as 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 Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

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. 500 Energy Lane, Suite 200 Dover, Delaware 19901
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Attention: Contracts

Shipper:

Pivotal Utility Holdings, Inc. d/b/a Florida City Gas
208 Wildlight Avenue
Yulee, FL 32097
Attention: Energy Logistics Contracts

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 Execution Date, 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 the place to which notices pursuant to this Agreement must be sent 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 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 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, subject to the provisions of Sections 3.3 and 3.4 of this Agreement, 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 Execution Date. 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.

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.3 or 3.4 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, 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 firm 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.

- (ii) 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, without regard for conflict of laws provisions. 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.

9.13 New Agreement/Termination of Prior Agreements

This Agreement shall supersede and replace in all respects the First and Second Firm Transportation Service Agreements and the respective Amendments thereto upon the Execution Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

By: William Hancock

William Hancock

Title: Assistant Vice President

Date: 02/27/2024

SHIPPER
Pivotal Utility Holdings, Inc. d/b/a Florida
City Gas

By: Jeffrey Sylvester

Jeffrey S. Sylvester

Title: President and Chief Operating Officer
of Pivotal Utilities Holdings, Inc

Date: 02/27/2024

EXHIBIT A
FIRM TRANSPORTATION SERVICE AGREEMENT
BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
FLORIDA CITY GAS

DATED

February 26, 2024

Segment I

Description of Transporter Delivery Point(s)

1. Interconnection between Florida Gas Transmission and the vicinity of I-95 and County Road 512

Description of Point(s) of Delivery

1. Interconnection between Shipper and Company in the area of Winter Beach, Florida,
2. Interconnection between Shipper and Company in the area of Fellsmere, Florida

Total MDTQ (Dekatherms): Dt/Day [REDACTED]
MHTP: [REDACTED]

Total Monthly Reservation Charge (Segment I): [REDACTED]
Monthly Reservation Charge if Agreement extends beyond initial thirty (30) year period:
[REDACTED]
Unauthorized Use Rate (In addition to Monthly Reservation Charge): [REDACTED] Each Day
Unauthorized Use

EXHIBIT B
FIRM TRANSPORTATION SERVICE AGREEMENT
BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
FLORIDA CITY GAS
DATED

February 26, 2024

Segment II

Description of Transporter Delivery Point(s)

1. A tap to the existing pipeline constructed in Segment I at or near 5900 85th Street, Vero Beach, Florida 32958

Description of Point(s) of Delivery

Interconnections between Company and Shipper's distribution lines at the following locations:

1. Highway 510 Wabasso Station
2. Beachside Orchid Station
3. Beach Turtle Trail Station
4. Beachside Indian River Shores Station
5. Beachside Greywig Station

From the Interconnection points identified herein, Company shall construct the Pipeline that shall consist of 10.93 miles of 4.50" x 0.188" API-5L X52 pipe. The design operating pressure is 625 psig, with an MAOP of 700 psig. At 700 psig the hoop stress in the 4" pipe is approximately 16.11% SMYS. The final design and construction of the Pipeline shall not materially deviate from these interconnection points or specifications absent a written and signed amendment of the Parties to this first revised amendment. The Pipeline consists of pipeline only and does not include any gate station, regulator station, branch valves, laterals, required property, etc.

MHTP: [REDACTED]

Total MDTQ (Dekatherms): [REDACTED] Dt/Day

Monthly Reservation Charge for thirty (30) year period (Segment II):

Years 1-5 [REDACTED]

Years 6-10 [REDACTED]

Years 11-15 [REDACTED]

Years 16-20 [REDACTED]

Years 21-25 [REDACTED]

Years 26-30 [REDACTED]

Where the Year 1 begins on the in-service 04/01/2023

Unauthorized Use Rate (In addition to Monthly Reservation Charge): [REDACTED] Each Day

Unauthorized Use

EXHIBIT C
FIRM TRANSPORTATION SERVICE AGREEMENT
BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
FLORIDA CITY GAS

DATED

February 26, 2024

Segment I

Description of Transporter Delivery Point(s)

2. Interconnection between Florida Gas Transmission and the vicinity of I-95 and County Road 512

Description of Point(s) of Delivery

3. Interconnection between Shipper and Company in the area of Winter Beach, Florida,
4. Interconnection between Shipper and Company in the area of Fellsmere, Florida

