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050584 - GP

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September 2, 2005

Blanca S. Bayo, Director  
Commission Clerk & Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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10 SEP - 2 PM 2:36  
COMMISSION  
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RE: Peninsula Pipeline Company, Inc.

Dear Ms. Bayo:

Enclosed herewith for filing, please find an original and fifteen copies each of Peninsula Pipeline Company, Inc.'s Petition for Declaratory Statement and Memorandum of Law. **PLEASE OPEN A DOCKET IN THIS MATTER.**

Please stamp and return one copy of each to my office acknowledging receipt.

Sincerely

Deana Russ,  
Assistant to Wayne L. Schiefelbein  
Of Counsel

/dcr  
Enclosures

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DOCUMENT NUMBER-DATE  
08401 SEP-2 05  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**IN RE: Petition by  
Peninsula Pipeline Company, Inc.  
for declaratory statement  
concerning recognition as  
a natural gas transmission  
company.**

050584-GP

**PETITION FOR DECLARATORY STATEMENT**

Peninsula Pipeline Company, Inc., (PPC or the Petitioner), by and through its undersigned counsel, pursuant to Section 120.565, Florida Statutes and Rules 28-105.001, Florida Administrative Code, et seq., requests that the Florida Public Service Commission (FPSC or Commission) issue a declaratory statement concerning whether it would recognize Petitioner as a natural gas transmission company under Section 368.101, Florida Statutes, et seq. In support whereof, Petitioner says:

GENERAL INFORMATION

1. The name and address of the Petitioner are:

Peninsula Pipeline Company, Inc.  
1015 6<sup>th</sup> Street N.W.  
Winter Haven, Florida 33882

2. The name, address, telephone number, and facsimile number of Petitioner's counsel are:

Wayne L. Schiefelbein  
Of Counsel  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
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Attorneys for Petitioner,  
Peninsula Pipeline Company, Inc.

DOCUMENT NUMBER-DATE

08401 SEP-28

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3. The Commission's disposition of the instant petition will affect the Petitioner by determining whether the Commission would recognize the Petitioner as a "natural gas transmission company" under Chapter 368.101, et seq., Florida Statutes, i.e., the Natural Gas Transmission Pipeline Intrastate Regulatory Act (NGTPIRA).
4. The statutory provision on which the declaratory statement is sought is, specifically, Section 368.103(4), Florida Statutes.

#### PENINSULA PIPELINE COMPANY OVERVIEW

5. Petitioner is a corporation established and in good standing under the laws of the state of Delaware. Petitioner is authorized to transact business in the State of Florida pursuant to Section 607.1505, Florida Statutes.
6. Petitioner is a wholly owned subsidiary of Chesapeake Utilities Corporation ("Chesapeake"). Chesapeake is also a corporation established and in good standing under the laws of the State of Delaware, and authorized to transact business in the State of Florida pursuant to Section 607.1505, Florida Statutes.
7. Chesapeake, a publicly owned corporation, is a diversified utility company engaged in natural gas distribution and transmission, propane distribution and wholesale marketing, advanced information services and other related businesses. A chart of Chesapeake's legal structure is attached hereto as Exhibit "A."
8. Chesapeake is engaged in regulated businesses that include both natural gas distribution and transmission operations. Chesapeake's natural gas distribution operations serve approximately 47,600 residential, commercial and industrial customers in Delaware, Maryland and Florida. In Delaware and Maryland,

Chesapeake operates as Chesapeake Utilities. In Florida, Chesapeake's Florida Division operates as a local distribution company doing business as Central Florida Gas Company, serving residential, commercial and industrial customers in four counties and industrial customers in nine additional counties. The Commission under Chapter 366, Florida Statutes, regulates Chesapeake's Florida natural gas distribution operations. Chesapeake's wholly-owned natural gas transmission pipeline subsidiary, Eastern Shore Natural Gas Company, a Delaware corporation, regulated by the Federal Energy Regulatory Commission (FERC), transports and delivers natural gas to industrial and LDC customers located in Delaware, the Eastern Shore of Maryland and Pennsylvania.

#### STATUTORY BACKGROUND

9. The 1992 Florida Legislature adopted two statutes providing for the regulation of intrastate pipelines. One, the Natural Gas Transmission Pipeline Siting Act (NGPSA), ss. 403.9401-9425, Florida Statutes, applies to the construction and operation of intrastate pipelines. The NGPSA<sup>1</sup>, which is administered by the Florida Department of Environmental Protection (FDEP), provides for certification of such pipelines, via one-stop shopping for all permits and licensing required by all state and local agencies through a highly structured process, in which a pipeline's routes or corridors are determined. As a subset of this process, the FPSC is responsible to determine the need for the pipeline, and the location of its commencement and terminus. The FPSC is required to render its decision on the need determination within 90 days after the application is filed. Although not specifically required as

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<sup>1</sup>The NGPSA is implemented by Chapter 62-807, Florida Administrative Code.

such, the need determination by the FPSC is expected to be issued before the filing for certification. The NGPSA provides that no construction of a natural gas transmission pipeline<sup>2</sup> may be undertaken without first obtaining certification by FDEP. This requirement does not apply to three categories of natural gas transmission pipelines, unless the applicant has elected to apply for such certification:

- a. those which are less than 15 miles in length or which do not cross a county line;
- b. those for which a certificate of public convenience and necessity has been issued under s.7(c) of the Natural Gas Act, 15 USC s.717, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act;
- c. those that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or a special district created by special act to distribute natural gas.

