

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of)
Chesapeake Utilities Corporation)
and Citrusuco North America, Inc.,)
for Declaratory Statement.)

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RECORDS AND REPORTING

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PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Chesapeake Utilities Corporation ("CUC") and Citrusuco North America, Inc. ("Citrusuco"), pursuant to § 120.565, Fla. Stat.(1997), and Fla. Admin. Code Ch. 28-105, hereby file this joint petition for declaratory statement, and in support thereof state:

1. Names and addresses of Petitioners:

Chesapeake Utilities Corporation
1015 Sixth Street, N.W.
Winter Haven, FL 33881
Telephone: (941) 299-2883
Facsimile: (941) 294-3895

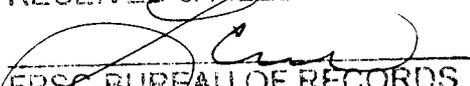
Citrusuco North America, Inc.
P.O. Box 3950
Lake Wales, FL 33859-3950
Telephone: (941) 696-7400
Facsimile: (941) 696-1303

2. The persons authorized to receive notices, communications and other documents in connection with this joint petition are:

Wayne L. Schiefelbein
Attorney at Law
P.O. Box 13688
Tallahassee, FL 32317
Telephone: (850) 297-9890
Attorney for Chesapeake Utilities Corporation

- AFA _____
- APP _____
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Attorney for Citrosuco North America, Inc.

3. Petitioners seek a declaratory statement with respect to the applicability and effect of a portion of § 366.02(1), Fla. Stat. (1997). In pertinent part, that section defines "public utility" for purposes of determining the entities which are subject to the Commission's jurisdiction under Chapter 366, as follows:

"Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state....

4. CUC supplies natural gas to the public within the State of Florida and, as such, is a public utility subject to the Commission's jurisdiction.

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

6. There is no affiliate relationship between CUC and Citrosuco.

7. Citrosuco intends to construct an approximately eight-inch (8") steel natural gas pipeline ("the Pipeline") extending from CUC's Lake Wales Gate Station approximately eleven (11) miles to the terminus of the pipeline at the point of interconnection with Citrosuco's meter at the front entrance to its citrus

processing plant, for the purpose of receiving natural gas purchased by Citrusuco from various gas suppliers and delivered for its account at CUC's Lake Wales Gate Station. The Pipeline is expected to be in service in October, 1999.

8. Citrusuco has no experience in the operation and maintenance of natural gas pipeline facilities. CUC is qualified and experienced in the operation and maintenance of such facilities.

9. Citrusuco is willing to lease the Pipeline to CUC for CUC's use in providing natural gas service to Citrusuco and to other customers of CUC in the vicinity of the route of the Pipeline. A copy of the Lease is appended hereto as Exhibit 1.

10. The Lease would have an initial term of ten (10) years, with CUC, as lessee, having the unilateral right to extend the term for one or more periods of five (5) years, or such other period as to which Citrusuco may agree. CUC, as lessee, would pay to Citrusuco an arms-length fixed annual rent for the use of the Pipeline in providing natural gas service to Citrusuco and to other customers of CUC.

11. Under a CTS Gas Transportation Service Agreement between CUC and Citrusuco, CUC would receive certain quantities of natural gas at CUC's Lake Wales Gate Station for Citrusuco's account, transport such quantities on the Pipeline, and redeliver same to Citrusuco's citrus processing facility in accordance with the terms and conditions of CUC's Commission-approved CTS Transportation

Service Rate Schedule. CUC will independently submit the CTS Gas Transportation Service Agreement with Citrosuco for Commission approval, in accordance with Commission requirements.

12. The Gas Transportation Agreement would have an initial term of ten (10) years, with Citrosuco, as Shipper, having the unilateral right to extend the term for one or more periods of five (5) years, or such other period as to which CUC may agree. Citrosuco, as Shipper, would pay to CUC an arms-length rate for said transportation service, which, consistent with CUC's tariff, would more than recover the cost of providing service to Citrosuco.

13. Under the Lease, CUC would have the right to connect mains or service lines to the Pipeline for the purpose of providing natural gas service to other customers and potential customers of CUC in the vicinity of the route of the Pipeline, provided that no exercise of such right by CUC would cause any interruption in Citrosuco's ability to use the Pipeline for receipt of its citrus processing facility's full requirements for natural gas, that is, Citrosuco's Maximum Daily Transportation Quantity, as specified in the Gas Transportation Agreement.

14. Citrosuco is not currently a public utility and does not wish to become one subject to the jurisdiction of the Commission.

15. Petitioners seek a declaratory statement from the Commission that Citrosuco's execution and performance of the Lease would not result in Citrosuco being considered a public utility subject to regulation by the Commission.

