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July 12, 2006

060492-60

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

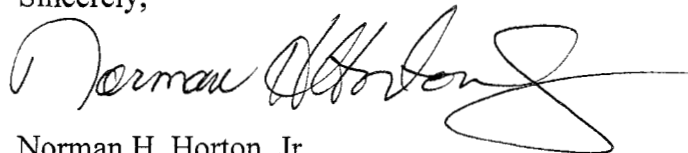
Dear Ms. Bayo:

Enclosed for filing on behalf of Indiantown Gas Company are an original and 15 copies of Indiantown Gas Company's Petition to Approve a Firm Transportation Service Agreement between Indiantown Gas Company and Florida Public Utilities Company.

Please acknowledge receipt of these documents by stamping the enclosed extra copy of this letter.

Thank you for your assistance.

Sincerely,



Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: Mr. Brian Powers

DOCUMENT NUMBER-DATE

06109 JUL 12 06

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of Firm Transportation )  
Service Agreement between Indiantown Gas )  
Company and Florida Public Utilities Company )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_  
Filed: July 12, 2006

**PETITION**

Indiantown Gas Company ("IGC") pursuant to Rule 25-9.034, Florida Administrative Code, and Chapter 366, Florida Statutes, herewith requests the Florida Public Service Commission to approve the attached Firm Transportation Service Agreement between Indiantown Gas Company and Florida Public Utilities Company ("FPUC"). As basis, IGC would show:

1. The name and address of the Petitioner is:

Indiantown Gas Company  
16600 S. W. Warfield  
P.O. Box 8  
Indiantown, FL 34956-0008

2. All Pleadings, motions, orders, notices and other correspondence related to this

docket should be directed to:

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL

Mr. Brian J. Powers  
President  
Indiantown Gas Company  
16600 S. W. Warfield  
P.O. Box 8  
Indiantown, FL 34956-0008

3. Indiantown Gas Company is a local distribution company ("LDC"), that provides natural gas transportation service to the public within the Indiantown Urban Services Boundary

DOCUMENT NUMBER-DATE

06109 JUL 12 06

FPSC-COMMISSION CLERK

in Martin County as designated by the County. Indiantown is subject to the jurisdiction of the Florida Public Service Commission pursuant to Chapter 366, Florida Statutes.

4. By Order No. PSC-02-1655-TRF-GU issued Nov. 26, 2002, the PSC approved the proposal of IGC to exit the merchant function and transfer all remaining sales customers to transportation service. The effect of this is that IGC continues to serve customers in its area but rather than selling and delivering gas to customers, the service provided by IGC is transportation.

5. Florida Public Utilities Company is also a local distribution company providing natural gas transportation and distribution to customers within its designated service areas. FPUC is a public utility subject to the jurisdiction of the FPSC.

6. IGC and FPUC have recently executed a Territorial Agreement whereby FPUC will provide natural gas service to customers within an area located in Indiantown. That Agreement is pending review and approval by the Commission. For FPUC to serve the area described in the Territorial Agreement, it will be necessary to have an arrangement for transportation of certain quantities of gas from a receipt point to a delivery point. That can be done by either constructing the facilities necessary to receive and deliver a sufficient supply of gas or seek other arrangements. Rather than constructing facilities that duplicate those of IGC, IGC will deliver gas to FPUC.

7. Subject to approval of the Commission, the parties have entered into a Firm Transportation Service Agreement, attached as Exhibit A. Pursuant to the Agreement, IGC will receive quantities of gas at a receipt point on a transporters facilities (Florida Gas Transmission Co.) and deliver those quantities on its facilities on a firm basis to FPUC at a delivery point in Indiantown. At the delivery point the gas will then be delivered to customers through FPUC distribution lines. This arrangement is consistent with the transportation focus of IGC, avoids

the need for unnecessary duplicate facilities and provides the most efficient and effective manner of providing a supply of natural gas to FPUC for distribution to its customers in the Indiantown area.

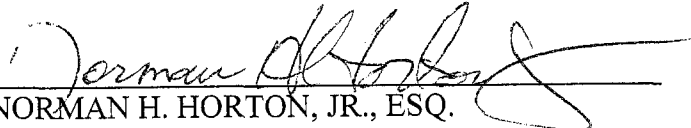
8. The Transportation Agreement, which has an initial term of 30 years and automatic renewals thereafter, contains provisions addressing the responsibilities of the parties as to points of delivery, quantity, scheduling, ownership, remedies and similar contractual provisions. The Agreement provides for a sufficient quantity of gas for current and anticipated needs and also contains the rates to be charged for the transportation service to be provided. These rates, reflected in Exhibit A to the Transportation Agreement, consist of a Reservation Charge computed as an amount per Decatherm times the Maximum Daily Transportation Quantity times the number of days in a billing month and a Firm Transportation Charge of \$0.15 per therm measured at the Delivery Point. These rates generate revenues in excess of the cost to serve and have been arrived at through negotiation and reflect terms that are fair and reasonable to both and to the customers of each.

