

ORIGINAL

MEMORANDUM

TO: Ms. Blanco Bayo  
PSC Clerk

FROM: Wayne L. Schiefelbein  
Of Counsel

RE: Chesapeake Utilities Corporation  
Our File No. 37019.14

DATE: November 20, 2002



021174-GU

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On behalf of the Florida Division of Chesapeake Utilities Corporation, enclosed for filing are an original and 15 copies of a Petition for Approval of Special Contract with The Minute Maid Company, a Division of The Coca-Cola Company. I have also included one copy to be date stamped and returned to me.

**PLEASE OPEN A DOCKET IN THIS MATTER.**

If you have any questions, please feel free to call.

WLS/dcr  
Enclosures  
cc: Wayne R. Makin (w/enclosures)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Florida Division  
of Chesapeake Utilities Corporation  
for Approval Of Special Contract  
with The Minute Maid Company,  
a Division of The Coca-Cola Company.

021174-GU

PETITION FOR APPROVAL OF SPECIAL CONTRACT WITH  
THE MINUTE MAID COMPANY, A DIVISION OF THE  
COCA-COLA COMPANY.

The Florida Division of Chesapeake Utilities Corporation (the Company), by and through its undersigned counsel, and pursuant to Section 366.06, Florida Statutes, petitions the Commission for approval of a Special Contract with The Minute Maid Company, a Division of The Coca-Cola Company (Minute Maid), and in support thereof states as follows.

1. The name and address of the petitioner is:

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

2. The name, address, and telephone and fax numbers of the person authorized to receive notices and communications with respect to this petition is:

Wayne L. Schiefelbein  
Of Counsel  
Rose, Sundstrom & Bentley, LLP  
2548 Blirstone Pines Dr.  
Tallahassee, Florida 32301  
(Ph) 850-877-6555  
(Fax) 850-656-4029

DOCUMENT NUMBER DATE

12758 NOV 20 08

FPSC-COMMISSION CLERK

Attorneys for Chesapeake Utilities Corporation, Florida Division

3. The Company is a natural gas distribution utility subject to the regulatory jurisdiction of this Commission as prescribed in Chapter 366, Florida Statutes. Its substantial interests will be affected by the Commission's disposition of this petition in that such disposition will determine whether the Florida Division will be permitted to provide gas transportation service on terms agreeable to it and Minute Maid.
4. Minute Maid is currently constructing a bottling plant that they will then own and operate in the city of Auburndale in Polk County, Florida. Natural gas will be used in the bottling process.
5. The Company is constructing the necessary distribution infrastructure and connecting into Minute Maid's bottling facility, for the purpose of receiving natural gas purchased by Minute Maid from gas suppliers and delivered for its account at various Company Gate Stations in the Auburndale area. The Company's facilities are expected to be in service in the first quarter of 2003. These facilities are designed to provide service to the bottling plant.
6. The Company and Minute Maid have entered into a Special Contract, subject to Commission approval. A copy of the agreement is appended hereto as Exhibit 1. The Company would thereunder receive certain quantities of natural gas at its various Gate Stations in the Auburndale area for Minute Maid's account, transport such quantities through its facilities, and redeliver same to Minute Maid's bottling plant in accordance with the terms and conditions of the Agreement.
7. The Company's tariff provides for Special Contracts in its Service Options section (Original Sheet No. 36), as follows:

Any non-residential customer who, at the sole option of the Company, and with the approval of the Commission, receives general sales or transportation service from the Company under written contractual

terms and conditions other than those set forth in the Company's approved tariff.


8. The Special Contract has an initial term of fifteen (15) years.
9. During the initial term of the Agreement, Minute Maid would pay to the Company a Transportation Rate of \$0.20 per Dekatherm. The Special Contract recognizes that the Transportation Rate established thereunder is subject to the continuing jurisdiction of the Commission.
10. The annual transportation revenues derived from the contract would enable the Company to more than recover the fully allocated cost of serving Minute Maid. The Cost of Service Study appended hereto as Exhibit 2 demonstrates this. As is shown in the study, the estimated \$14,681 in total annual operating costs will be fully recovered and will provide a return on the Company's net investment through the projected transportation revenues of \$32,850 per year for the fifteen-year service agreement. The Agreement clearly generates revenues in excess of the cost to serve, thereby providing benefits to the general body of ratepayers.
11. The agreement specifies that Minute Maid's facility is subject to the applicable provisions of the Company's Curtailment Plan, which has been previously furnished to the Commission. A copy of the current Curtailment Plan is attached as Exhibit 3 hereto.
12. The Company asks that the Commission approve the Agreement with Minute Maid submitted herewith as a special contract under Rule 25-9.034(1), Florida Administrative Code.
13. The Company is entitled to reasonable compensation for the service rendered, and the Commission has the authority to approve rates to provide such compensation, pursuant to Chapter 366, Florida Statutes.
14. The Company requests that Commission approval of the Special Contract be made effective as of the date of the vote by the Commission, and that in the event a protest to the Order granting the instant petition is timely filed, that the authority to collect the