16. In pertinent part, § 366.02(1), Fla. Stat., defines "public utility," essentially, as any legal entity "supplying ... gas ... to or for the public within this state", with certain exceptions not applicable here. § 366.04(1) grants the Commission jurisdiction over each public utility.

17. Under the terms of the Lease, Petitioners submit that Citrosuco would not supply natural gas to or for the public within this State. Citrosuco would merely own the Pipeline, and lease it to CUC. Under the proposed Lease, it is CUC which would supply natural gas to or for the public. CUC would operate and maintain the Pipeline and otherwise continue to function as a public utility fully subject to the Commission's jurisdiction. Accordingly, the Lease should not result in Citrosuco being deemed a public utility, as defined in § 366.02(1), Florida Statutes.

18. The "supplying" of electricity or natural gas which would render an entity subject to Commission jurisdiction is not statutorily defined. Petitioners are aware of no decisional law which is dispositive of the instant petition. However, Petitioners believe a declaratory statement that Citrosuco would not be properly deemed a public utility by virtue of its mere ownership and lease of the Pipeline as described hereinabove is consistent with prior construction of the statutory term "public utility" by the Florida Supreme Court and the Commission.

19. (a) The Florida Supreme Court interpreted the definition of public utility set forth in § 366.02(1), Fla. Stat., in the case of PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988). PW Ventures proposed to construct, own and operate a cogeneration project on land leased from an industrial customer, and to sell its output to the industrial customer on a long-term take or pay contract. PW Ventures sought a declaratory statement from the Commission that the proposed transaction would not subject it to Commission regulation.

(b) The central issue in PW Ventures, according to the Court, was "whether the sale of electricity to a single customer makes the provider a public utility," a decision which hinged on the construction of the phrase "to the public" as it is used in Sec. 366.02(1). The Court sustained the Commission's construction, that the phrase meant "to any member of the public."

(c) The Court appears to have repeatedly equated the statutory phrase of "supplying electricity" with PW Ventures' "proposed sale of electricity." 533 So. 2d 282-284. In the instant case, it is CUC, a jurisdictional natural gas utility, which would sell natural gas service to Citrosuco and other customers. Citrosuco's sole involvement would be its ownership and lease of the Pipeline to CUC, the jurisdictional utility.

20. The Florida Supreme Court's apparent equation of "supplying" with "selling" power is not an anomaly. The Commission has repeatedly engaged in a similar construction of § 366.02(1).

21. The Commission denied a complaint which sought the exercise of Commission jurisdiction over a condominium management company which collected a management fee for a wide range of services and facilities, including the provision of electricity to the common areas and facilities of a condominium development. The Commission found that:

Geller Management doesn't supply electricity -- it supplies services and facilities which require the company to use and pay for electricity. ... Geller does not supply electricity to the ultimate consumer and the ultimate consumer is unable to choose how the electricity is used. This is not a sale of electricity to the ultimate consumer. ... In addition we find that Geller has not resold electricity at a profit, and is not an electric utility subject to the Commission's regulatory jurisdiction.

In re: Complaint ... Regarding ... H. Geller Management Co., 91 F.P.S.C. 10:339, at 341-342 (1991).

22. In 1993, the Commission again equated "supply" with "sale" of electricity in interpreting the definition of "public utility." In reviewing Gulf Power Company's negotiated contract for purchase of firm capacity from a cogeneration unit owned by Monsanto Chemical Company (Monsanto), the Commission also examined leases between Monsanto and two industrial producers of inputs in Monsanto's energy production, to determine whether, under the leases, Monsanto would be making retail sales of electricity. Monsanto was to provide power to the producers' industrial production equipment. The Commission found:

The lease agreements with Niject and Praxair respectively, provide for Monsanto to operate both facilities and utilize the outputs for Monsanto's purposes. Monsanto will pay Niject and Praxair a monthly rental charge regardless of the level of output from the compressed air and nitrogen facilities.

Electricity is not supplied to Niject or Praxair, rather, Monsanto is merely providing power for Monsanto's use of equipment which it has leased. Monsanto is paying rent for the right to operate the equipment and to utilize the output as part of its overall process. Therefore, a retail sale does not occur under this arrangement and Monsanto would not be considered a public utility. We put Monsanto on notice, however, that should this relationship change so that Monsanto supplies electricity to another entity, Monsanto would become a public utility subject to the regulatory jurisdiction of this Commission. See Section 366.02, Florida Statutes, and P.W. Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

In re: Petition ... by Gulf Power Company, 93 F.P.S.C. 3:820, at 822 (1993) (emphasis added).