Natural gas transmission pipelines falling within any of these three exempt

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<sup>2</sup>A “natural gas transmission pipeline” is defined under the NGPSA as “the transmission pipeline and any related equipment, facility, or building used in the transportation of natural gas or its treatment or storage during the course of transportation. The term does not include a gathering line, but the term includes a transmission pipeline that transports gas from a gathering line or a storage facility to a distribution center or a storage facility or that operates at a hoop stress of 20 percent or more of specified minimum yield strength, as defined by federal law, or that transports gas within a storage field.” Sec. 403.9403(16), Fla. Stat.

categories remain subject to all otherwise applicable permitting requirements. Pipelines within the first two of the three exempt categories are required to notify FDEP prior to the start of construction, for informational purposes only.

10. Sunshine Pipeline Partners initially utilized the foregoing regulatory framework to facilitate the permitting of a proposed intrastate pipeline. The project as designed consisted of 502 miles of mainline and laterals having a transmission capacity of 250,000 Mcf per day through its first three years of service. An application was duly filed with the FPSC for a determination of need in March, 1993.<sup>3</sup> Florida Gas Transmission (FGT) principally opposed the application. A hearing before the FPSC was held in May, 1993, and the FPSC issued an Order determining the need for the pipeline in July, 1993. The Order was unsuccessfully appealed to the Florida Supreme Court, which upheld the constitutionality of the NGPSA and found that the record sufficiently supported the FPSC's order. Florida Gas Transmission Co. v. Public Service Commission, 635 So.2d 941 (Fla. 1994). However, the project was withdrawn prior to completion of the certification proceedings. According to the FDEP website, ([www.dep.state.fl.us/siting/programs/natgas](http://www.dep.state.fl.us/siting/programs/natgas)), no projects have been certified as yet under the NGPSA.
11. The 1992 Florida Legislature also adopted the Natural Gas Transmission Pipeline Intrastate Regulation Act (NGTPIRA), ss. 368.101-112, Florida Statutes, under which authority to regulate the rates of intrastate pipelines is conferred on the FPSC. NGTPIRA provides for ratemaking in a manner substantially different from

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<sup>3</sup>Chesapeake Utilities Corporation, Petitioner's parent company, appeared as an intervener in the docket, in support of the application.

that provided for a “public utility”<sup>4</sup> under Chapter 366, Florida Statutes. Within certain parameters, the NGTPIRA provides for negotiated rates between the intrastate pipeline and its customers.

12. Sec. 368.105(1) requires all rates or service of intrastate pipeline companies to be subject to schedules, rules and regulations on file with the FPSC. Such filing “may include minimum and maximum rates for any service offered.”
13. Sec. 368.105(2) provides that it is the duty of the FPSC “to ensure that all rates and services” of any natural gas transmission company are “just and reasonable and are not unreasonably preferential, prejudicial, or unduly discriminatory.” Rates must be “sufficient, equitable, and consistent in application to each class of customers” and the FPSC may treat two or more customers served as a single class if the FPSC “considers that treatment to be appropriate.”
14. Sec. 368.105(3) further provides in part that

Rates charged or offered to be charged by any natural gas transmission company for transactions with other natural gas transmission companies, transportation customers, and industrial, power plant, and other similar large-volume contract customers, but excluding direct sales-for-resale to gas distribution utilities at city gates, unless suspended and modified pursuant to this subsection, are deemed to be just and reasonable and approved by the commission, if both the natural gas transmission company and the customer file an affidavit with the commission affirming that:

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<sup>4</sup>In pertinent part, a “public utility” is defined by Sec. 366.02(1), Florida Statutes, as “...every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying...gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include...any natural transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers ....” The term “natural gas transmission pipeline company” is not defined in Chapter 366.

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

15. However, Sec. 368.105(4) provides that the standard contained in (3)(a) above shall not apply to “rates charged or offered to an affiliated<sup>5</sup> pipeline or to an entity in which the natural gas transmission company has an ownership interest.” Furthermore, none of the provisions of (3) above apply “if a complaint is filed with the commission by a natural gas transmission company regarding the justness and reasonableness of rates under which such natural gas transmission company purchases gas or receives transportation from another natural gas transmission company.”

16. Sec. 368.105(6) further provides

A natural gas transmission company shall provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory; however, a natural gas transmission company shall not be required to provide transmission access to a person at rates that are not just and reasonable. A natural gas transmission company shall construct any necessary pipeline lateral facilities and related facilities for interconnection with a customer if that customer agrees to fully compensate the

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<sup>5</sup>“Affiliated” is defined “when used in relation to any person” to mean “another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.” Sec. 368.103(1), Florida Statutes.



natural gas transmission company for reasonable costs incurred. The commission shall resolve any controversy between the natural gas transmission company and a person desiring transmission access, including access availability, type of service, applicable rates, or interconnection costs.