rate proposed therein remain in effect, subject to refund, pending resolution of the protest.

15. The Company is aware of no disputed issues of material fact.

WHEREFORE, the Florida Division of Chesapeake Utilities Corporation requests that the Commission approve the Special Contract with The Minute Maid Company, a Division of The Coca-Cola Company as soon as is practical.

Respectfully submitted,



Wayne L. Schiefelbein

Of Counsel

Rose, Sundstrom & Bentley, LLP

2548 Blairstone Pines Dr.

Tallahassee, Florida 32301

(Ph) 850-877-6555

(Fax) 850-656-4029

Attorneys for Chesapeake Utilities  
Corporation, Florida Division

**EXHIBIT 1**

**SPECIAL CONTRACT**

**SPECIAL CONTRACT**

**MADE AND ENTERED INTO BETWEEN**

**CHESAPEAKE UTILITIES CORPORATION  
D/B/A CENTRAL FLORIDA GAS COMPANY**

**AND**

**THE MINUTE MAID COMPANY,  
A DIVISION OF  
THE COCA-COLA COMPANY**

## SPECIAL CONTRACT

**THIS AGREEMENT** is entered into by and between Chesapeake Utilities Corporation, a Delaware corporation, doing business as Central Florida Gas Company, (the "Company") and, The Minute Maid Company, A Division of The Coca-Cola Company, a Delaware corporation (the "Shipper").

### WITNESSETH:

**WHEREAS**, Company operates facilities for the distribution of natural gas in the State of Florida; and

**WHEREAS**, Shipper has requested that Company receive from Transporters certain quantities of Gas for Shipper's account, transport such quantities on Company's distribution system, and deliver same to Shipper's facilities located on Derby Ave. in the City of Auburndale, Florida ("Shipper's Facility") and Company agrees to provide such service in accordance with the terms hereof;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

### **ARTICLE I** **Definitions**

Unless another definition is expressly stated, the following terms and abbreviations, when used in this Agreement and in all exhibits, recitals, and appendices contained or attached to this Agreement are intended to and will mean as follows:

- 1.1 "Btu" means the amount of heat required to raise the temperature of one pound of water from 59 degrees Fahrenheit to 60 degrees Fahrenheit at a constant pressure of 14.73 p.s.i.a.
- 1.2 "Day" means a period of 24 consecutive hours beginning and ending at 9:00 a.m. Central Clock Time ("CCT"); provided that, in the event of a change in the definition of the corresponding term in the tariff of Transporter(s) on file with the Federal Energy Regulatory Commission ("FERC"), this definition shall be deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in said tariff(s).
- 1.3 "Dekatherm" or "Dt" means 1,000,000 Btu's or ten (10) Therms.
- 1.4 "Delivery Point" means the point at the connection of the facilities of an upstream party and a downstream party's facility at which the Gas leaves the outlet side of the measuring equipment of the upstream party and enters the downstream party's facility.



- 1.5 “Distribution Facilities” means Company-owned facilities starting from the interconnection with a Transporter’s pipeline and ending with the outlet side of the measuring equipment of Company’s facilities.
- 1.6 “Gas” means natural gas which is in conformance with the quality specifications of the Transporter.
- 1.7 “Maximum Daily Transportation Quantity” or “MDTQ” means the largest quantity of Gas, expressed in Dt’s, that Company is obligated to transport and make available for delivery to Shipper under this Agreement.
- 1.8 “Month” means a period beginning at 9:00 a.m. CCT on the first day of a calendar month and ending at 9:00 a.m. CCT on the first day of the next succeeding calendar month; provided that, in the event of a change in the definition of the corresponding term in the tariff of Transporter(s) on file with the FERC, this definition shall be deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in said tariff(s).
- 1.9 “P.O.I.” means Point of Interest, that is, the point at which control and possession of Gas passes from a Transporter to Company.
- 1.10 “p.s.i.a.” means pounds per square inch absolute.
- 1.11 “p.s.i.g.” means pounds per square inch gauge.
- 1.12 “Receipt Point” means the point at which Gas is received by a Transporter into Transporter’s system from an upstream service or facility.
- 1.13 “Therm” means a unit of heat equal to 100,000 Btu’s.
- 1.14 “Transporter” means any third party pipeline or pipelines utilized to effect delivery of Gas to the Shipper’s Facility.