Total MDTQ (Dekatherms): Dt/Day [REDACTED]
MHTP: [REDACTED]

Total Monthly Reservation Charge (Segment I): [REDACTED]

Monthly Reservation Charge if Agreement extends beyond initial thirty (30) year period:
[REDACTED]

Segment II

Description of Transporter Delivery Point(s)

2. A tap to the existing pipeline constructed in Segment I at or near 5900 85th Street, Vero Beach, Florida 32958

Description of Point(s) of Delivery

Interconnections between Company and Shipper's distribution lines at the following locations:

6. Highway 510 Wabasso Station
7. Beachside Orchid Station
8. Beach Turtle Trail Station
9. Beachside Indian River Shores Station
10. Beachside Greywig Station

From the Interconnection points identified herein, Company shall construct the Pipeline

that shall consist of 10.93 miles of 4.50" x 0.188" API-5L X52 pipe. The design operating pressure is 625 psig, with an MAOP of 700 psig. At 700 psig the hoop stress in the 4" pipe is approximately 16.11% SMYS. The final design and construction of the Pipeline shall not materially deviate from these interconnection points or specifications absent a written and signed amendment of the Parties to this first revised amendment. The Pipeline consists of pipeline only and does not include any gate station, regulator station, branch valves, laterals, required property, etc.

MHTP: [REDACTED]

Total MDTQ (Dekatherms): [REDACTED] Dt/Day

Monthly Reservation Charge for thirty (30) year period (Segment II):

Years 1-5 [REDACTED]

Years 6-10 [REDACTED]

Years 11-15 [REDACTED]

Years 16-20 [REDACTED]

Years 21-25 [REDACTED]

Years 26-30 [REDACTED]

Where the Year 1 begins on the in-service 04/01/2023

Segment III

Description of Transporter Delivery Point(s)

1. At or near Oslo Road and 74th Avenue
2. 77th Street and Kings Highway

Description of Point(s) of Delivery

1. At or near Oslo Road and 74th Avenue
2. 77th Street and Kings Highway
3. At or near 74th Avenue and N Sandpiper Drive

Total MDTQ (Dekatherms): Dt/Day [REDACTED]

MHTP: [REDACTED]

Total Monthly Reservation Charge (Segment III): [REDACTED]

This charge is subject to adjustment pursuant to the terms of this Agreement.

Unauthorized Use Rate (In addition to Monthly Reservation Charge): [REDACTED] Each Day

Unauthorized Use



ATTACHMENT C

Transportation Service Agreement – Miami-Dade

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is entered into this February 26, 2024, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a New Jersey corporation (herein called "Shipper" or "FCG"). PPC and FCG are sometimes referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH

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

WHEREAS, Company desires to provide FTS to Shipper, in accordance with the terms hereof; and

WHEREAS, Shipper desires Company to construct a project that will allow Shipper to serve customers within its service area with natural gas service, and Company is willing to construct the project and points of delivery; and

WHEREAS, Company intends to construct the desired project, called the Miami-Dade Expansion ("Project"), in Miami-Dade County, Florida. As specified in Exhibit A attached hereto, the Project will include extending steel pipelines, one from a new interconnect with local alternate natural gas supply, and another from a district regulator station, to connect with Shipper's local distribution system.

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
DEFINITION

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

"In-Service Date" for the Project means the date that Company has commenced commercial operations, that construction has been completed, and that the Project has been inspected and tested as required by applicable law.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

2.1 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 Agreement on any one Gas Day.

2.2 If, on any Day, the Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this 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 in Exhibit A of this Agreement and shall be charged to the Shipper beginning on the In-Service Date and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional tax charges (including, without limitation, income taxes and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

3.3 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation,

mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the 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.

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 by both Parties (the "Execution Date") and shall continue in full force for an initial period of twenty (20) years from the In-Service Date ("Initial Term"). After the Initial Term, the Agreement shall be extended on a year-to-year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Current 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 No less than 120 days before the expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

4.3 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 expiration or termination of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff or 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.