9. Approval of the Transportation Service Agreement provides benefits to both IGC and its customers through the revenue derived from the service provided. FPUC and its customers similarly receive benefits through having a means of transporting gas for customers and expanding its customer base without the necessity of constructing facilities which duplicate existing facilities.

IGC requests that the Commission approve the Firm Transportation Service Agreement pursuant to Rule 25-9.034, Florida Administrative Code as the parties request. If approved, the Agreement would become effective upon the expiration of 30 days after the final order approving the Agreement.

Respectfully submitted,

MESSER, CAPARELLO & SELF, P.A.  
215 S. Monroe Street, Suite 701  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

  
NORMAN H. HORTON, JR., ESQ.

Attorneys for Indiantown Gas Company

## FIRM TRANSPORTATION SERVICE AGREEMENT

This FIRM TRANSPORTATION SERVICE AGREEMENT, ("Agreement") is made and entered into on the 15<sup>th</sup> day of July 2006, to be effective on the first day of the Month following approval by the Florida Public Service Commission (FPSC) (the "Effective Date"), by and between Indiantown Gas Company, Inc., a Florida corporation and hereinafter referred to as "Company", and Florida Public Utilities Company, a Florida corporation hereinafter referred to as "Shipper". Company and Shipper shall also be referred to from time to time herein as "Party" or, collectively, as "Parties."

### WITNESSETH:

WHEREAS, Company operates Distribution Facilities for the Transportation of natural gas in Martin County, Florida; and

WHEREAS, Shipper operates facilities for the distribution of natural gas in Martin County, Florida which are physically interconnected to Company's Gas Distribution Facilities at the Delivery Point(s); and

WHEREAS, Shipper has requested that Company receive certain quantities of Gas at its Receipt Point with Transporter and redeliver such quantities on a Firm basis on Company's Distribution Facilities to the Delivery Point(s), and Company agrees to provide such service in accordance with the terms hereof; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties mutually 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 Btus or ten (10) Therms.
- 1.4 “Delivery Point”** means the point at the connection of Company’s Distribution Facilities and Shipper’s facilities at which the Gas leaves the outlet side of Company’s measuring equipment and enters Shipper’s facilities.
- 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 “Operational Order”** means an Alert Day Notice, Operational Flow Order, Pack or Draft Notice, Curtailment Order or Other Operational Control Order or any other notice or order requiring action on the part of Shipper relative to scheduled or delivered gas quantities, in accordance with Transporter’s FERC Gas Tariff and/or Indiantown’s FPSC Tariff.
- 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(s) of interconnection between Company and Transporter in Martin County, Florida.
- 1.13 “Shipper’s Designee”** means an agent named by Customer to perform Shipper’s obligations with regard to nominations, confirmations and any other administrative duties under this agreement. Shipper’s Designee must be a duly approved Shipper with Transporter upstream of the Receipt Point.
- 1.14 “Therm”** means a unit of heat equal to 100,000 Btu’s.
- 1.15 “Transporter”** means the interstate pipeline transmission company, intrastate pipeline company or local distribution company utilized to effect

delivery of Shipper's Gas to Company at the Receipt Point(s) for redelivery to the Delivery Point(s)

**ARTICLE II**  
**Points of Receipt and Delivery**

2.1 Shipper shall cause Transporter to deliver to Company at the Receipt Point, the quantity of Gas to be transported by Company on a Firm basis hereunder. Company shall deliver such quantity of Gas received at the Receipt Point to the Delivery Point(s) with Shipper. Company shall have no responsibility for transportation of Shipper's Gas on Company's Distribution Facilities prior to receipt of such Gas from the Transporter at the Receipt Point. For the purpose of this Agreement, "Firm" shall mean that Company may interrupt its delivery of Shipper's Gas only to the extent that such delivery is prevented by reasons of Force Majeure or as may be authorized by Company's FPSC Natural Gas Tariff.