**ARTICLE II**  
**POINTS OF DELIVERY**

- 2.1 Shipper shall cause the Transporter to deliver to Company at the Delivery Point on the Transporter’s system, (which specified Delivery Point is hereinafter referred to as “Transporter’s Delivery Point”), the quantities of Gas to be transported by Company hereunder. Company shall have no responsibility for transportation of Shipper’s Gas prior to receipt of such Gas from the Transporter at Transporter’s Delivery Point. Company shall deliver such quantities of Gas received from the Transporter at Transporter’s Delivery Point for Shipper’s account to Company’s Delivery Point at the Shipper’s Facility.

**ARTICLE III**  
**QUANTITIES**

- 3.1 Subject to the terms and conditions of this Agreement, Company agrees to receive from the Transporter, at Transporter's Delivery Point, on a daily basis, a quantity of Gas up to Shipper's MDTQ, and Company agrees to transport and deliver equivalent quantities to Shipper at Company's Delivery Point located at the Shipper's Facility. Shipper's MDTQ under this Agreement shall be the quantity of Gas per day as shown in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof.

**ARTICLE IV**  
**SCHEDULING AND BALANCING**

- 4.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to Transporter's Delivery Point and delivered by Company to the Shipper's Facility. Shipper shall promptly provide notice to Company of all such nominations. Such notices shall be provided to Company by facsimile transmission or by other electronic means. Imbalances between quantities (i) scheduled for delivery by the Transporter to Transporter's Delivery Point to be delivered by Company to the Shipper's Facility, and (ii) actually delivered by the Transporter and Company hereunder, shall be resolved in accordance with the applicable provisions of Company's Florida Public Service Commission ("FPSC") Natural Gas Tariff, as such provisions may be amended from time to time, subject to approval by the FPSC.
- 4.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to the Shipper's Facility over each 24-hour period and each Day throughout each Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at Transporter's Delivery Point and deliver to Company's Delivery Point up to the MDTQ as described in Exhibit A attached hereto, subject to any restrictions imposed by the Transporter and/or pursuant to the provisions of Articles V and IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from the Distribution Facilities at a daily rate of flow not to exceed the applicable nomination in place, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Articles V and VI of this Agreement.

**ARTICLE V**  
**CURTAILMENT**

- 5.1 This Agreement in all aspects shall be and remain subject to the applicable provisions of Company's Curtailment Plan, as filed with the FPSC (and as such Curtailment Plan may be amended from time to time), which is made a part hereof by this reference. For purposes of the Curtailment Plan only, Shipper shall be deemed to be in the same priority class as the TS-9 Classification customers