23. Subsequently, Polk Power Partners (Polk) sought a declaratory statement that "certain contemplated financing and ownership structures of the Mulberry Cogeneration Facility" would, inter alia, not be deemed an unlawful sale of electricity and not cause Polk or its partners to be deemed a public utility. Polk would have essentially supplied power to be consumed by an unrelated lessee-operator of an adjacent ethanol plant in return for payment of a minimum lease amount which would not vary with the amount of electricity consumed, plus increases based on production. The Commission relied on PW Ventures in concluding that the financing would be deemed an unlawful sale of electricity and would

cause Polk and its partners to be deemed a public utility, subject to regulation by the Commission:

In our view, what is dispositive for jurisdictional purposes is the contemplated generation of electric power by one entity, Polk, for consumption by an unrelated entity ... in return for payment. Such an arrangement is encompassed by Sec. 366.02(1), Florida Statutes, read in the light of P.W. Ventures. ... Moreover, we are unable to conclude that no sale of electricity takes place under these facts where electricity is supplied for rent payments.

In re: Petition ... by Polk Power Partners, L.P., 94 F.P.S.C. 2:332, at 334-335 (1994). The Commission distinguished Monsanto, in which generation equipment was leased and the lessee then produced and consumed the power generated: there was no "sale" of the power to an unrelated entity. 94 F.P.S.C. 2:334.

24. Clearly, Polk was supplying electricity for compensation. That is entirely distinguishable from the instant situation, in which Citrosuco would lease the Pipeline to CUC for CUC's own provision of natural gas service to Citrosuco and other CUC customers. Citrosuco would not engage in the sale of natural gas to anyone. Accordingly, Citrosuco should not be deemed a public utility subject to Commission regulatory jurisdiction.

25. (a) As discussed earlier, in addition to providing service to Citrosuco through the leased Pipeline, CUC intends to connect mains or service lines to the Pipeline for CUC's own provision of natural gas service to CUC's other customers and potential customers in the vicinity of the Pipeline. No

compensation will be paid to Citrosuco by these other CUC customers; they will instead pay CUC for natural gas service under CUC's Commission-approved rate schedules.

(b) Thus, assuming arguendo that Citrosuco's lease of the Pipeline to CUC (for a fixed rent unrelated to the volume of gas transported by CUC to Citrosuco and CUC's other customers) could be construed as Citrosuco "supplying natural gas" to CUC, Citrosuco should not be considered to be a public utility subject to the jurisdiction of the Commission. In Attorney General Opinion (AGO) 051-440 (December 5, 1951), the question of whether a company selling gas exclusively to public utilities regulated by the Commission was itself a public utility was addressed as follows:

Since this proposed corporation here being considered would not ... be supplying manufactured gas, oil, or other petroleum products to or for the public, but would supply such products only to other corporations or companies which themselves would be subject to the jurisdiction of the Commission, I do not believe that such proposed corporation would come within the intended scope of the laws nor within the definition of "public utility" as contained in the law.

(c) The Commission has determined that the foregoing Attorney General's Opinion was adequate precedent for issuance of a declaratory statement finding that an entity selling gas exclusively to a public utility regulated by the Commission is not itself supplying gas to or for the public and is therefore not a public utility. In re: Petition ... by Tampa Electric Company, 95

F.P.S.C. 12:510, at 511-512 (1995). The Commission therein found the aforesaid Attorney General Opinion to parallel § 364.02(12), Fla. Stat., which explicitly exempts from the Commission's regulatory jurisdiction entities providing telecommunications facilities exclusively to telecommunications companies certificated by the Commission. 95 F.P.S.C. 12:512.

26. In any event, there is no policy reason to apply the regulatory protection of Chapter 366 to the transaction proposed by Petitioners, given the undiminished jurisdiction that the Commission would exercise over CUC. The Commission will retain full regulatory oversight over the sale of gas transported over the Pipeline through the regulation of CUC's own rates, to Citrosuco and other customers receiving service off the Pipeline. See 95 F.P.S.C. 12:512. Unlike the situation in PW Ventures, no uneconomic duplication of facilities, no diversion of revenue to unregulated producers, and no recovery of fixed costs from a diminished body of ratepayers would result from the proposed transaction between CUC and Citrosuco. There would be no adverse impact on the incumbent public utility or on the general body of ratepayers. Compare PW Ventures, 533 So 2d. at 283.

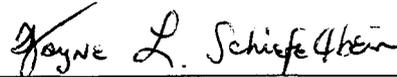
27. CUC acknowledges and agrees the Commission's issuance of the requested declaratory statement, that Citrosuco's proposed Lease of the Pipeline to CUC will not result in Citrosuco being deemed a public utility subject to Commission regulatory jurisdiction, shall in no way be considered Commission approval of

any matter affecting CUC's revenue requirement or rates. CUC further acknowledges and agrees that in any Commission proceeding to consider its revenue requirement or rates, CUC will bear the burden of proof to support the prudence and reasonableness of its rent payments under the Lease and any other cost allocations related thereto.

Wherefore, and in consideration of the above, CUC and Citrosuco request that the Commission declare that Citrosuco's execution and performance of the Lease would not result in Citrosuco being considered a public utility subject to regulation by the Commission.