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 ("Company's Tariff"), 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), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The 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 recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. 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 Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

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. 500 Energy Lane, Suite 200 Dover, Delaware 19901 Attention: Contracts
Shipper:	Pivotal Utility Holdings, Inc. d/b/a Florida City Gas 208 Wildlight Avenue Yulee, FL 32097 Attention: Energy Logistics Contracts

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 Exhibit attached hereto, sets forth the full and complete understanding of the parties as of the Execution Date, 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 the place to which notices pursuant to this Agreement must be sent 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 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 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, subject to the provisions of Sections 3.2 and 3.3 of this Agreement, 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 Execution Date. 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.

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.2 or 3.3 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, 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 firm 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.
- (ii) 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, without regard for conflict of laws provisions. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

By: William Hancock

William Hancock

Title: Assistant Vice President

Date: 02/27/2024

SHIPPER
Pivotal Utility Holdings, Inc. d/b/a Florida City
Gas

By: Jeffrey Sylvester

Jeffrey S. Sylvester

Title: President and Chief Operating Officer
of Pivotal Utilities Holdings, Inc

Date: 02/27/2024

EXHIBIT A TO
FIRM TRANSPORTATION SERVICE
AGREEMENT BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
PIVOTAL UTILITY HOLDINGS d/b/a FLORIDA CITY GAS
DATED

February 26, 2024

Description of Transporter Delivery Point(s)
At or near NW 93rd Street and NW 89th Avenue

Description of Point(s) of Delivery
At or near NW 12th Street and NW 72 Avenue

Total MDTQ (Dekatherms): Dt/Day: ()
MHTP: ()

Total Monthly Reservation Charge: ()
This charge is subject to adjustment pursuant to the terms of this Agreement.
Unauthorized Use Rate (In addition to Monthly Reservation Charge): () Each Day
Unauthorized Use



Item 9

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *JP*
Office of the General Counsel (Thompson) *JSC*

RE: Docket No. 20240051-GU – Petition for approval of transportation service agreement with Florida City Gas by Peninsula Pipeline Company, Inc.

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place on the Agenda prior to Docket 20240050-GU

Case Background

On March 28, 2024, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition for approval of a transportation service agreement (Transportation Agreement) with Florida City Gas (FCG) (jointly, the parties). The purpose of the Transportation Agreement is to ensure continuance of gas service to FCG after the impending acquisition by Peninsula of certain pipeline facilities in the area in and around Palm Beach County. Peninsula operates as an intrastate natural gas transmission company as defined by Section 369.103(4), Florida Statutes (F.S.).¹ FCG is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

¹ 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, F.S., et seq.*

By Order No. PSC-07-1012-TRF-GP, Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers.² Peninsula provides gas transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval.³ However, Peninsula is requesting Commission approval of this proposed Transportation Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.⁴ The parties are subsidiaries of Chesapeake Utility Corporation, a Delaware corporation, and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

The Pioneer Supply Header Pipeline (Pioneer Header) was constructed by FCG to provide itself and other local distribution companies (LDC) and industrial customers with gas supply from Florida Gas Transmission Company, LLC (FGT) in the area in and around Palm Beach County. The pipeline consists of 39.5 miles of 12-inch coated steel and runs from east to west through Palm Beach County. The pipeline interconnects with FGT at its east end and a pigging station at its west end near South Bay. The proposed Transportation Agreement has been necessitated by the transfer of the Pioneer Header from FCG to Peninsula. Pursuant to the proposed Transportation Agreement, Peninsula will provide transportation service to FCG, allowing FCG to continue to receive natural gas in Palm Beach County.

The proposed Transportation Agreement and project map are shown as Attachments A and B to the recommendation. During the evaluation of the petition, staff issued a data request for which responses were received on April 29, 2024. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

² Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

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

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

Discussion of Issues

Issue 1: Should the Commission approve Peninsula's Transportation Agreement with FCG?