**ARTICLE VI**  
**TITLE, CONTROL AND INDEMNIFICATION**

- 6.1 Shipper warrants that it will have good and merchantable title to all Gas delivered by the Transporter to Company for Shipper's account at Transporter's Delivery Point, and that such Gas will be free and clear of all liens, encumbrances, and claims whatsoever. In the event any adverse claim in respect to said Gas is asserted, or Shipper breaches its warranty herein, Company shall not be required to perform its obligations to transport and deliver said Gas to Shipper's Facility, subject to receipt of any necessary regulatory authorization, to continue service hereunder for Shipper until such claim has been finally determined; provided, however, that Shipper may receive service if (i) in the case of an adverse claim, Shipper furnishes a bond to Company, conditioned for the protection of Company with respect to such claim; or (ii) in the case of a breach of warranty, Shipper promptly furnishes evidence, satisfactory to Company, of Shipper's title to said Gas.
- 6.2 Shipper shall be deemed to be in control and possession of the Gas prior to delivery to Transporter's Delivery Point; and Company shall be deemed to be in control and possession of the Gas to be transported by it upon delivery of such Gas by Transporter to Transporter's Delivery Point, and until it shall have been delivered to Company's Delivery Points. Each party, while deemed to be in control and possession of such Gas, shall be responsible for, and shall indemnify and hold the other harmless from any and all claims, actions, suits, including attorney's fees, arising out of or relating in any way to custody and control of such Gas.
- 6.3 (a) For value received and to induce Company to enter into this Agreement, Shipper agrees to protect, defend (at Shipper's expense and by counsel satisfactory to Company), indemnify, and save and hold harmless Company, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all direct or indirect costs, expenses, damages, losses, obligations, lawsuits, appeals, claims, or liabilities of any kind or nature (whether or not such claim is ultimately defeated), including in each instance, but not limited to, all costs and expenses of investigating and defending any claim at any time arising and any final judgments, compromises, settlements, and court costs and attorneys' fees, whether foreseen or unforeseen (including all such expenses, court costs, and attorneys' fees in the enforcement of Company's rights hereunder), incurred by Company in connection with or arising out of or resulting from or relating to or incident to:
1. any breach of any of the representations, warranties, or covenants of Shipper contained in this Agreement or in any Exhibit, Schedule, or other document attached hereto and/or incorporated by reference herein, specifically including but not limited to:
    - a. any Transporter penalties or other expenses or liabilities for unauthorized overrun Gas, for monthly imbalances, for failure to comply with its

FERC Tariff, or for failure to comply with a curtailment notice or to take deliveries as scheduled, pursuant to Sections 3.1 and 4.1 of this Agreement; and

b. any breach by Shipper of warranty of title to Gas and related obligations, pursuant to Sections 6.1 and 6.2 of this Agreement;

2. any claim by a creditor of Shipper as a result of any transaction pursuant to or contemplated by this Agreement; and
3. any claim against Company relating to any obligation or liability of Shipper, or its affiliates, or any of them of any kind or nature.

In the event that any claim or demand for which Shipper would be liable to Company hereunder is asserted against or sought to be collected from Company by a third party, Company shall promptly notify Shipper of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof, if determination of an estimate is then feasible (which estimate shall not be conclusive of the final amount of such claim or demand) (the "Claim Notice"). Shipper shall have twenty (20) days, or such shorter period as the circumstances may require if litigation is involved, from the personal delivery or mailing of the Claim Notice (the "Notice Period") to notify Company:

1. whether or not it disputes its liability to Company hereunder with respect to such claim or demand; and,
2. whether or not it desires, at its sole cost and expense, to defend Company against such claim or demand.

In the event that Shipper notifies Company within the Notice Period that it desires to defend Company against such claim or demand and except as hereinafter provided, Shipper shall have the right to defend Company by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by Shipper to a final conclusion in any manner as to avoid any risk of Company becoming subject to any liability for such claim or demand or for any other matter. If Company desires to participate in, but not control, any defense or settlement, it may do so at its sole cost and expense. If Shipper elects not to defend Company against such claim or demand, whether by not giving Company timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is contested by Shipper or by Company (Company having no obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be conclusively deemed to be a liability of Shipper and subject to indemnification as provided hereinabove.

(b) For value received and to induce Shipper to enter into this Agreement, Company agrees to protect, defend (at Company's expense and by counsel satisfactory to Shipper), indemnify, and save and hold harmless Shipper, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all direct or indirect costs, expenses, damages, losses, obligations, lawsuits, appeals, claims, or liabilities of any kind or nature (whether or not such

claim is ultimately defeated), including in each instance, but not limited to, all costs and expenses of investigating and defending any claim at any time arising and any final judgments, compromises, settlements, and court costs and attorneys' fees, whether foreseen or unforeseen (including all such expenses, court costs, and attorneys' fees in the enforcement of Shipper's rights hereunder), incurred by Shipper in connection with or arising out of or resulting from or relating to or incident to:

1. any breach of any of the representations, warranties, or covenants of Company contained in this Agreement or in any Exhibit, Schedule, or other document attached hereto and/or incorporated by reference herein, specifically including but not limited to:
  - a. any breach by Company of warranty of title to Gas and related obligations, pursuant to Sections 6.1 and 6.2 of this Agreement;
2. any claim by a creditor of Company as a result of any transaction pursuant to or contemplated by this Agreement; and,
3. any claim against Shipper relating to any obligation or liability of Company, or its affiliates, or any of them of any kind or nature.

