

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of transportation service agreement with Florida Public Utilities Company by Peninsula Pipeline Company, Inc.	DOCKET NO. 20230032-GU ORDER NO. PSC-2023-0133-PAA-GU ISSUED: April 18, 2023
--	--

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TRANSPORTATION SERVICE AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

On March 2, 2023, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Transportation Agreement) between Peninsula and Florida Public Utilities Company (FPUC) (collectively, the parties). The purpose of the Transportation Agreement is to ensure continuance of gas service to FPUC after the impending acquisition by Peninsula of certain pipeline facilities in the immediate area of the City of Lake Wales in Polk County. Peninsula operates as an intrastate natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S).¹ FPUC is a local distribution company (LDC) subject to our regulatory jurisdiction pursuant to Chapter 366, F.S.

By Order No. PSC-07-1012-TRF-GP,² Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides gas transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without our prior

¹ Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

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

approval.³ However, Peninsula is requesting our approval of this proposed Transportation Agreement as it does not fit any of the criteria enumerated in the tariff for which our approval would not be required.⁴ The parties are subsidiaries of Chesapeake Utility Corporation, a Delaware corporation, and agreements between affiliated companies must be approved by us pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

In 1999, we approved a pipeline lease agreement (1999 agreement) between FPUC (Florida Division of Chesapeake Utilities Corporation at the time) and Citrusuco North America, Inc. (Citrusuco) for pipeline facilities in the Lake Wales area.⁵ Citrusuco owns and operates a citrus processing plant in Lake Wales. In 1999, Citrusuco constructed a natural gas pipeline that provides access for the Citrusuco processing plant to the Florida Gas Transmission (FGT) interstate natural gas pipeline. The Citrusuco-owned pipeline runs from the FGT Lake Wales gate station to Citrusuco's meter at the entrance of its citrus processing plant.

Pursuant to the 1999 agreement, Citrusuco owns the pipeline and leases it to FPUC for operation and maintenance. FPUC receives certain quantities of natural gas at the Lake Wales Gate Station for Citrusuco's use and transports the natural gas on the pipeline to Citrusuco's facility. In addition, FPUC accesses the pipeline to serve customers in the Lake Wales area. The 1999 agreement expired in 2019 and has been renewed on a monthly basis.

Peninsula has been in discussions with Citrusuco to acquire the pipeline from Citrusuco through a Pipeline Purchase and Sale Agreement. This purchase agreement between Peninsula and Citrusuco, which contains a negotiated purchase price, does not require our approval. Upon acquisition, Peninsula would maintain and operate the pipeline and provide transportation service to FPUC pursuant to the proposed Transportation Agreement. Citrusuco would continue to receive natural gas service from the pipeline. Peninsula stated that the closing of the purchase agreement is contingent on our approval of the proposed Transportation Agreement.

The proposed Transportation Agreement and project map are shown as Attachments A and B to this order. Pursuant to the Transportation Agreement, FPUC will continue to utilize the Citrusuco pipeline system to serve its customers in and around Lake Wales, Florida. On March 8, 2023, our staff had an informal conference call with Peninsula and FPUC regarding the petition. During the evaluation of the petition, staff issued a data request to the parties for which responses were received on March 13, 2023.⁶ Peninsula requested expedited approval of the proposed Transportation Agreement and that we consider it at our April 4, 2023 Agenda Conference. We have jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

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

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

⁵ Order No. PSC-99-2106-PAA-GU, issued October 25, 1999, in Docket No. 991168-GU, *In re: Petition by the Florida Division of Chesapeake Utilities Corporation for approval of CTS Gas Transportation Service Agreement with Citrusuco North America, Inc.*

⁶ Document No. 02200-2023.

Decision

Proposed Transportation Service Agreement

The parties have entered into the proposed firm Transportation Agreement to enable FPUC to continue to serve natural gas customers in and around the area of Lake Wales once Peninsula has acquired the Citrusuco pipeline system.

The proposed Transportation Agreement specifies an initial term of 20 years and thereafter shall be extended on a year-to-year basis, unless either party gives no less than 90 days of written notification of termination. If either party desires to negotiate modifications to the rates or terms of this Transportation Agreement, they may do so no less than 120 days prior to expiration of the current active term. The proposed Citrusuco pipeline acquisition is discussed below and the project map depicting the pipeline is Attachment B to this order.

Citrusuco Pipeline Acquisition

The Citrusuco pipeline consists of approximately 11 miles of 8-inch steel pipeline and associated facilities. The pipeline runs from the FGT Lake Wales gate station to Citrusuco's meter at the entrance of its citrus processing plant.