Recommendation: Yes, the Commission should approve Peninsula's Transportation Agreement with FCG dated March 18, 2024, included as Attachment A to the recommendation. The proposed Transportation Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FCG's current and potential future customers by ensuring that there is a continuous supply of natural gas to Palm Beach County. (Ward)

Staff Analysis:

Pioneer Header Acquisition

FCG originally constructed the Pioneer Header to provide service to itself and additional customers with gas supply from FGT. The Pioneer Header is being transferred to Peninsula at book value. Peninsula explained in its petition that it is the preferred owner-operator of this transmission asset because its core business is being a transmission grade pipeline owner and operator. Peninsula stated that the Pioneer Header is a natural fit for inclusion in its existing portfolio because it is a larger-diameter pipeline that interconnects directly with an interstate pipeline that would allow Peninsula to bring larger volumes of natural gas to LDCs or large volume industrial customers.

Peninsula further stated that the Pioneer Header will serve as the foundation for a larger-scale transmission project designed to reduce capacity constraints and improve deliverability of gas commodity to the southeastern portion of the state. Upon acquisition, Peninsula will undertake the costs associated with the ownership of the planned project protecting FCG's general body of ratepayers. Peninsula asserts that the proposed Transportation Agreement will enable FCG to continue to obtain gas supply from FGT upon Peninsula's acquisition of the Pioneer Header.

In response to staff's first data request, Peninsula stated that the Purchase and Sale Agreement between FCG and Peninsula for the Pioneer Header will be signed upon approval of the Transportation Agreement (discussed below) by the Commission.⁵ The purchase and sale agreement between FCG and Peninsula has been provided in responses to staff's first data request; however, Commission approval is not required of the purchase and sale agreement. The purchase and sale agreement will be signed upon approval of the proposed Transportation Agreement.

Proposed Transportation Service Agreement

The parties have entered into the proposed Transportation Agreement to enable FCG to continue to serve natural gas customers in and around the area of Palm Beach County once Peninsula has acquired the Pioneer Header. The proposed Transportation Agreement specifies an initial term of 20 years and thereafter shall be extended on a year-to-year basis, unless either party gives no less than 90 days of written notification of termination. If either party desires to negotiate

⁵ Responses to Staff's First Data Request, Response No. 8.

Date: June 27, 2024

modifications to the rates or terms of this Transportation Agreement, they may do so no less than 120 days prior to the expiration of the current active term.

Pursuant to the proposed Transportation Agreement, Peninsula will provide 20,000 Dth/day of firm transportation service to FCG for a rate of \$0.00 Dth/day for authorized transportation quantities. In response to staff's first data request, Peninsula explained that the rate contained in the Transportation Agreement will prevent FCG ratepayers from additional rate impact because the cost of the Pioneer Header is currently included in base rates.⁶ In its petition, Peninsula indicated that the agreement and rate are somewhat unique, recognizing the transfer of Pioneer Header.

In FCG's next rate case, the pipeline will be removed from rate base. At that time, FCG and Peninsula will negotiate an appropriate transportation rate and petition the Commission for approval of an amended Transportation Agreement.

Conclusion

Based on the petition and the parties' responses to staff's data request, staff believes that the proposed Transportation Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FCG's current and potential future customers by ensuring that there is a continuous supply of natural gas to the area of Palm Beach County. Staff therefore recommends approval of the proposed Transportation Agreement between Peninsula and FCG dated March 18, 2024.

⁶ Responses to Staff's First Data Request, Response No. 9.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filled by a person whose substantial interest are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Thompson)

Staff Analysis: If no protest is filled by a person whose substantial interest are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is entered into this March 18, 2024, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a New Jersey corporation (herein called "Shipper" or "FCG"). PPC and FCG are sometimes referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH

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

WHEREAS, Company desires to provide FTS to Shipper, in accordance with the terms hereof; and

WHEREAS, Parties are or have recently become corporate affiliates;

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
DEFINITION

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

"In-Service Date" means the effective date of Company's acquisition of the Pioneer Supply Header Pipeline.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

2.1 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 Agreement on any one Gas Day.

2.2 If, on any Day, the Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this 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 in Exhibit A of this Agreement and shall be charged to the Shipper beginning on the In-Service Date and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement.

3.3 If, during the term of this Agreement, any Governmental Authority should increase any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy. Should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section E of the Rules and Regulations of Company's Tariff.