Dated this 3^d day of June, 1999.

Respectfully submitted,



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Attorney for CITROSUCO NORTH
AMERICA, INC.

EXHIBIT 1

PIPELINE LEASE AGREEMENT

This Pipeline Lease Agreement (this "Lease"), is made and entered into by and between **Citrusuco North America, Inc.**, a Delaware corporation ("Lessor"), and **Chesapeake Utilities Corporation**, a Delaware corporation, ("Lessee"), each of Lessor and Lessee being sometimes referred to herein individually as "party" or collectively as the "parties").

WHEREAS, Lessor owns and operates a citrus processing plant in Lake Wales, Florida (the "Plant"), and owns an approximately eight-inch (8") steel natural gas pipeline extending from Lessee's Lake Wales Gate Station approximately eleven (11) miles to Lessor's meter set at the front entrance to the Plant (as hereinafter more particularly defined, the "Pipeline");

WHEREAS, Lessee is a public utility and owns and operates a natural gas distribution system within Central Florida, is qualified and experienced in the operation of natural gas pipeline facilities, and desires to lease the Pipeline from Lessor for use in delivering gas to Lessor and other customers of Lessee located in the vicinity of the route of the Pipeline; and

WHEREAS, Lessor is willing to lease the Pipeline to Lessee for use by Lessee in providing service to Lessor and other customers of Lessee in the vicinity of the route of the Pipeline.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the parties agree as follows:

Section 1. Lease. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, effective as of the Lease Commencement Date and upon and subject to the terms and conditions herein set forth, the following described property:

The following gas pipeline facilities (such property, together with all replacements, repairs and additions incorporated therein or affixed or appurtenant thereto (excluding any additions or appurtenances installed by Lessee pursuant to Section 5(b) of this Lease) being referred to herein as the "Pipeline") located in the State of Florida, as more particularly described on Exhibit "A" attached hereto:

The approximately 11 miles of the 8" pipeline owned by Lessor from the outlet of Lessee's Lake Wales Gate Station to the terminus of said pipeline at its point of interconnection with the meter set at the front entrance to Lessor's citrus processing plant located in Lake Wales, Florida, and all appurtenances thereto (excluding any appurtenances installed by Lessee pursuant to Section 5(b) of this Lease).

Section 2. Definitions. As used in this Lease, the following terms shall have the meanings set forth below:

"day" means a calendar day.

"Effective Date" has the meaning given in Section 3.

"First Renewal Period" has the meaning given in Section 3.

"Gas Transportation Agreement" means the CTS Gas Transportation Service Agreement between Lessor and Lessee of even date herewith.

"Initial Term" has the meaning given in Section 3.

"Lease Commencement Date" means the date (if any) on which title to the Pipeline is conveyed by Bosek, Gibson and Associates, Inc. ("BGA") to Lessor pursuant to Paragraph 26.3(b) of the General Conditions attached as Exhibit A to the Contract between BGA and Lessor, dated as of even date herewith and providing for BGA's construction of the Pipeline.

"Lease Year" means a period of twelve (12) consecutive months commencing on the Lease Commencement Date, and successive like annual periods during the term of this Lease.

"mcf" means 1,000 cubic feet.

"month" means a calendar month.

"party" or "parties", as the context requires, means Lessee and/or Lessor.

"Pipeline" has the meaning given in Section 1.

"Plant" means Lessor's citrus processing plant in Lake Wales, Florida.

"p.s.i.g." means pounds per square inch gauge.

"Termination Date" means the beginning of the day commencing on October 1, 2009.

Section 3. Term. This Lease shall be effective as of the date of its execution by the parties (the "Effective Date"). The term of this Lease shall commence on the Lease Commencement Date, and shall continue until the Termination Date (the "Initial Term"), unless earlier terminated as provided herein or extended automatically as hereinafter provided. Thereafter, Lessee shall have the unilateral right to extend the term of this Lease for one or more periods of five (5) years, or such other period as to which Lessor may agree (any such period being hereinafter referred to as a "Secondary Term"), by giving Lessor written notice of the exercise of such right not less than ninety (90) days prior to the expiration of the Initial Term (or any Secondary Term for which this Lease has been previously extended). This Lease shall terminate and be of no further force or effect in the event title to the Pipeline is conveyed by Bosek, Gibson and Associates, Inc. ("BGA") to Lessee pursuant to Paragraph 25.3(a) of the General Conditions attached as Exhibit A to the Contract between BGA and Lessor, dated as of even date herewith and providing for BGA's construction of the Pipeline.

Section 4. Rent. (a) During the Initial Term of this Lease, Lessee shall pay to Lessor rent in the amount of \$100,000.00 annually, the first such payment being due within twenty (20) days following the Lease Commencement Date, and successive annual payments in said amount being due within twenty (20) days following each anniversary of the Lease Commencement Date (rent being due for any fractional portion of any year in proportion).