17. Other provisions of Sec. 368.105 provide that the FPSC may suspend proposed rates within 45 days after their filing, and that such suspension shall not exceed 5 months after such filing; and that the FPSC may administratively approve any decrease in rates proposed by the company and agreed to by all parties directly affected, unless the FPSC finds that such decrease is not in the public interest.
18. Sec. 368.106(1) provides that except when a rate is deemed just and reasonable under Sec. 368.105(3) above, the natural gas transmission company may not charge an initial rate or increase its rates above the maximum rate on file unless it has filed a statement of intent with the FPSC no later than 60 days prior to the proposed effective date of the proposed initial or new maximum rate; the FPSC may for good cause waive such 60-day notice.
19. Sec. 368.106(2) provides that except when a rate is deemed just and reasonable under Sec. 368.105(3) above, the FPSC, on complaint filed by a person whose substantial interests are affected by the rate filed before such rate would have taken effect, shall order a hearing to determine whether the rate is just and reasonable; the FPSC may also order such hearing on its own motion.
20. Sec. 368.106(3) and (4) essentially provide for implementation of proposed initial rates or increased rates above the maximum rates on file, subject to refund, under procedures and within time frames somewhat analogous to traditional file-and-suspend rate-making.

21. The sole decisional law under the NGTPIRA consists of a 1993 FPSC Order Approving Initial Regulated Rates for Five Flags Pipeline Company, the ultimate parent of which was Sunshine Interstate Pipeline Partners, and a 1997 FPSC Order reaffirming the initially approved rates.<sup>6</sup> The Five Flags intrastate pipeline, originally constructed in 1972 and expanded in 1974, provided natural gas transportation service to customers in Santa Rosa and Escambia Counties in the Florida Panhandle. Prior to the passage of the NGTPIRA, the pipeline's rates were derived by settlement agreement and approved by the Federal Energy Regulatory Commission (FERC). FERC approved the company's request to subject the rates to FPSC jurisdiction under the NGTPIRA, with the conditions that the rates are no greater than that approved by FERC and that Five Flags file to obtain a new cost-based determination from the FPSC at least once every three years. The rates were supported by affidavits of the pipeline and the customers affirming the satisfaction of the requirements of Sec. 368.105(3), Florida Statutes, described hereinabove.

#### MARKET ENVIRONMENT

22. The demand for natural gas in most North American markets has significantly increased over the past decade. Customers representing all market segments select clean-burning natural gas for a variety of economic, environmental and operational reasons. Natural gas is widely recognized as a reliable and largely domestic fuel source. In the Petitioner's view, natural gas represents the best

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<sup>6</sup>In Re: Filing of Initial Regulated Rates by Five Flags Pipeline Company, 93 FPSC 11: 246 (11/18/93); In Re: Petition for Approval of Existing Firm and Interruptible System Transportation Rates by Five Flags Pipeline Company, 97 FPSC 5: 581 (5/28/97).

overall energy value for the majority of customers that would receive service through an intrastate pipeline. In Florida, the majority of new and re-powered electric generation projects in the state since 1990 have been fueled with natural gas. Florida's natural gas Local Distribution Companies (LDCs) have also been actively promoting gas usage to residential, commercial and industrial customers in their service areas over the same period.

23. Over the past decade many Florida regulated and municipal LDCs have invested to expand gas distribution systems to areas previously not served by natural gas. Chesapeake's LDC installed a distribution system in Citrus County, Peoples Gas extended service to southwest Florida from Sarasota to Naples and Florida City Gas constructed new gas systems in Indian River and St. Lucie counties, to name a few. The substantial expansion of gas distribution systems is principally designed to keep pace with Florida's rapid population growth. A recent article (March 2005) in the Lakeland Ledger noted that in-migration to Florida reached approximately 1,100 people per day in 2004. To accommodate such growth the homebuilding industry has been working at record pace. The University of Florida's Bureau of Economic and Business Research (BEBR) forecasts new home starts will continue at well over 100,000 units per year over the next ten years.
24. Many of the traditional development areas, especially in south Florida, are building out. Others are facing environmental and local service limitations (zoning, transportation and utility infrastructure, impact fees, etc.) that restrict the number of building lots. Throughout the state developers are acquiring land in locations that heretofore were not considered for development. As an example, the Centex

Corporation, a major national homebuilder, recently purchased several hundred acres in western Martin County close to Indiantown, Florida. According to an article in the Palm Beach Post (May 2005) Centex currently plans to build over 5,000 homes in Indiantown in the next fifteen years. In our experience, commercial and industrial projects typically follow the construction of new housing developments.