In the event that any claim or demand for which Company would be liable to Shipper hereunder is asserted against or sought to be collected from Shipper by a third party, Shipper shall promptly notify Company of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof, if determination of an estimate is then feasible (which estimate shall not be conclusive of the final amount of such claim or demand). Company shall have twenty (20) days, or such shorter period as the circumstances may require if litigation is involved, from the personal delivery or mailing of the Claim Notice to notify Shipper:

1. whether or not it disputes its liability to Shipper hereunder with respect to such claim or demand; and,
2. whether or not it desires, at its sole cost and expense, to defend Shipper against such claim or demand.

In the event that Company notifies Shipper within the Notice Period that it desires to defend Shipper against such claim or demand and except as hereinafter provided, Company shall have the right to defend Shipper by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by Company to a final conclusion in any manner as to avoid any risk of Shipper becoming subject to any liability for such claim or demand or for any other matter. If Shipper desires to participate in, but not control, any defense or settlement, it may do so at its sole cost and expense. If Company elects not to defend Shipper against such claim or demand, whether by not giving Shipper timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is contested by Company or by Shipper (Shipper

having no obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be conclusively deemed to be a liability of Company and subject to indemnification as provided hereinabove.

(c) The foregoing indemnification and hold harmless agreement shall benefit both parties from the date hereof and shall survive the termination of this Agreement.

## **ARTICLE VII**

### **RATE**

- 7.1 The rate to be charged each month for transportation service provided by Company shall be as set forth in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof. The rate, as set forth in Exhibit A, has been negotiated between the parties and includes only the Company's transportation rate under this Agreement and does not include any charges for transportation service by any Transporter of Shipper's Gas prior to delivery to Company at the Transporter's Delivery Point. The rate provided in Exhibit A is subject to the continuing jurisdiction of the FPSC and may be adjusted during the term of this Agreement, as provided herein. If, during the term of this Agreement, the rate set forth in Exhibit A becomes higher than the otherwise applicable tariff rate that Shipper would qualify for, then Shipper may elect to terminate this Agreement, with thirty (30) days written notice to Company, and revert to this otherwise applicable tariff rate on the first day of the month subsequent the end of said notice period.
- 7.2 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase any present tax or levy any additional tax, relating to the service provided by Company under this Agreement, any such additional tax required by law to be paid by Company shall, in Company's discretion, insofar as such discretion is provided for under applicable law, be separately stated on the bill. If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should decrease or eliminate any tax relating to the service provided by Company under this Agreement, the reduction in such tax required to be paid by Company shall, in Company's discretion, insofar as such discretion is provided for under applicable law, be separately stated as a deduction to the total amount of the bill.

## **ARTICLE VIII**

### **TERM AND TERMINATION**

- 8.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution by both parties and shall continue in full force and effect for an initial period of fifteen (15) years from the first day of the Month subsequent to the date that Company begins delivery of Gas to Shipper, and shall thereafter be extended for an additional period of five years; unless either party gives written notice of termination to the other party, not less

than ninety (90) days prior to the expiration of the initial or any subsequent term. This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

## **ARTICLE IX** **DEFAULT**

- 9.1 The following shall constitute an event of default:
- (a) Shipper or Company fails to satisfy in full the terms and conditions of this Agreement.
  - (b) Shipper or Company voluntarily suspends the transaction of business where there is an attachment, execution or other judicial seizure of any portion of their respective assets;
  - (c) Shipper or Company becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors;
  - (d) Shipper or Company files, or there is filed against it, a petition to have it adjudged bankrupt or for an arrangement under any law relating to bankruptcy; or
  - (e) Shipper or Company applies for or consents to the appointment of a receiver, trustee or conservator for any portion of its properties or such appointment is made without its consent.
- 9.2 If either party fails to perform its obligations under this Agreement, the non-defaulting party shall notify the defaulting party in writing (the "Default Notice") within three (3) days after the non-defaulting party obtained knowledge of such failure to perform. Each such Default Notice shall describe in detail the act or event constituting the non-performance by the defaulting party. The defaulting party shall have five (5) days after its receipt of the Default Notice to cure any such failure to perform, unless such cure can not be accomplished using reasonable efforts within said five (5) day period, in which case the defaulting party shall have such additional time as may be necessary, using reasonable efforts, to cure such non-performance (the "Default Cure Period").
- 9.3 In the event of a default that is not cured within the Default Cure Period, the non-defaulting party may, at its option, exercise any, some or all of the following remedies, concurrently or consecutively:
- (a) any remedy specifically provided for in this Agreement;
  - (b) terminate the Agreement by written notice to the defaulting party; and/or,
  - (c) any remedy existing at law or in equity.