In the petition, Peninsula stated that it has negotiated an acquisition agreement with Citrusuco for the Citrusuco pipeline system and that the closing of the pipeline acquisition agreement is contingent on our approval of the proposed Transportation Agreement. If the proposed Transportation Agreement is approved, Peninsula stated that it will take over ownership of the pipeline, as well as operation and maintenance of the facilities from FPUC. Peninsula will provide service to FPUC pursuant to the proposed Transportation Agreement. In response to staff's data request, the parties explained that the Citrusuco pipeline falls within the portfolio of projects typically operated by Peninsula, instead of FPUC.

The parties stated that after the closing of the acquisition, FPUC will serve Citrusuco for six years pursuant to the Commission-approved Contract Transportation Service Rider which allows FPUC to provide reduced rates to commercial or industrial customers with alternate fuel capabilities. Afterwards, FPUC asserts that Citrusuco would be served under a standard rate schedule.

Anticipated System Benefits

The parties assert that the proposed Transportation Agreement will enable FPUC to continue to obtain gas supply from FGT upon Peninsula's acquisition of the Citrusuco pipeline. In response to staff's first data request, FPUC stated that it believes there is too much risk involved in leasing key facilities from an unrelated entity such as Citrusuco.⁷ FPUC believes that Peninsula's ownership of the pipeline will protect the general body of ratepayers from potential unforeseen price increases or service challenges tied to a leasing arrangement. FPUC stated that the Citrusuco pipeline is a key strategic asset for FPUC's gas supply and operations in the City of Lake Wales. Additionally, FPUC stated that it anticipates growth in the immediate area of the

⁷ Document No. 02200-2023.

pipeline, and that Peninsula owning the pipeline would position FPUC to meet the anticipated growth.

Furthermore, the parties asserted that purchasing the existing pipeline through a negotiated purchase price would be less costly than installing a new, separate pipeline to serve FPUC's customers. FPUC estimated that it would cost approximately \$15.46 million to build another, similar feed to its Lake Wales system. By instead acquiring the existing pipeline from Citrusuco, Peninsula would be avoiding additional costs, therefore reducing the total cost to be recovered from FPUC's general body of ratepayers.

Negotiated Monthly Reservation Payments to Peninsula

The parties assert that the negotiated monthly reservation charge contained in the proposed Transportation Agreement is consistent with market rates, because the rates are substantially the same as rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. The parties assert that Peninsula will recover the purchase price of the pipeline from Citrusuco through the monthly reservation charge (confidential) to FPUC as shown in Exhibit A to the proposed Transportation Agreement.

FPUC is proposing to recover its payments to Peninsula through Purchased Gas Adjustment (PGA) and swing service rider mechanisms. The PGA allows FPUC to periodically adjust the price of natural gas supplied to its customers to reflect the actual cost of gas purchased and delivered on behalf of the customers. The swing service rider allows FPUC to recover intrastate capacity costs from their transportation customers and is a cents per therm charge that is included in the monthly customer gas bill of transportation customers.

Conclusion

Based on the petition and the parties' responses to our staff's data request, we find that the proposed Transportation Agreement is reasonable and meets requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FPUC's current and potential future customers by ensuring that there is a continuous supply of natural gas to the City of Lake Wales. Therefore, we approve the proposed Transportation Agreement between Peninsula and FPUC dated March 1, 2023.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed firm transportation service agreement dated March 1, 2023 between Florida Public Utilities Company and Peninsula Pipeline Company, Inc., is approved. The proposed Transportation Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Transportation Agreement benefits FPUC's current and potential future customers by ensuring that there is an uninterrupted supply of natural gas to Lake Wales, Florida. It is further

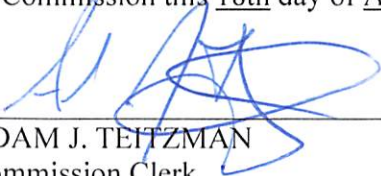
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

ORDER NO. PSC-2023-0133-PAA-GU
DOCKET NO. 20230032-GU
PAGE 5

close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of April, 2023.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MRT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 9, 2023.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 28 day of February, 2023, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company" or "PPC"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper" or "FPUC"). PPC and FPUC are sometimes referred to herein individually as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, Company is engaged in discussions to acquire a pipeline system from Citrusuco North America, Inc. ("Citrusuco") in Lake Wales, Florida which extends from start point at the Florida Gas Transmission ("FGT") Lake Wales gate station to Citrusuco's meter at the front entrance of its citrus processing plant ("Citrusuco Pipeline System"); and