25. A reliable measure of the increase in gas demand in Florida can be observed by the increase in interstate natural gas pipeline capacity serving Florida. Florida Gas Transmission (FGT) is currently pursuing the expansion of its pipeline system (the Phase VII expansion project). Phase VII will be FGT's fifth system expansion since 1993. Over that period, FGT has increased its delivery capacity into Florida from approximately 975 million cf/day to over 2 billion cf/day. In 2002 a new trans-Gulf pipeline, Gulfstream Natural Gas System, was completed bringing approximately 1.1 Bcf/day of additional capacity from Mobile Bay to Port Manatee south of Tampa and continuing across central Florida to western Osceola County. Gulfstream completed its first expansion project earlier this year, extending service across Florida to Martin County. In addition, the Cypress pipeline is scheduled to begin service in 2007. Cypress will enable delivery of approximately 220,000 cf/day of Liquefied Natural Gas (LNG) from the Elba Island, Georgia terminal into the FGT system in the Jacksonville area. The Commission recently approved (by Order No. PSC-05-0721-FOF-EI) a long-term LNG supply contract and corresponding pipeline capacity contracts for Progress Energy Florida to fuel its Hines Unit 4 facility in Polk County. Several proposed pipeline projects to provide LNG service from the

Bahamas are in various stages of permitting and market development. Upon completion, the project(s) would be capable of delivering approximately 800,000 cf/day of LNG from the terminal site(s) in the Bahamas to the east coast of Florida and into FGT's pipeline. Total natural gas pipeline capacity into Florida from the FGT and Gulfstream pipelines has more than tripled over the past decade. Continued growth in Florida and the probable addition of substantial LNG supply sources will undoubtedly contribute to further expansion of gas transmission systems throughout the state.

26. The increased demand for natural gas in Florida and the accompanying expansion of interstate pipeline and local distribution facilities, in Petitioner's view, may provide opportunities for investment to deliver gas service to certain niche markets. For example, there are three types of projects that are contemplated.
  - a. Construction of facilities originating at a FERC regulated interstate pipeline and extended to serve one or more new or existing industrial or electric generation customers.
  - b. Construction of facilities originating at a FERC regulated interstate pipeline and extended to interconnect with a FPSC regulated or municipal LDC. These projects could provide service to areas of new LDC distribution expansion or provide additional gas supply or pressure support to an existing distribution system.
  - c. Construction of facilities that interconnect one LDC with another LDC.
27. While the primary interstate pipelines serving Florida have been expanding mainline facilities both volumetrically and geographically, they have constructed few laterals

to serve what the interstate pipelines' consider small volume industrial customers. For example, Gulfstream has provided service taps exclusively to large volume electric generators and LDCs. To our knowledge, Chesapeake's Florida Division is the smallest volume Gulfstream customer, with contracted capacity quantities of 10,000 Dt/day.

28. Petitioner believes there are four primary factors that affect the feasibility and practicality of small volume customers (approximately 1000 Dt/day or less) committing to a direct interstate pipeline connection.
  - a. In situations where the pipeline seeks to recover the cost of its system expansion from the customer, the cost of a tap, gate station, pipeline and related interconnection facilities are expensive, virtually eliminating this option for the potential customers. Another significant contributor to the cost of interstate pipeline system expansion projects is the state and Federal tax gross-up recovered on capital expansion costs.
  - b. In situations where the pipeline bears the system expansion costs, the customer will typically be required to commit to a long-term (20-year) agreement for pipeline capacity, usually at prevailing tariff rates. Because many industrial facilities are unwilling to execute transportation agreements of this length, these potential customers rarely utilize this option. Many industrial customers instead operate plants where the use of secondary market capacity is acceptable. Over the past several years such secondary capacity has been readily available, in many cases trading at significant discounts to the primary firm recourse rate. Some industrial customers also

have alternate fuel switching capabilities that further enhance the attractiveness of the secondary capacity market. In the event capacity is not available for a short period such customers would be able to switch to their alternate source. Many customers are also comfortable contracting with third party marketers for term capacity deliveries, again at discounts to tariff rates. In these situations customers may benefit by avoiding a direct interstate pipeline connection and an extended term capacity agreement.

- c. Expanding industrial customer access to unbundled transportation service over the past decade has resulted in increased customer purchasing sophistication. In today's market environment such customers approach gas service negotiations with the full intention of customizing the rates and service conditions to meet their specific operational or economic situation. However, there is little incentive for FERC-regulated pipelines to structure "off-tariff" arrangements with small volume customers. FERC-regulated pipelines have a limited ability to adjust their capacity reservation tariff recourse rates for primary firm capacity, especially if they are extending facilities. Some FERC pipeline service agreements (Gulfstream has several such agreements) also include "favored nation" clauses where any special rate or service arrangement for one customer may have to be provided to many customers, to the economic detriment of the pipeline. The pipeline's limited flexibility and/or motivation to adjust capacity recourse rates coupled with the long-term contract requirements of most FERC pipelines, as noted above, frequently eliminate this option for small volume industrial customers

to directly connect to interstate pipelines.