## **ARTICLE X** **COMPANY'S TARIFF PROVISIONS**

- 10.1 The following sections of the Company's Natural Gas Tariff approved by the FPSC, including any amendments thereto approved by the FPSC during the term of this Agreement, are hereby incorporated into this Agreement and made a part hereof for all purposes: Classification of Customers; Service Options; Rate Schedules MCF, and Billing Adjustments - BA; and General Terms and

Conditions – Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 17. In the event of any conflict between said provisions of Company’s FPSC Tariff and specific provisions of this Agreement, the latter shall prevail, in the absence of an FPSC Order to the contrary.

**ARTICLE XI**  
**SAFE DESIGN AND OPERATION**

- 11.1 Company shall maintain, at no cost to Shipper for the term of this Agreement, the Distribution Facilities in accordance with the Federal Department of Transportation (“FDOT”) Regulations, Section 191 and 192 and Chapter 25-12, Florida Administrative Code (“F.A.C.”), as such rules and regulations may be amended from time to time, regarding the design, installation, operation and maintenance of natural gas systems.
- 11.2 It shall be the responsibility of Shipper to maintain all Shipper-owned equipment, starting from the outlet side of the measurement equipment at the Company’s Delivery Point. The Company agrees to perform (at no charge) for Shipper, for the entire primary term of the Agreement, an annual leak survey, that complies with the above-mentioned regulations, of the underground Shipper-owned facilities from the outlet side of the Company’s measurement equipment to the exterior wall of the Shipper’s Facility.

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

- 12.1 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:

Shipper:           The Minute Maid Company,  
                      A Division of The Coca-Cola Company  
                      2000 St. James Place  
                      Houston, Texas 77056-4198

Attention:       James Homco  
Phone:           713/888-5119  
Facsimile:       713/888-5700

With a copy to: General Counsel  
                      The Minute Maid Company,  
                      A Division of The Coca-Cola Company  
                      2000 St. James Place  
                      Houston, Texas 77056-4198  
                      713/888-5773 - Facsimile

Company:        Central Florida Gas Company  
                      P. O. Box 960  
                      Winter Haven, Florida 33882-0960



Attention: Accounting & Rates Manager  
Phone: (863) 293- 2125 Ext. 2913  
Facsimile: (863) 294-3895

- 12.2 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.
- 12.3 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.
- 12.4 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 11.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 11.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments which are necessary to comply with the requirements of, or are otherwise approved by, the FPSC or its successor agency or authority.
- 12.5 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 an equitable adjustment in the provisions of this Agreement in good faith.
- 12.6 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. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.7 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.

- 12.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties and neither Company or Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.
- 12.9 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, 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.
- 12.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In addition to the foregoing, Company shall file within ten (10) business days an appropriate petition with the FPSC seeking approval of the Special Contract. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any such 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 FPSC over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 12.10, 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 is precluded.
- 12.11 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. Unless otherwise agreed in writing by the parties, venue for any legal action hereunder shall be in Polk County, Florida.

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

IN WITNESS WHEREOF, the parties have executed this Agreement, in multiple originals, effective as of the date of execution by both parties.

THE MINUTE MAID COMPANY,  
A DIVISION OF THE COCA-COLA COMPANY

BY: James G. LeSage

NAME: James G. LeSage

TITLE: Sr VP Operations

DATE: 10/1/02

CHESAPEAKE UTILITIES CORPORATION  
D/B/A CENTRAL FLORIDA GAS COMPANY

BY: Thomas A. Geoffrey

NAME: Thomas A. Geoffrey

TITLE: Asst VP

DATE: 11-7-02

**EXHIBIT A**  
**TO**  
**SPECIAL CONTRACT**  
**BETWEEN**  
**CHESAPEAKE UTILITIES CORPORATION**  
**D/B/A CENTRAL FLORIDA GAS COMPANY**  
**AND**  
**THE MINUTE MAID COMPANY,**  
**A DIVISION OF**  
**THE COCA-COLA COMPANY**

Transporter's Delivery Points: D.R.N. No. \_\_\_\_\_

MDTQ (Jan. through Dec.): 750 Dt/Day

Company's Delivery Points: The outlet side of the measuring equipment of the Distribution Facilities at the Shipper's Facility.