(b) During any Secondary Term (as defined in Section 3) for which the term of this Lease may be extended, Lessee shall pay to Lessor annually within twenty (20) days following each anniversary of the Lease Commencement Date, rent in the amount of \$100,000.00, such amount to be adjusted by the lesser of three percent (3%) per year or the change in the Producer Price Index, from the base year of 1999 through the year in which such Secondary Term commences (rent being due for any fractional portion of any year in proportion).

(c) Any past due payment of rent shall bear interest at an annual rate equal to the lesser of eighteen percent (18%) or the highest rate allowed by applicable law, calculated on a daily basis from the date due until paid. All rent payments shall be made to Lessor at the address set forth in Section 12 of this Lease, or at such other address as Lessor may designate by written notice to Lessee, unless Lessor shall assign this Lease and the right to receive the rent hereunder, in which case rent shall be paid to Lessor's assignee after written notice of such assignment, if any, has been duly given to Lessee by Lessor. All rent shall be paid without notice or demand, and without abatement, deduction or set-off of any amount whatsoever.

Section 5. Use, Operation and Maintenance of Pipeline.

(a) Use of Pipeline: Records and Reports. During the term of this Lease, Lessee shall be entitled to use the Pipeline for the purpose of transporting and delivering gas to customers of Lessee, and for such other purposes as may be incidental thereto, and for no other purpose; provided, however, that Lessee's use of such capacity shall comply in all respects with all applicable laws, ordinances and regulations, and the orders or directives of any governmental body having jurisdiction; and provided further, however, that Lessee's use of the Pipeline shall not, without the prior written consent of Lessor, and notwithstanding any other agreement between Lessor and Lessee to the contrary, cause (i) any interruption in Lessor's ability to use the Pipeline for receipt of the Plant's full requirements for natural gas as set forth in Exhibit A to the Gas Transportation Agreement, (ii) the rate of flow of natural gas at Lessor's meter set to be reduced below 390 mcf per hour, or (iii) the inlet pressure at Lessor's meter set to be reduced below 100 p.s.i.g. In particular, Lessee shall comply at all times with the requirements of Parts 191 and 192, Title 49, Code of Federal Regulations, and Chapter 25-12, Florida Administrative Code, as well as any applicable orders or directives of the Florida Public Service Commission. Lessee shall also prepare and maintain all books and records required by any applicable laws, regulations or ordinances to be prepared and maintained by the owner or lessee of the Pipeline, and prepare and file (or submit to Lessor for filing, as the case may be) all reports with governmental bodies required by any applicable

laws, regulations or ordinances to be filed by the owner or lessee of the Pipeline, in connection with Lessee's operation, maintenance or repair of the Pipeline.

(b) Lessee's Right to Connect. In order to provide gas service to customers and potential customers in the vicinity of the route of the Pipeline, Lessee shall have the right during the term of this Lease, at its sole cost and expense, to connect to the Pipeline, mains or service lines; provided, however, that no exercise of such right by Lessee shall, without the prior written consent of Lessor, and notwithstanding any other agreement between Lessor and Lessee to the contrary, cause (i) any interruption in Lessor's ability to use the Pipeline for receipt of the Plant's full requirements for natural gas as set forth in Exhibit A to the Gas Transportation Agreement, (ii) the rate of flow of natural gas at Lessor's meter set to be reduced below 390 mcf per hour, or (iii) the inlet pressure at Lessor's meter set to be reduced below 100 p.s.i.g.

(c) Easements, Permits, Records, etc. During the term of this Lease, Lessor shall make available to Lessee Lessor's records (or copies thereof) relating to the design, permitting, construction and operation of the Pipeline, including, without limitation, regulatory filings, schematics, blueprints and maintenance records, provided, however, that to the extent any such data, files or records are not limited in scope to the Pipeline, Lessor shall (i) only provide copies of such information, and (ii) be allowed to redact from such copies any and all portions of such information that pertain to matters beyond the scope of the Pipeline. Lessee shall use reasonable efforts to secure any necessary approvals from landowners or other persons or entities required for Lessor's assignment to Lessee, for the term of this Lease, any rights owned by Lessor with respect to or relating to the installation, construction, maintenance or operation of the Pipeline through, over, under or upon any private or public lands, streets, alleys, roads or highways. In the event such consents can be obtained by Lessor with the exercise of such reasonable efforts, Lessor shall assign such rights to Lessee for the term of this Lease. Lessee shall obtain, or make arrangements to obtain, any new right-of-way, permit, easement or other such permission or conveyance, and for the renewal of any recurring permit, license fee, rental or easement fee, that may be required for operating and maintaining the Pipeline on the property of others or in the public domain, and shall pay the cost thereof.