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 by both Parties (the "Execution Date") and shall continue in full force for an initial period of twenty (20) years from the In-Service Date ("Initial Term"). After the Initial Term, the Agreement shall be extended on a year-to-year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Current 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 If, at any time after the Execution Date and throughout the term of this Agreement, the Company makes any operational modification to the points of delivery or delivery points through modifications by the Company or requests by the Shipper or other third party shippers, then Company or Shipper may request the opportunity to negotiate a modification of the rates or terms of this Agreement, and the Parties shall negotiate in good faith a modification to the Agreement.

4.3 If at any time after the Execution Date and throughout the term of this Agreement, the Florida Public Service Commission approves revised customer rates for Shipper that reflect the removal of the Pioneer Supply Header Pipeline from Shipper's rate base, then Company may request the opportunity to negotiate a modification of the rates or terms of this Agreement, and the Parties shall negotiate in good faith a modification to the Agreement.

4.4 No less than 120 days before the expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

4.5 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement shall survive the expiration or termination of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.6 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff or 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.

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 ("Company's Tariff"), is hereby incorporated into this Agreement and made a part hereof for all purposes, except to the extent otherwise expressly provided herein. 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), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The 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.

8.2 The Parties hereto agree that Shipper shall serve as the Delivery Point Operator ("DPO") for the Delivery Point. Shipper shall be responsible for executing such documents as are required by the Transportation Service Provider's FERC Gas Tariff to assume the obligations of Delivery Point Operator for the Delivery Point.

8.3 Shipper shall administer the Delivery Point in accordance with the provisions of the Transportation Service Provider's FERC Tariff, and Shipper's FPSC Natural Gas Tariff on file with the Florida Public Service Commission. Resolution of Monthly Receipt or Delivery Imbalances at the Delivery Point shall be in accordance with the current Florida City Gas Tariff on file with the Florida

Public Service Commission. Each Month, Shipper, as DPO, shall provide to Company, third party shippers, and Shipper, as appropriate, statements of any Receipt or Delivery imbalance credits or charges and any Operational Order credits or charges for the preceding Month. Shipper shall provide timely notice to the Company of any Operational Orders issued by the Transportation Service Provider or Florida City Gas that affect the Delivery Point in accordance with the Operator Order notice provisions of the Shipper's Natural Gas Tariff.

8.4 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. 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 Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

8.5 In the event of a conflict between the terms in this Article XIII and the DPO and balancing provisions in Shipper's Natural Gas Tariff, Shipper's Natural Gas Tariff, shall govern.

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. 500 Energy Lane, Suite 200 Dover, Delaware 19901 Attention: Contracts
Shipper:	Pivotal Utility Holdings, Inc. d/b/a Florida City Gas 208 Wildlight Avenue Yulee, Florida 32097 Attention: Contracts

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 Exhibit attached hereto, sets forth the full and complete understanding of the Parties as of the Execution Date, 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 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, 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 ("Governmental Authority"). 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 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, subject to the provisions of Sections 3.2 and 3.3 of this Agreement, 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 Execution Date. 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.

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.2 or 3.3 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, 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 firm 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.

- (ii) 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, without regard for conflict of laws provisions. 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

By: Bill Hancock

William Hancock

Title: Assistant Vice President

Date: 03/21/2024

SHIPPER
Pivotal Utility Holdings, Inc. d/b/a Florida City Gas

By: Jeff Sylvester

Jeffrey S. Sylvester

Title: President and Chief Operating Officer
of Pivotal Utilities Holdings, Inc

Date: 03/20/2024

EXHIBIT A TO
FIRM TRANSPORTATION SERVICE AGREEMENT
BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
PIVOTAL UTILITY HOLDINGS, INC. d/b/a FLORIDA CITY GAS
DATED

March 18, 2024

Description of Transporter Delivery Point(s)