WHEREAS, FPUC currently utilizes said Citrusuco Pipeline System to serve FPUC distribution customers in the area under a separate agreement with Citrusuco that is currently month-to-month; and

WHEREAS, Company intends to execute a Pipeline Purchase and Sale Agreement with Citrusuco North America, Inc., a Delaware corporation ("Purchase and Sale Agreement") to acquire and operate the Citrusuco Pipeline System; and

WHEREAS, Shipper desires to obtain Firm Transportation Service ("FTS") from Company in the event Company acquires the Citrusuco Pipeline System; and

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

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

ARTICLE I
DEFINITION

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

ARTICLE II
QUANTITY & UNAUTHORIZED USE

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

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

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

ARTICLE III
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be assessed in accordance with the terms and conditions set forth herein as of the Effective Date (as defined in Section 4.1 below).

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

3.3 If, at any time after the Execution Date (as defined in Section 9.3 hereof) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional tax charges (including, without limitation, income taxes and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

3.4 If, at any time after the Execution Date and throughout the term of this Agreement, the Company is required by any Governmental Authority asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

ARTICLE IV
TERM AND TERMINATION

4.1 Subject to all other provisions, conditions, and limitations hereof, the term of this Agreement for purposes of performance by the Parties shall commence on the date of execution of the Purchase and Sale Agreement ("Effective Date") and shall continue in full force and effect for an initial period of twenty (20) years from the Effective Date ("Initial Term"). Thereafter, the Agreement shall be extended on a year-to-year basis ("Renewed Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the Initial Term or Renewed Term (jointly, "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the Parties' respective rights under applicable law or in the event Company does not close on the Citrusuco Pipeline System or by September 1, 2023, in which case this Agreement shall terminate automatically.

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

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

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

ARTICLE V
COMPANY'S TARIFF PROVISIONS

5.1 Company's Tariff approved by the Commission, including any amendments

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

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

ARTICLE VI
REGULATORY AUTHORIZATIONS AND APPROVALS

6.1 As of the Effective Date of this Agreement, Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's Tariff.

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

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

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

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

ARTICLE VIII
SCHEDULING AND BALANCING

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

8.2 The parties hereto recognize the desirability of maintaining a uniform rate

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

ARTICLE IX
MISCELLANEOUS PROVISIONS

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

Company: Peninsula Pipeline Company, Inc.
500 Energy Lane, Suite 200
Dover, Delaware 19901
Attention: Contracts

Shipper: Florida Public Utilities Company
208 Wildlight Avenue
Yulee, Florida 32097
Attention: Contracts

9.2 **Headings.** All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the Parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

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

9.4 **Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the Parties expressly acknowledge that the limitations on amendments to this

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

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

9.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either Party, the Parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.

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

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

9.9 Assignment and Transfer. No assignment of this Agreement by either Party may be made without the prior written approval of the other Party (which approval shall not be unreasonably withheld) and unless the assigning or transferring Party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon such assignment or transfer, as well as assumption of the duties and obligations, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and the assumption of duties and obligations.

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each Party shall proceed with diligence to file any

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either Party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either Party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either Party from performing hereunder, then neither Party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the Parties, including, but not limited to, the relative economic position of, and risks to, the Parties as reflected in this Agreement, then, subject to the provisions of Sections 3.3 and 3.4 of this Agreement, the Parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the Parties as reflected in this Agreement as of the Execution Date. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.3 or 3.4 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of firm transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.
- (ii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120)

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE
days prior written notice to Shipper.

9.11 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either Party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any Party who has signed it.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

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

COMPANY
Peninsula Pipeline Company, Inc.

By: Marissa Stipa
Marissa Stipa

SHIPPER
Florida Public Utilities Company

By: Bill Hancock
Bill Hancock

Title: Director

Title: Assistant Vice President

Date: March 1, 2023

Date: March 1, 2023

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

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

EXHIBIT A

FIRM TRANSPORTATION SERVICE AGREEMENT BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

FLORIDA PUBLIC UTILITIES COMPANY

<u>Description of Transporter Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>
<u>Florida Gas Transmission- Lake Wales gate station</u>	<u>Various delivery points terminating at or near Highway 60 and Dude Ranch Road</u>

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

MHTP: [REDACTED] %

Monthly Reservation Charge: [REDACTED] ([REDACTED]/Dekatherm/day). This charge is subject to adjustment pursuant to the terms of this Agreement.