2.2 Company shall not oppose any request by Shipper to transfer a quantity of Shipper's firm delivery rights and excess use rights to the Receipt Point, up to the MDTQ, or such other quantity as the Parties may mutually agree, as such rights are provided in FGT's FERC Gas Tariff, as amended from time to time. Company recognizes that Shipper will report its gas deliveries on Florida Gas Transmission Company's (FGT) pipeline to the FGT Data Verification Committee in Shipper's name.

**ARTICLE III**  
**Quantity**

3.1 Subject to the terms and conditions of this Agreement, Company agrees to receive from the Transporter, at the Receipt Point, on a daily basis, a quantity of Gas up to Shipper's MDTQ, and Company agrees to transport and deliver equivalent quantities at the agreed minimum pressure to Shipper's Delivery Point(s). Shipper's MDTQ and Company's minimum delivery pressure requirements under this Agreement shall be 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, or Shipper's Designee, shall be responsible for nominating and scheduling quantities of Gas to be delivered by Transporter to the Receipt Point and transported by Company to Shipper's Delivery Point(s). Copies of all Shipper nominations to Transporter shall be provided to Company within a reasonable period following submittal to Transporter. Monthly imbalances between Gas quantities scheduled for delivery by the Transporter to the Receipt Point to be delivered by Company to Shipper's Delivery Point(s), and Gas quantities actually



delivered by the Transporter and Company hereunder, and any charges or credits from Transporter resulting from Operational Orders for Gas quantities transported under this Agreement shall be resolved in accordance with the applicable provisions of Company's FPSC Natural Gas Tariff, as such provisions may be amended from time to time, subject to approval by the FPSC.

**4.2** By the 15<sup>th</sup> Day (or subsequent Business Day if a weekend or holiday), of the following Month, Company shall provide a statement to Shipper which shall include the imbalance total in MMBtu's and, for Positive Imbalances, the amount due Shipper from Company, and for Negative Imbalances the amount due Company from Shipper. Imbalance resolution amounts payable by Shipper to Company, shall be rendered in accordance with the payment provisions in Article X of this Agreement. Imbalance resolution amounts due to Shipper from Company shall be payable to Shipper on or before the last Day of the Month following the Month in which the imbalance occurred. Resolution of disputed payment amounts by either party shall be as provided in Article X 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 (as such Curtailment Plan may be amended from time to time), which is made a part hereof by reference. For purposes of the Curtailment Plan only, Shipper shall be deemed to be in the same priority class as Company's TS-1 Classification customers.

#### **ARTICLE VI** **Title and Control**

**6.1** Shipper warrants that it will have good and merchantable title, or have the ability to obtain such title, to all Gas delivered by the Transporter to Company for Shipper's account at the Receipt 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** The Parties acknowledge that Transporter has control and possession of the Gas prior to delivery to the Receipt Point pursuant to the terms of an agreement between Transporter and Shipper and nothing herein is intended to

modify or change that Agreement in any manner. The 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 the Receipt Point, and until it shall have been delivered to Company's Delivery Point. The Company, 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 control and possession of such Gas.

## **ARTICLE VII** **Indemnification**

**7.1 (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 VIII**  
**Failure to Perform, Default and Remedies**

**8.1** The following shall constitute an event of default:

- (a) Shipper or Company fails to satisfy in full the terms and conditions of this Agreement and/or the applicable provisions of Company's FPSC Natural Gas Tariff.
- (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.

**8.2** 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").

**8.3** 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 IX**  
**Force Majeure**

**9.1** Except with regard to a party's obligation to make payment(s) due under the terms of this Agreement, neither party shall be liable to the other for failure to perform any of its obligations, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 9.2.

**9.2** Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of crops, wells or lines of pipe; (iii) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (iv) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Company and Contractor shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

**9.3** Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or, (ii) economic hardship.

**9.4** Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

**9.5** The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligations under this Agreement, from the onset of the Force Majeure event to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

## **ARTICLE X**

### **Rates, Billing and Payment**

**10.1** The rates for gas transportation service provided hereunder shall be as set forth in Exhibit A.

**10.2** 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 Company's bill for service. 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 Company's bill for service.