- d. Industrial and electric generating facilities could construct their own pipelines and connect to gas transmission pipelines. However, in Petitioner's view, most industrial customers have had little interest in investing capital outside of their primary business function. For most industrial customers, the desired payback threshold for capital investments is typically much shorter than can be achieved through this option. In addition to the economic constraints associated with pipeline construction, customers usually do not want to be responsible for the ongoing operation and maintenance of the pipeline facilities as regulated by Federal DOT standards.

29. Therefore, since the inception of open access, interstate pipelines in Florida have referred potential small volume customers to other service providers. From a regulatory perspective, two Florida alternatives exist: (i) service provided through an LDC gas system, (ii) or service provided through an intrastate transmission pipeline. To date, no intrastate pipelines have materialized (other than the short period Five Flags was operational as an intrastate pipeline). The small volume industrial customers have worked with LDCs to provide gas service or selected an alternate fuel such as fuel oil. Regulated and municipal gas utilities interested in serving this load have designed Special Contract and other mechanisms to adopt "off-tariff" rates and service terms. In today's marketplace, it is Petitioner's belief that Florida LDCs add virtually no new industrial accounts at tariff rates. The Commission has supported regulated LDC efforts to serve these customers by regularly approving Special Contract filings with such



customized rates and terms of service.

30. The increased customization of industrial rates and service terms places LDCs in an increasingly difficult position. For any service provider, the level of risk in serving industrial customers is inherently higher than residential and commercial accounts. Extending service to an industrial customer frequently requires significant capital investment. If the customer terminates or reduces service, the LDC's investment could become stranded, potentially exposing the remaining ratepayers to pay for facilities. Investor-owned LDCs also potentially expose their shareholders to risk in the event the Commission does not allow recovery of a stranded LDC investment. Additionally, LDCs serving industrial customers with off-tariff discounts and custom service terms expose themselves to claims of discriminatory treatment from those long-term existing customers who are receiving tariff service. Pressure from these customers to obtain the "special terms" could put pressure on the LDCs' overall cost recovery, necessitating rate adjustments for smaller volume customers. An intrastate pipeline, operating under the NGTPIRA and NGPSA statutes and applicable Commission rules, would be better able to structure creative and flexible agreements to address such issues than an LDC or interstate pipeline applying their respective tariffs. Absent the ability of an intrastate pipeline to offer such arrangements, potential industrial customers might not select natural gas and instead burn imported oil or another fuel.
31. The Petitioner is aware of a potential gas expansion project that illustrates many of the above points. There is an industrial plant in Florida that is adding new

processing equipment and is investigating the economics of converting existing equipment from oil to natural gas. The plant is twenty miles from an LDC gas system, but relatively close to an interstate pipeline. The projected annual consumption for the plant is estimated to be 1,000 Dt/day. Based on conversations with management, it appears that the cost for the plant to build facilities that connect to the interstate pipeline does not meet management's desired capital payback threshold. Moreover, the customer's parent company has not heretofore executed a transportation agreement at any of its other facilities that extends beyond ten years.

32. In the Petitioner's view, service to the above plant could be provided at an economically acceptable cost level to the customer while achieving an appropriate rate of return on Petitioner's investment. However, there are risks associated with serving the customer. Certain segments of Florida's manufacturing and industrial base are retracting as a result of economic pressures and foreign competition. Some of these facilities have terminated operations, while others have changed the character of their operations, resulting in substantial adjustments in fuel use. In fact, the equipment additions at said plant are occurring due to the termination of certain functions at another plant site and the consolidation of those functions at the plant used in the above example. Although the manager of the plant contacted by Petitioner indicates no plans to cease operations in the near term, there is no guarantee that the plant will continue to operate. The plant currently burns fuel oil and could switch back to oil in the future, adding to the potential risk to the service provider. Constructing gas facilities to serve the plant is the type of investment that poses significant risks to an LDC. The potential returns can be substantial, however,

the potential risk of losing the customer, either through fuel switching or plant closure, and stranding the investment, is of concern to LDC management. However, the Petitioner believes it would be able to profitably serve similarly situated industrial or electric generating customers, under terms acceptable to both parties, under the NGTPIRA regulatory framework.

33. Opportunities may also exist to build intrastate pipelines to deliver gas to LDCs serving the end-use customers in the LDCs' own expanding service territories. Some LDCs are capital-constrained and have limited capability to undertake significant system expansions to support system growth. Most LDCs have contracted for sufficient interstate pipeline capacity to meet their growth requirements over the next several years, thus they are able to deliver gas to the intrastate pipeline with existing interstate capacity. FERC has continued to mandate increased pipeline operating flexibility by requiring reasonable backhaul rates, capacity segmentation and similar provisions that enable shippers to optimize the use of existing capacity assets. In this situation, neither the LDC nor the interstate pipelines have any incentive to add interconnections. An intrastate pipeline can fill the void, bringing the capital to pay for interstate pipeline interconnections and building pipelines to the LDC growth areas without contracting for additional interstate pipeline capacity. Intrastate pipelines can also promote the efficient and economical use of interstate pipeline capacity to the ultimate benefit of the LDC end-use customers.
34. Construction of pipelines that provide a "mid-stream" service between two or more LDCs may provide additional investment opportunities for intrastate transmission

companies. There already exist numerous interconnects between LDCs in Florida. Most of these interconnects have occurred when the territory of an LDC requiring pressure or volume support at the terminal end of part of its distribution system is in close proximity to another LDC willing to provide such support. The Petitioner believes that the construction of more substantial pipeline facilities between LDCs to support distribution system growth and service reliability will be possible in the future. An intrastate pipeline may be able to construct and operate such facilities at a cost significantly lower than would result if both LDCs interconnected to an interstate pipeline and constructed independent primary feeder mains.