1. Interconnect with Florida Gas Transmission at or near Pioneer Road

Description of Point(s) of Delivery

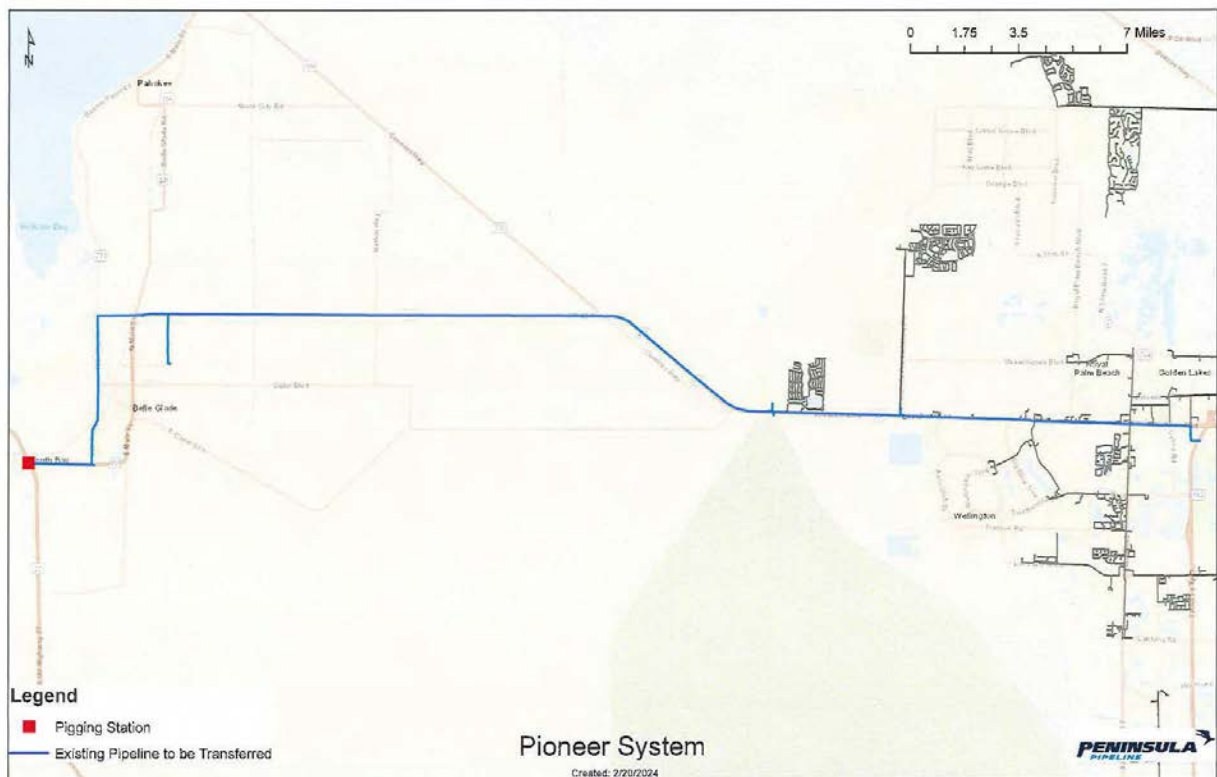
1. Meters until the terminus at or near the intersection of W Palm Road and US Highway 27 S

Total MDTQ (Dekatherms) () Dt/Day

MHTP: ()

Total Monthly Reservation Charge: \$()/Dekatherm)

This charge is subject to adjustment pursuant to the terms of this Agreement.



Item 10

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 27, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (McClelland, Hampson) *EDD*
Office of the General Counsel (Sandy) *JSC*

RE: Docket No. 20240050-GU – Petition for approval of transportation service agreement with Florida Public Utilities Company by Peninsula Pipeline Company, Inc.

AGENDA: 07/09/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 28, 2024, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition for approval of a firm transportation service agreement between Peninsula and Florida Public Utilities Company (FPUC), (jointly, the parties). The transportation agreement will permit Peninsula to provide transportation service for FPUC along the Pioneer Supply Header Pipeline (Pioneer Header), therefore allowing FPUC to continue serving customers in Palm Beach County, provide reinforcement, and allow for future expansion. FPUC is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida

Statutes (F.S.). Peninsula operates as an intrastate natural gas transmission company as defined by Section 368.103(4), F.S.¹

Peninsula provides gas transportation service only; it does not engage in the sale of natural gas to customers. By Order No. PSC-07-1012-TRF-GP (2007 Order), Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers.² Pursuant to the 2007 Order, Peninsula is allowed to enter into gas transmission agreements that meet certain criteria without prior Commission approval.³ However Peninsula is requesting Commission approval of this proposed agreement as it does not fit any of the enumerated criteria.⁴ Additionally, Peninsula and FPUC are subsidiaries of Chesapeake Utility Corporation, and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and the 2007 Order.