Transportation Rate: \$0.20 per Dt

Term: Fifteen (15) years.

Delivery Pressure: 10 p.s.i.g.

Distribution Facilities: Company will install all required equipment and materials, including electronic metering equipment, in accordance with FDOT Regulations, Section 191 and 192 and Chapter 25-12, F.A.C., as such rules and regulations may be amended from time to time, to enable Gas usage at the Shipper's Facility.

IN WITNESS WHEREOF, the parties have executed this Exhibit A on the dates stated below.

THE MINUTE MAID COMPANY,  
A DIVISION OF THE COCA-COLA COMPANY

BY: 

NAME: James G. LeSage 

TITLE: Sr VP Operations

DATE: 11/1/02

CHESAPEAKE UTILITIES CORPORATION  
D/B/A CENTRAL FLORIDA GAS COMPANY

BY: 

NAME: Thomas A. Geoffrey

TITLE: Asst VP

DATE: 11-7-02

## EXHIBIT 2

### COST OF SERVICE STUDY

**COST OF SERVICE STUDY  
Minute Maid**

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED RATE BASE AND RETURN

| <u>Description</u>                       | <u>Amount</u>         |
|--|-----------------------|
| Cost of Plant: Gross investment in plant | \$45,679              |
| Accumulated Depreciation                 | (\$1,549)             |
|  | <hr/>                 |
| Net Plant                                | \$44,130              |
| Working Capital                          | \$0                   |
| Accumulated Deferred<br>Income Taxes     | \$0                   |
| Deferred Investment Tax Credit           | <hr/> \$0             |
| Rate Base                                | <hr/> <u>\$44,130</u> |
| Long Term Debt @ 0.00%                   | 0                     |
| Common Equity @ 0.00%                    | <hr/> 0               |
| Total Return @ 7.37%                     | <hr/> <u>\$3,252</u>  |

**INCREMENTAL COST OF SERVICE STUDY**  
**Minute Maid**

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

ESTIMATED INCOME TAXES

| <u>Description</u>                               | <u>Total</u>     |
|--|------------------|
| 1. Rate Base                                     | <u>\$44,130</u>  |
| 2. Return On Rate Base (Line 1 x Rate of Return) | \$3,252          |
| 3. Less: Interest on Debt                        | <u>(\$1,209)</u> |
| 4. Net Income after Taxes                        | \$2,043          |
| 5. Divide by 1-Tax Rate                          | 0.6237           |
| 6. Taxable Income                                | <u>\$3,276</u>   |
| 7. Income Taxes @ 37.63%                         | <u>\$1,233</u>   |



**INCREMENTAL COST OF SERVICE STUDY**  
**Minute Maid**

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

COST OF SERVICE

| <u>Cost of Service</u>       | <u>Amount</u>              |
|------------------------------|----------------------------|
| Operation & Maintenance      | \$6,573                    |
| Depreciation                 | \$1,549                    |
| Insurance                    | \$1,000                    |
| Taxes - Other Than Income 1/ | \$1,073                    |
| Income Taxes                 | \$1,233                    |
| Return @ 7.37% 2/            | <u>\$3,252</u>             |
| <br>Total Operating Costs    | <br><u><u>\$14,681</u></u> |

NOTES:

1/ Taxes Other Than Income - Property and Revenue Related

|                           |                     |                             |                       |
|---------------------------|---------------------|-----------------------------|-----------------------|
| 2001 Property Tax Expense | \$423,360           | Revenue Related Taxes       | 0.500%                |
| taxable plant             | <u>\$21,315,462</u> | Projected Revenues          | \$32,850              |
| Average Tax Rate          | 0.0199              | Revenue Related Taxes       | <u>\$164</u>          |
| x Gross Plant             | \$45,679            | Total revenue related taxes | <u><u>\$1,073</u></u> |
| Property Tax Expense      | <u>\$909</u>        |                             |                       |

2/ 7.37% Return is the Company's mid-point rate of return from September 2002 surveillance report as filed with the FPSC.