35. Given the aforementioned opportunities, Petitioner is interested in serving customers as an intrastate transmission pipeline. Petitioner desires to file for Commission approval a tariff for intrastate pipeline operations, submit Service Agreements for individual customers and otherwise operate in compliance with NGTPIRA, as provided by statute and rule. To obtain a definitive determination of Petitioner's ability to operate in Florida as an intrastate transmission company (which Petitioner deems essential as a prerequisite to making the capital investment necessary to launch its operations), Petitioner is seeking a declaratory statement from the Commission.

#### RECOGNITION OF PETITIONER UNDER NGTPIRA

36. The Petitioner has been incorporated, as a wholly owned subsidiary of Chesapeake, for the avowed purpose of acting as a natural gas transmission company, pursuant to the NGTPIRA, Section 368.101, Florida Statutes, et seq., provided that the Commission recognizes that Petitioner would qualify for such status under Florida

law.

37. It is Petitioner's intent to serve, as described above, industrial, electric generation and other large volume accounts through contractual relationships. In addition, Petitioner would seek to establish a tariff, complete with recourse rates, general terms and conditions, service offerings, and any other information required by statute or rule.
38. There is no formal application process provided for under NGTPIRA, or under the rules the Commission has promulgated thereunder. See Rules 25-7.100, et seq., Florida Administrative Code.
39. While the Commission has on occasion been called upon to apply the NGTPIRA, there appears to be no Commission precedent that would lend clarity to the issue poised by the instant petition.
40. Section 368.103(4), Florida Statutes, defines "(n)atural gas transmission company" in pertinent part as
  - any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss 717 et seq.... Sec. 368.103(4), Fla. Stat.
41. The Act further defines the term "person" as "a natural person, corporation, partnership, association or other legal entity and its lessee, trustee, or receiver." Sec. 368.103(5), Fla. Stat.
42. The fundamental question is whether the fact that a parent corporation through certain divisions (most pertinently Chesapeake's Florida Division) "owns or operate

facilities primarily for the local distribution of natural gas” or, through its subsidiary, Eastern Shore Natural Gas Company, is in some aspects “subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss 717 et seq.” would pose an impediment to Petitioner, a separate wholly-owned subsidiary of Chesapeake, qualifying under the NGTPIRA as a natural gas transmission company.

43. It is Petitioner’s position that Sec. 368.103(4), Florida Statutes, does not include any prohibition against a corporation through its divisions engaged in part in business as LDCs, or through a subsidiary subject to FERC jurisdiction, from creating a wholly-owned subsidiary that would qualify as a natural gas transmission company under NGTPIRA.
44. Petitioner’s additional legal analysis of this matter is presented in a separate Memorandum of Law filed concurrently with this Petition, which is incorporated by this reference as though fully set forth herein.

#### INTRASTATE PIPELINE PROPOSED PARAMETERS OF SERVICE

45. The Petitioner recognizes that Florida law does not provide a clear distinction between the types of facilities that may be operated by LDCs as opposed to those that may be operated under NGTPIRA and NGPSA by natural gas transmission companies. As described earlier in this petition, some of the industrial customers potentially served by the Petitioner could, in some circumstances, receive service from an LDC. In an attempt to clarify Petitioner's objectives the following parameters have been developed within which Petitioner proposes to operate, in addition to

statutory and rule requirements:

- a. Petitioner would comply with all applicable regulations regarding affiliate transactions. To the extent services are provided to or received from Petitioner, an appropriate allocation of costs would be made by applying standards in keeping with the spirit of those established by the Commission's Code of Conduct (Rule No.25-7.072 F.A.C.) for Marketing Affiliates.
- b. Existing regulated distribution system customers of Chesapeake, excluding customers served through the Flexible Gas Service (FGS) tariff provision (under the FGS provision, if an FGS customer converts to service from an intrastate pipeline, the general body of LDC ratepayers would not be harmed), would not be eligible for service through the intrastate pipeline, unless specifically authorized by the Commission.
- c. Intrastate pipelines would interconnect with interstate pipelines, other intrastate pipelines and/or LDC systems and terminate at industrial, electric generation, other similar large volume customer locations, other intrastate pipelines and/or LDC systems.
- d. Petitioner would retain all earnings (as allowed under existing regulation) and would bear all the risks of the capital investment in the event of a customer default, plant closures or other similar events. The Petitioner would not have the ability to shift any of the risk to its other intrastate pipeline customers nor to its LDC affiliate or the customers thereof.