The Pioneer Header was constructed by Florida City Gas (FCG) to provide itself and other local distribution companies (LDC) and industrial customers with natural gas supply in the area in and around Palm Beach County. Currently, pursuant to a transportation agreement between FCG and FPUC, FCG provides transportation service on the Pioneer Header pipeline to FPUC.

As addressed in Docket No. 20240051-GU, the Pioneer Header is being transferred from FCG to Peninsula. This sale of the asset does not require Commission review; however, the sale will not take place until after Commission approval of the transportation service agreement between FCG and Peninsula addressed in Docket No. 20240051-GU. Following the transfer of the Pioneer Header from FCG to Peninsula, Peninsula would own the pipeline. With this petition, Peninsula is seeking approval of a transportation agreement with FPUC to provide natural gas transportation service along the Pioneer Header to FPUC. The proposed transportation agreement and project map are shown as Attachments A and B to this recommendation.

During the evaluation of the petition, staff issued a data request to the parties for which responses were received on June 14 and on June 19, 2024. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

¹ Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 20050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

² Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

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

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

Date: June 27, 2024

Discussion of Issues

Issue 1: Should the Commission approve Peninsula's transportation service agreement with FPUC?

Recommendation: Yes, the Commission should approve Peninsula's transportation service agreement with FPUC, dated March 18, 2024, included as Attachment A to the recommendation. The proposed agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed agreement benefits FPUC's current and potential future customers through the activation of two additional delivery points. (McClelland)

Staff Analysis:

The parties have petitioned the proposed firm transportation agreement to maintain and enhance service to the West Palm Beach area currently provided by FCG. The parties state that proposed agreement will allow Peninsula to serve FPUC with 900 dekatherms per day of firm transportation at three delivery points. The parties further assert that this level of service is needed for FPUC to serve current customers and expand to serve potential new customers with the addition of two delivery points.

The proposed firm transportation agreement between FPUC and Peninsula is contingent on the transfer of the Pioneer Header from FCG to Peninsula. This transfer would be completed following the Commission review and approval of the transportation service agreement between FCG and Peninsula addressed in Docket No. 20240051-GU.

Paragraph 11 of the petition states that the proposed monthly reservation charge that FPUC would pay to Peninsula is similar to the rate FPUC is currently paying to FCG. In the parties' joint responses to staff's first data request, the parties clarified that the rates have been calculated using the same methodology. However, the proposed monthly reservation charge is higher than the current rate because Peninsula has factored in activation of two additional delivery points to provide service to FPUC.

The proposed agreement would be effective for 20 years after its date of execution, and extended on a year-to-year basis after this initial term, unless either party chooses to terminate via written notice submitted 90 days prior to the expiration of the current term. Either party may request modification of the rates or terms of the agreement, to be made effective in the next renewed term, no less than 120 days before the expiration of the current term. However, the parties acknowledge that any amendments to the proposed agreements would require further Commission approval.

FPUC would recover its monthly reservation charge payments to Peninsula through the purchased gas adjustment⁵ (PGA) and swing service rider. The PGA allows FPUC to periodically adjust the price of natural gas supplied to its customers to reflect the actual cost of gas purchased and delivered on behalf of the customers. The swing service rider allows FPUC to recover intrastate capacity costs from their transportation customers and is a cents per therm

⁵ Docket No. 2024003-GU, *In re: Purchased gas adjustment (PGA) true-up*.

Date: June 27, 2024

charge that is included in the monthly customer gas bill of transportation customers. In a bill calculation provided by FPUC, a residential RES-3 customer using 21 therms would see an increase of \$0.07.

Conclusion

Based on the petition and the parties' responses to staff's data request, staff recommends that the Commission should approve Peninsula's transportation service agreement with FPUC, dated March 18, 2024, included as Attachment A to the recommendation. The proposed agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed agreement benefits FPUC's current and potential future customers through the activation of two additional delivery points.