(d) Audit Rights. Lessor shall have the right to review and audit, during normal business hours, on reasonable prior notice and at its own expense, Lessee's records relating to services performed or required to be performed by Lessee pursuant to this section.

Section 6. Warranties. Lessee agrees that it has entered into this Lease based upon its own judgment and inspection of the Pipeline and disclaims any reliance upon any statements or representations with respect to the Pipeline made by Lessor. LESSOR MAKES NO WARRANTY WITH RESPECT TO THE PIPELINE, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PIPELINE OR ANY PORTION

THEREOF.

Section 7. Title. Title to the Pipeline shall at all times remain in Lessor, and Lessee shall, at its own expense, protect and defend the title of Lessor and keep it free and clear of all claims and liens other than the rights of Lessee hereunder and claims and liens created by or arising through Lessor. The Pipeline shall remain personal property regardless of its attachment to or placement within realty.

Section 8. Taxes. Lessee agrees that, during the term of this Lease, in addition to the rent required herein to be paid, it will promptly pay all taxes assessments, and other governmental charges or fees levied or assessed upon the interest of the Lessee in the Pipeline or upon Lessee's use or operation thereof or on the Lessee's earnings arising therefrom, and as additional rent will promptly pay or reimburse Lessor for all taxes assessments or other governmental charges or fees levied or assessed against and paid by the Lessor on account of its ownership of the Pipeline, or any part thereof, or the rent herein provided for or the earnings arising therefrom, exclusive, however, of any taxes based on the net income of Lessor.

Section 9. Insurance; Indemnification.

(a) Lessee shall, during the term hereof, carry property damage and casualty insurance protecting the Pipeline from all risks in a face amount not less than the full value of the Pipeline, with the proceeds of any such insurance payable to Lessor or its assigns, and liability insurance with combined single limits of not less than \$1,800,000.00, naming Lessor as an additional insured. Lessee shall provide certificates of such insurance coverages to Lessor, and all policies shall require the giving of written notice to Lessor not less than thirty (30) days prior to any cancellation or change in coverage.

(b) Lessee shall indemnify and hold Lessor harmless from and against any and all liability, loss, damage, expense, causes of action, suits, claims or judgments arising from injury to persons or property resulting from or arising out of the actual or alleged use, operation, maintenance or repair of the Pipeline or its location or condition, and shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others, upon any such liability, or claim, and shall satisfy, pay and discharge any and all judgments or fines which may be recovered against Lessor in any such action or actions; provided, however, that Lessee's indemnification as aforesaid shall not extend to any liability, loss, damage, expense, cause of action, suit, claim or judgment caused by the negligence, fraud or breach of fiduciary duty of Lessor, its employees, agents or contractors.

Section 10. Assignment. No assignment of this Lease by either party may be made without the prior written consent of the other party (which consent shall not be unreasonably withheld) and unless the assignee assumes the full obligations of the assignor; provided, however, that either party may, without the prior written consent of the other party, assign this Lease and its rights thereunder

to an affiliate of the party, so long as such assignee assumes the full obligations of the assigning party; and provided further, however, that either party may, without the prior written consent of the other party, assign or otherwise alienate and transfer this Lease in connection with the sale of substantially all of its assets or upon its merger or consolidation with any other corporation. Whenever (i) an assignment or a transfer of a party's interest in this Lease is required to be made with the written consent of the other party, or (ii) an assignment or a transfer of a party's interest in this Lease is made pursuant to the foregoing provisos, the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Lease of the assigning or transferring party, and upon such assignment or transfer and assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

Subject to the foregoing provisions of this section, the terms and provisions of this Lease and the respective rights and obligations of Lessee and Lessor hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns.

Section 11. Default; Remedies. (a) Each of the following events shall constitute an "Event of Default" hereunder:

(i) Lessee or Lessor shall fail to pay when due any amount required hereunder to be paid to the other and the continuance thereof for ten (10) days following written notice thereof;

(ii) Lessee shall fail to observe or perform any other requirement or agreement to be observed or performed by Lessee hereunder and the continuance thereof for ten (10) days following Lessor's written notice thereof to Lessee;

(iii) Lessee shall cease doing business as a going concern or make an assignment for the benefit of creditors;

(iv) Lessee shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator shall be appointed for it or of all or a substantial part of its assets;

(v) an event of default shall occur under any other obligation Lessee owes to Lessor; or

(vi) any indebtedness Lessee may now or hereafter owe to Lessor shall be accelerated following a default thereunder or, if any such indebtedness is payable on demand, payment thereof shall be demanded.