## SUMMARY OF POLICY BENEFITS OF INTRASTATE PIPELINES

46. There are several policy benefits that could result from recognizing the Petitioner as a natural gas transmission company under NGTPIRA:
- a. Commission policy has historically encouraged and supported LDCs in their efforts to expand natural gas facilities to serve greater numbers of Florida homeowners, businesses and industrial plants. Many Florida regulated LDCs have received Commission approval for mechanisms that provide alternatives to tariff rate schedules and terms of service. Among the mechanisms approved are Competitive Rate Adjustment clauses, Special Contracts and Flexible Gas Service tariff provisions. As the interstate pipelines transitioned to open access service and the majority of LDC industrial and non-residential customers migrated to unbundled transportation service, these mechanisms greatly improved the LDCs competitive ability to serve new customers. Commission policy has worked well during this transition from fully bundled service to today's more competitive environment. However, in Petitioner's view, as the gas marketplace continues to mature, Commission policy should likewise evolve by using the existing regulatory framework for intrastate pipelines to encourage continued gas expansion.
  - b. Gas supply and capacity markets are robust, with active trading among experienced parties, including most LDCs, industrial customers and electric generators. Sophisticated customers expect gas agreements to be tailored to



their individualized needs, rather than accepting traditional tariff terms. Competition among fuel types and among multiple service providers offer most industrial and electric generating customers sufficient fuel options to minimize the need for rigorous regulatory oversight of rates and terms of service. The NGTPIRA appears to appropriately consider the ability of such customers to negotiate rates and terms in their own best interest. Petitioner believes it is sound regulatory policy for the Commission to support the expansion of natural gas service to certain customers by intrastate transmission companies. Operating under the NGTPIRA, Petitioner would be able to provide customized gas service arrangements to customers by applying existing Florida-specific regulations.

- c. The NGTPIRA provides for negotiated rates between parties subject to meeting the tests prescribed by law. The Petitioner would anticipate that the forecast returns resulting from such negotiations would, in general, be greater than the overall system forecast returns typically allowed regulated LDCs. These higher forecast returns are appropriate given the higher risks frequently associated with the types of customers that would be targeted by Petitioner (large-volume industrials, customers with alternate fuel capabilities, etc.). The potential to earn higher than regulated LDC returns provides an incentive for intrastate pipelines to aggressively seek out opportunities for investment, furthering the expansion of gas service to Floridians.
- d. The risk inherent in serving certain customers is better managed outside of a

regulated LDC. Many of the “off-tariff” mechanisms currently used by LDCs to serve customers who require negotiated rates and flexible terms expose the LDC to atypical levels of risk. Evidence of the risk related to industrial customers is readily apparent from a review of the rate filings submitted to the Commission by Florida LDCs over the past ten years. Virtually all of these filings contain descriptions of significant load loss from large-volume industrial accounts that have closed or relocated overseas. In spite of this general trend, opportunities to serve large-volume customers continue to develop. Increasingly, LDCs face a dilemma when considering an industrial expansion. What is an appropriate level of risk and will the Commission allow recovery of stranded investment costs if the customer prematurely terminates service if revenues otherwise fail to fully recover costs? Attempting to remove the majority of risk from the deal through the requirement of credit security or other provisions (security deposit, letter of credit, etc.) from the customer frequently derails or terminates negotiations. Petitioner believes that the NGTPIRA offers an opportunity to craft creative agreements that include appropriate risk/reward provisions for the intrastate pipeline, without putting LDC ratepayers at risk.

- e. Petitioner believes that investing in regulated intrastate pipeline projects provide distinct advantages to all stakeholders. The customers served by the pipeline facilities would be afforded the protection of Commission oversight into the Petitioner’s rates and conditions of service. The Petitioner would be

able to execute deals that address market competition and provide flexible solutions to customer requirements, while continuing to operate in a Commission-regulated arena. Investing in intrastate pipelines is closely aligned with Petitioner's parent company's core regulated business operations and is consistent with its long-term strategic objectives. Finally, the Commission would gain the ability to conduct a need determination on specific large-scale intrastate pipeline projects and ensure that rates to all customers served by the pipeline are just and reasonable.

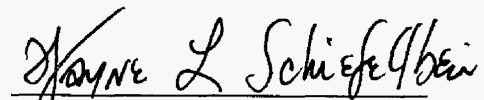
- f. Intrastate pipelines operated under the NGTPIRA and NGPSA could support the state's economic development efforts, especially in rural areas, by providing a preferred fuel source to industrial customers interested in locating in Florida.
- g. The Petitioner would bring substantial pipeline operations experience to any customer relationship. The Commission would be able to continue to monitor and enforce appropriate operational and safety standards under the Federal Department of Transportation Regulations, Section 191 and 192, and Chapter 25-12, Florida Administrative Code.
- h. The increased distribution of natural gas in Florida, especially for industrial and electric generation purposes, supports the reduction of foreign oil imports and contributes to improvements in the environment, benefiting all Florida citizens.
- i. Recognizing the Petitioner as an intrastate transmission company will

contribute to the continued development of a robust, competitive gas market in Florida. Providing industrial consumers and LDCs expanded options for receiving gas service strengthens the overall gas industry by keeping such services fairly and competitively priced. In Petitioner's opinion, given the amount of interest in the Florida gas market from numerous national energy companies, the NGTPIRA and NGPSA will eventually be viewed by many as an attractive method of serving industrial, generation and LDC customers.