Date: June 27, 2024

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interest is affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Sandy)

Staff Analysis: If no protest is filed by a person whose substantial interest is affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

ATTACHMENT A

Transportation Service Agreement – Pioneer Supply Header Pipeline

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is entered into this March 18, 2024, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper" or "FPUC"). PPC and FPUC are sometimes referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH

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

WHEREAS, Company desires to provide FTS 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
DEFINITION

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

"In-Service Date" means the effective date of Company's acquisition of the Pioneer Supply Header Pipeline.

ARTICLE II
QUANTITY & UNAUTHORIZED USE

2.1 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 Agreement on any one GasDay.

2.2 If, on any Day, the Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this 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 in Exhibit A of this Agreement and shall be charged to the Shipper beginning on the In-Service Date and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action, subject to Commission approval of the amendment. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement.

3.3 If, during the term of this Agreement, any Governmental Authority should increase any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy. Should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section E of the Rules and Regulations of Company's Tariff.

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 by both Parties (the "Execution Date") and shall continue in full force for an initial period of twenty (20) years from the In-Service Date ("Initial Term"). After the Initial Term, the Agreement shall be extended on a year-to-year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Current 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 If, at any time after the Execution Date and throughout the term of this Agreement, the Company makes any operational modification to the points of delivery or delivery points through modifications by the Company or requests by the Shipper or other third party shippers, then Company or Shipper may request the opportunity to negotiate a modification of the rates or terms of this Agreement, and the Parties shall negotiate in good faith a modification to the Agreement.

4.3 No less than 120 days before the expiration of the Current Term, either Party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the Parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both Parties prior to the expiration of the Current Term.

4.4 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, shall survive the expiration or termination of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.5 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff or 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.

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 ("Company's Tariff"), is hereby incorporated into this Agreement and made a part hereof for all purposes, except to the extent otherwise expressly provided herein. 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), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The 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 the Delivery Point Operator's tariff as set forth in Section 8.2 below, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 Florida City Gas is the Delivery Point Operator ("DPO") for all Delivery Points on the Pioneer Supply Header Pipeline, which will be administered in accordance with the provisions of the Transportation Service Provider's FERC Tariff and Florida City Gas's FPSC Natural Gas Tariff ("DPO's Tariff"), as applicable. Resolution of Monthly Receipt or Delivery Imbalances at the Delivery Points shall be in accordance with DPO's Tariff as set forth on sheet number 65 through 67. By executing this Agreement, FPUC expressly agrees it will be bound by the referenced tariff pages including the daily and monthly balances of the DPO's Tariff as it may be updated from time to time.

8.3 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. 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 Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

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.
500 Energy Lane, Suite 200
Dover, Delaware 19901
Attention: Contracts

Shipper: Florida Public Utilities Company
208 Wildlight Avenue
Yulee, Florida 32097
Attention: Contracts

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 Exhibit attached hereto, sets forth the full and complete understanding of the Parties as of the Execution Date, 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 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, 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 ("Governmental Authority"). 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 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, subject to the provisions of Sections 3.2 and 3.3 of this Agreement, 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 Execution Date. 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.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.2 or 3.3 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, 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 firm 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.

(ii) 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, without regard for conflict of laws provisions. 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY
Peninsula Pipeline Company, Inc.

SHIPPER
Florida Public Utilities Company

By: Bill Hancock

By: Jeff Sylvester

William Hancock

Jeffrey S. Sylvester

Title: Assistant Vice President

Title: President and Chief Operating Officer

Date: 03/21/2024

Date: 03/20/2024

EXHIBIT A TO
FIRM TRANSPORTATION SERVICE AGREEMENT
BETWEEN
PENINSULA PIPELINE COMPANY, INC. AND
FLORIDA PUBLIC UTILITIES COMPANY

DATED

March 18, 2024

Description of Transporter Delivery Point(s)

1. Interconnect with Florida Gas Transmission at or near Pioneer Road

Description of Point(s) of Delivery

1. At or near the intersection of SR 80 east and Seminole Pratt Whitney Road
2. At or near the intersection of Benoist Farm Road and Pioneer Road
3. At or near the intersection of Palms West Parkway and Southern Boulevard

Total MDTQ (Dekatherms) () Dt/Day

MHTP: ()

Total Monthly Reservation Charge: ()/Dekatherm)

This charge is subject to adjustment pursuant to the terms of this Agreement.

ATTACHMENT B
Pioneer Pipeline Map