**INCREMENTAL COST OF SERVICE STUDY**  
**Minute Maid**

CHESAPEAKE UTILITIES CORPORATION  
 FLORIDA DIVISION

ESTIMATED O&M EXPENSES

| <u>Description</u>  | <u>Amount</u>         |
|---|-----------------------|
| 1 Meter -Spin test 2 times per year. (16 hours/year @ \$28.74\hr)                     | \$460                 |
| 2 Meter-Test every 5 years. (8 hours/year @ \$28.74\hr. Parts \$500)                  | \$546                 |
| 3 Meter Parts   | \$150                 |
| 4 Repaint Station Every 3 Years. (20hrs labor @ \$62\hr. \$183 Supplies & Misc. Exp.) | \$496                 |
| 5 Maintenance & Calibration of EFM Equipment  |                       |
| 6     16 hrs\yr @ 28.74\hr.   | \$460                 |
| 7     Replacement Board   | \$500                 |
| 8     Replacement Modem   | \$475                 |
| 9     Replacement Battery (Every 5 Yrs)   | \$20                  |
| 10    Misc. Materials   | \$120                 |
| 11 Annual Regulator Testing & Repair (19hrs @ \$28.74\hr)                             | \$546                 |
| 12     Misc Materials for Repair  | \$300                 |
| 13 Miscellaneous Expense  | <u>\$2,500</u>        |
| 14 TOTAL ESTIMATED O & M EXPENSES   | <u><u>\$6,573</u></u> |

**INCREMENTAL COST OF SERVICE STUDY**  
**Minute Maid**

CHESAPEAKE UTILITIES CORPORATION  
FLORIDA DIVISION

CAPITALIZATION AS  
FILED IN SEPTEMBER 2002 SURVEILLANCE REPORT

|                |   |
|----------------|---|
| 48.48%         | Debt                                    |
| <u>51.52%</u>  | Common Equity, DIT, ITC, Customer Deps. |
| <u>100.00%</u> |   |
| 2.7400%        | Weighted Average Cost of Service        |
| \$44,130       | Rate Base                               |
| <u>\$1,209</u> | Interest Expense                        |

## EXHIBIT 3

### CURTAILMENT PLAN

Florida Division of Chesapeake Utilities Corporation  
Curtailement Plan

This plan will be invoked when the Company issues curtailment / interruption notices to insure firm peak system requirements are met and system integrity is maintained. This plan applies to all gas sales and transportation service, and may be implemented by the Company in the event of a supply and / or capacity constraint.

**Curtailement Notice:**

Whenever curtailment of gas delivery is required, the Company shall issue a Curtailement Order to its customers specifying the delivery point (City Gate Station), the quantity of gas to be curtailed, and the time at which curtailment is to be made. When restoration of service is permissible, the Company shall similarly issue a restoration order specifying the delivery point (City Gate Station), the quantity of gas to be restored, and the time at which restoration is to be made.

A curtailment order shall be issued at least two (2) hours in advance of its effective time; provided, however, that if curtailment or interruption is occasioned by an event of Force Majeure affecting the Company's system, the Company shall be obligated to give only such notice as is practicable under the circumstances.

In the event that curtailment / interruption of service becomes necessary, such curtailment / interruption shall be implemented in the following order:

- (a) All Interruptible Customers served through the affected Company City Gate Station(s). All consumption must end as of the time specified in the Curtailement Notice.
- (b) All Alternate Fuel Customers served through the affected Company City Gate Station(s). All consumption must end as of the time specified in the Curtailement Notice.
- (c) All customers in Service Classification "Greater than 1,000,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailement will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (d) All customers in Service Classification "500,000 - 1,000,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailement will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (e) All customers in Service Classification "100,000 - 500,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailement will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.

Florida Division of Chesapeake Utilities Corporation  
Curtailment Plan

- (f) All customers in Service Classification "50,000 – 100,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (g) All customers in Service Classification "25,000 - 50,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (h) All customers in Service Classification "10,000 - 25,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (i) All customers in Service Classification "3,000 - 10,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (j) All customers in Service Classification "300 – 3,000 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (k) All customers in Service Classification "0 - 300 Annual Therms" served through the affected Company City Gate Station(s). Curtailment will be uniformly shared among this customer group except Priority 2 and Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, will be the last to be affected.
- (l) All Priority 2 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, regardless of Service Classification. Curtailment will be uniformly shared among this customer group if necessary after all other customers, with the exception of Priority 1 customers.
- (m) All Priority 1 customers, as defined in Section 401 of the Natural Gas Policy Act of 1978, regardless of Service Classification. Curtailment will be uniformly shared among this customer group if necessary after all other customers have been curtailed.