RELIEF REQUESTED

Petitioner requests that the Commission: 1) Grant this Petition for Declaratory Statement; 2) Permit Petitioner to address the Commission at a regularly scheduled agenda conference in support of its position; 3) Issue a Declaratory Statement determining as a matter of law that Sec. 368.103(4), Florida Statutes, does not prohibit Petitioner from qualifying as a natural gas transmission company under NGTPIRA; and, 4) Grant such other relief as may be just and appropriate.

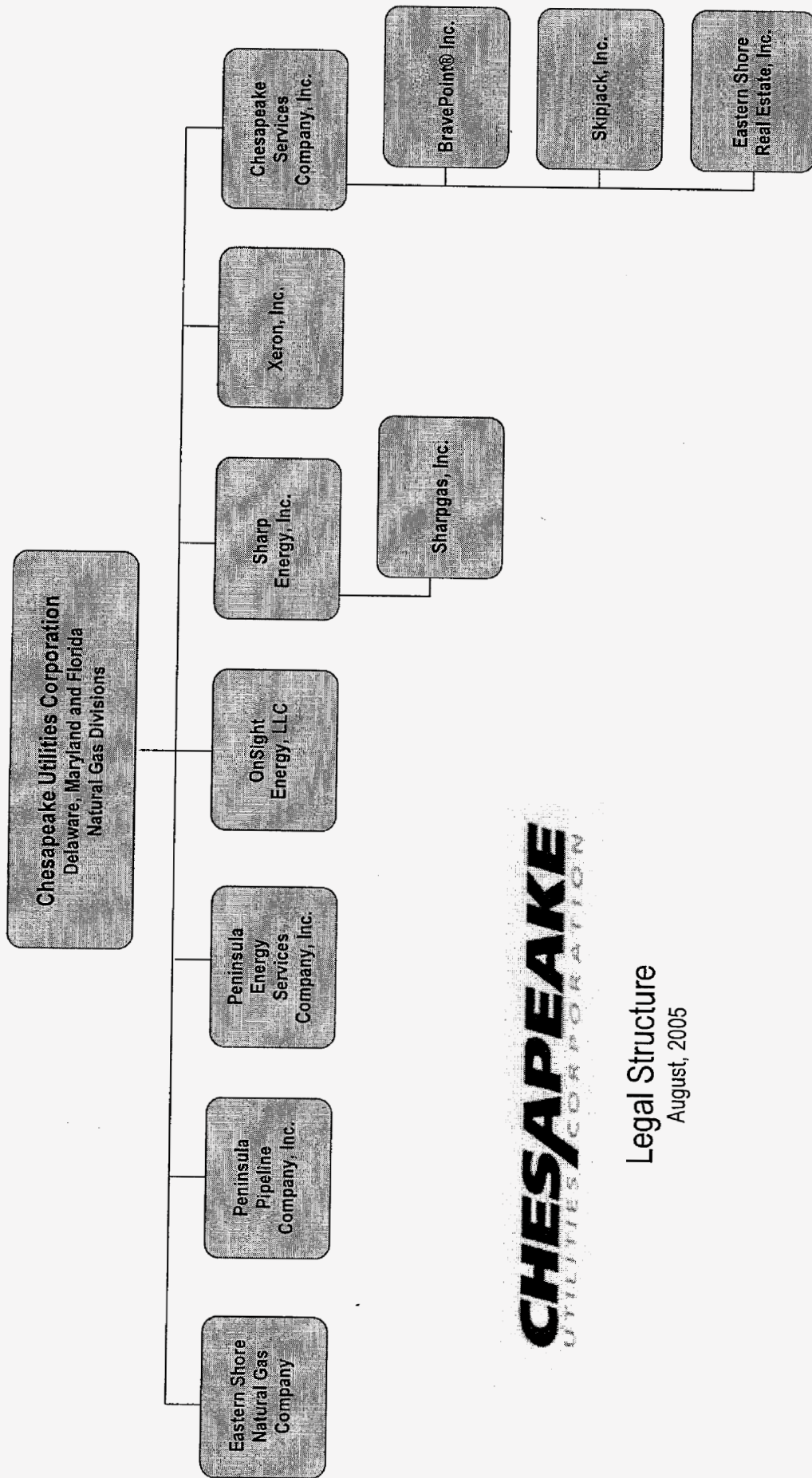
Respectfully submitted,



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# **EXHIBIT A**



Legal Structure  
August, 2005