(b) The parties agree that Lessor's damages suffered by reason of an Event of Default are uncertain and not capable of exact measurement at the time this Lease is executed, and therefore agree that, for purposes of this Section 11(b), "Lessor's Loss" shall be:

(i) if Lessee continues to make when due all payments of rent and other amounts due Lessor hereunder, but fails to permit Lessor to use the Pipeline in the manner herein provided, an amount equivalent to the actual damages, including consequential damages and lost profits, suffered by Lessor as a result of such failure, and

(ii) in all other cases shall be the sum of (1) the amount of all rent and other amounts payable by Lessee hereunder which are due but unpaid as of such date, (2) the amount of all unpaid rent for the balance of the term of this Lease not yet due as of such date, discounted from the respective dates installment payments would be due at the rate of nine percent (9%) per annum, and (3) one hundred percent (100%) of the undepreciated book value of the Pipeline.

Upon the occurrence of an Event of Default and at any time thereafter, Lessor may exercise any one or more of the remedies listed below, as Lessor in its sole discretion may elect, provided that upon the occurrence of an Event of Default specified in Section 11(a)(iv) above, an amount equal to Lessor's Loss as of the date of such occurrence shall automatically be and become payable without notice or demand of any kind.

(i) Lessor may, by written notice to Lessee, terminate this Lease and declare an amount equal to Lessor's Loss as of the date of such notice to be immediately due and payable, and the same shall thereupon be and become immediately due and payable without further notice or demand, and all rights of Lessee to use the Pipeline shall terminate but Lessee shall be and remain liable as provided in this Section 11.

(ii) Lessor may proceed by appropriate court action to enforce performance by Lessee of the applicable terms and conditions of this Lease (and, in the case of an Event of Default described in paragraph (b)(i) above, Lessee agrees that the remedy of specific performance would be appropriate) or to recover, for breach of this Lease, Lessor's Loss as of the date Lessor's Loss is declared due and payable hereunder.

(iii) Lessor may exercise any other right or remedy available to it by law or by agreement.

Lessor may recover interest on the unpaid balance of Lessor's Loss from the date it becomes payable until fully paid at an annual rate equal to the lesser of eighteen percent (18%) or the highest rate allowed by applicable law. Lessor may in any event recover reasonable attorneys' fees and other expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder. No remedy provided herein is intended to be exclusive, and each shall be cumulative, but only to the extent necessary to permit Lessor to recover amounts for which Lessee is liable hereunder.

Section 12. Notices. Any notice, demand, request or invoice provided for in this Lease shall be in writing and deemed given when delivered by hand or deposited in the U.S. Mail postage prepaid addressed to each party as set forth below:

Lessee:

Chesapeake Utilities Corporation
Florida Division
P. O. Box 960
Winter Haven, Florida 33882-0960

Lessor:

Citrosuco North America, Inc.
P. O. Box 3950
Lake Wales, Florida 33859-3950

Administrative Matters:

Attention: Florida Regional Manager
Telephone: (941) 299-2565
Facsimile: (941) 294-3895

Administrative Matters:

Attention: Elliott Seabrook
Telephone: (941) 696-7400
Facsimile: (941) 696-1303

Invoices/Payment:

Attention: Accounting and Rates Manager
Telephone: (941) 299-2883
Facsimile: (941) 294-3895

Invoices/Payment:

Attention: Elliott Seabrook
Telephone: (941) 696-7400
Facsimile: (941) 696-1303

Section 13. Independent Parties. Lessee and Lessor shall perform hereunder as independent parties and neither Lessee nor Lessor is in any way or for any purpose, by nature 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.

Section 14. No Waiver. No waiver of any of the provisions hereof shall be deemed to be a waiver of any other provision whether similar or not. No waiver shall constitute a continuing waiver. No waiver shall be binding on a party unless executed in writing by that party.

Section 15. Amendments. This Lease shall not be amended except by an instrument in writing signed by the party against which enforcement of the amendment is sought. A change in (a) the place to which notices hereunder must be sent shall not be deemed nor require an amendment hereof provided such change is communicated pursuant to Section 12.

Section 16. Entire Agreement. On and after the Lease Commencement Date, this Lease constitutes the entire agreement between the parties with respect to Lessee's use of the Pipeline and the operation, maintenance and repair services to be provided for the Pipeline, and supersedes all prior agreements and understandings between the parties with respect thereto.

Section 17. Governing Law. This Lease and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida and shall be subject to all applicable laws, rules and orders of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. 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 Lease shall be in a court having jurisdiction and located in Polk County, Florida.

Section 18. Dispute Resolution.

(a) Except as provided in paragraph (b) below, prior to initiating arbitration to resolve a dispute under this Lease, the parties agree to submit any and all disputes to pre-arbitration mediation under the Florida Rules for Certified and Court Appointed Mediators and Florida Rules of Civil Procedure 1.700 through 1.730 and 1.750, excluding subsection (b), together with the rules of the American Arbitration Association or the Foundation for Dispute Resolution. Accordingly, the parties agree to strictly follow said rules and abide by any agreement entered into as a result of such mediation. Good faith compliance with this section shall be considered a condition precedent to the right to arbitration under this Lease. This section shall be deemed to be a material inducement to each party's entering into this Lease.

(b) Subject to paragraph (a) above, any dispute relating to or arising under this Lease shall be decided by arbitration conducted in accordance with the arbitration rules and regulations (latest edition) established by the American Arbitration Association ("AAA"), by a single arbitrator appointed by the parties or, failing agreement as to such appointment within thirty (30) days of a party's proposal of an arbitrator, by an arbitrator appointed by the AAA. The physical location of the arbitration shall be in the State of Florida. The decision of such arbitrator shall be final and binding on the parties, who will pay the cost of the arbitrator as he or she directs.

Section 19. Legal Fees. In the event of litigation between the parties hereto arising out of or in connection with this Lease, then the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

Section 20. Force Majeure. (a) In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Lease, other than to make payments due hereunder, it is agreed that the obligations of such party, so far as they are affected by such force majeure, shall be suspended during the continuation of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided,

however, that no party hereto shall be required against its will to adjust any labor dispute. It is agreed that such party shall give notice and full particulars of such force majeure event in writing, telecopied to the other party as soon as reasonably possible after the occurrence of such event.

(b) The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes and hurricane warnings, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, curtailment, interruption or other unavailability of firm transportation, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies which are required to enable such party to fulfill its obligations hereunder.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date(s) set forth below.

LESSEE

LESSOR

CHESAPEAKE UTILITIES CORPORATION

CITROSUCO NORTH AMERICA, INC.

By: Steph C. Thompson

By: _____

Name: Stephen C. Thompson

Name: _____

Title: Vice President

Title: _____

Date: March 8, 1999

Date: March 8, 1999

STATE OF Delaware)
COUNTY OF Kent)

The foregoing instrument was acknowledged before me, a Notary Public in and for said State, on this day personally appeared Stephen C. Thompson, the Vice President of Chesapeake Utilities Corporation, a Delaware corporation, known to me to be the identical person whose name is subscribed to the foregoing instrument as Vice President of said corporation having produced DE Driver License as identification, and he acknowledged the execution of said instrument as his voluntary act and in the capacity stated, and as the voluntary act of said corporation.

Given under my hand and seal this 8th day of March, 1999.

Patricia A. Connors
NOTARY PUBLIC

My commission expires:

2/19/00

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date(s) set forth below.

LESSEE

LESSOR

CHESAPEAKE UTILITIES CORPORATION

CITROSUCO NORTH AMERICA, INC.

By: _____

By: 

Name: _____

Name: J. ELLIOTT SEABROOK

Title: _____

Title: PRESIDENT

Date: March 8, 1999

Date: March 8, 1999

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me, a Notary Public in and for said State, on this day personally appeared _____, the _____ of Chesapeake Utilities Corporation, a Delaware corporation, known to me to be the identical person whose name is subscribed to the foregoing instrument as _____ of said corporation having produced _____ as identification, and he acknowledged the execution of said instrument as his voluntary act and in the capacity stated, and as the voluntary act of said corporation.

Given under my hand and seal this _____ day of March, 1999.

NOTARY PUBLIC

My commission expires:

STATE OF Florida
COUNTY OF Polk

The foregoing instrument was acknowledged before me, a Notary Public in and for said State, on this day personally appeared J. ELLIOTT SEABOARD, the PRESIDENT of Citrusuco North America, Inc., a Delaware corporation, known to me to be the identical person whose name is subscribed to the foregoing instrument as PRESIDENT of said corporation having produced N/A as identification, and he acknowledged the execution of said instrument as his voluntary act and in the capacity stated, and as the voluntary act of said corporation.

Given under my hand and seal this 10th day of March, 1999

Kathryn K. Borglund
NOTARY PUBLIC

My commission expires:



Kathryn K Borglund
My Commission CC706057
Expires January 1, 2002

EXHIBIT "A"
TO
PIPELINE LEASE AGREEMENT
BETWEEN
CITROSUCO NORTH AMERICA, INC.
AND
CHESAPEAKE UTILITIES CORPORATION

DESCRIPTION AND LOCATION OF PIPELINE

That certain eight-inch (8") steel natural gas pipeline (together with all appurtenances thereto) extending from the outlet of the metering device at the gate station known as CFG-Lake Wales, DRN 3197 (located on the south side of State Road 60 and approximately 1.5 miles west of the intersection of State Road 60 and U.S. Highway 27), proceeding east along State Road 60, turning south along U.S. Highway 27, continuing east along County Road 17B and Hunt Brothers Road, continuing along Hunt Brothers Road to Thulberry Road, continuing east to Big Sinkhole Road, thence north to State Road 60, thence north to Lessor's citrus processing facility at 5937 State Road 60 East.