**10.3** Meters at Company's Delivery Point to Shipper shall be read by Company at regular monthly intervals. Invoices for Gas Service provided during a month will be rendered by the 15<sup>th</sup> Day (or subsequent Business Day if a weekend or holiday), of the following month and shall be due and payable by mail no later than ten (10) days following receipt of invoice. Company shall provide to Shipper each month, along with its invoice, reasonable supporting information (including a statement of the gas quantities delivered by Company to Shipper at the Delivery Point on each day of such month) sufficient to justify the charges included thereon. If Shipper fails to make payment to Company in a timely manner, and such failure is not remedied within five (5) Days after written notice from Company, then Company may seek such remedies to collect the payment as are provided in this Agreement, the Company's FPSC Natural Gas Tariff and by law, including but not limited to termination of this Agreement. Company shall not seek such remedies if a bona fide billing dispute exists, and the parties are negotiating in good faith to resolve the dispute.

**10.4** Gas quantities delivered to Company for transportation and redelivery to Shipper shall be as measured by Transporter at the Receipt Point. Gas quantities transported and redelivered to Shipper shall be as measured by Company at the Delivery Point.

**10.5** Shipper shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of Company to the extent reasonably necessary to verify the accuracy of any invoice. Any such audit and any claim based upon errors in any statement must be made within two (2) years of the date of such statement or last revision thereof.

**10.6** In the event an error is discovered in the amount billed in any invoice rendered hereunder such error shall be rectified by payment within twenty (20) days after notice of the discovery of the error or if mutually agreed, credited against the next invoice. In the event a dispute arises as to the amount payable in any invoice rendered hereunder, Shipper shall nevertheless pay when due the amount not in dispute under such invoice, and shall provide written notice to Seller indicating the disputed amount and the reason for such dispute. During

this time of reconciliation, there shall be no late charges or interest imposed on Shipper related to payment for such difference. Such payment shall not be deemed to be a waiver of the right by Shipper to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver by Company of any underpayment.

**10.7** Shipper shall have the right to install check measurement equipment immediately downstream of Company's measurement equipment. Shipper shall install and maintain any such check measurement equipment in accordance with standard industry practice and in full compliance with all applicable governmental regulations.

## **ARTICLE XI** **Term and Termination**

**11.1** This Agreement is subject to the regulatory authority of the FPSC, whose approval of this Agreement, shall be an absolute condition precedent to the validity, enforceability and applicability of the Agreement. This Agreement shall have no force or effect whatsoever until such time as the date of expiration of the appeal period following the issuance by the FPSC of an order approving this Agreement. In the event the FPSC declines to approve this Agreement, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this Agreement.

**11.2** This Agreement shall become effective on the date an FPSC order approving this Agreement and the Territorial Agreement becomes final and effective, and shall remain in effect for a primary term ending ten (10) years from such date. Upon conclusion of the primary term, this Agreement shall automatically renew for four (4) consecutive additional five-year terms. Notwithstanding the foregoing, (a) FPUC may terminate this Agreement at the end of the primary term or any subsequent five-year term by serving written notice on IGC not less than one hundred eighty (180) days prior to the end of the then-current term, and (b) either Party may terminate the Agreement at any time in the event of a material default by the other Party in the performance of its duties and obligations under this Agreement, which default is not substantially cured within thirty (30) days following receipt of written notice by the defaulting party from the non-defaulting party specifying such default.

## **ARTICLE XII** **Company's Tariff Provisions**

**12.1** The applicable sections of the Company's FPSC Natural Gas Tariff, 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. In the event of any conflict between provisions of Company's FPSC Tariff and specific provisions of this Agreement, the latter shall prevail.

**ARTICLE XIII**  
**Safe Design And Operation**

13.1 Company shall own, operate and maintain the Distribution Facilities delivering Gas to Shipper's Delivery Point(s) 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.

13.2 It shall be the responsibility of Shipper to maintain all Shipper-owned equipment, beginning at the outlet side of the measurement equipment at the Delivery Point(s).

**ARTICLE XIV**  
**Notices**

14.1 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:

To IGC:

Brian Powers  
President  
Indiantown Gas Company  
16600 S.W. Warfield  
P.O. Box 8  
Indiantown, Florida 34956  
Phone: 772-597-2168  
Facsimile: 772-597-2068

To FPUC:

C.L. Stein  
Senior Vice President & C.O.O.  
Florida Public Utilities Company  
401 S. Dixie Highway  
P.O. Box 3395  
West Palm Beach, Florida 33402  
Phone: 561-838-1760  
Facsimile: 561-833-8562

with a copy to:

Barry Kennedy  
General Manager-South Florida  
Florida Public Utilities Company  
401 S. Dixie Highway  
P.O. Box 3395  
West Palm Beach, Florida 33402  
Phone: 561-838-1729  
Facsimile: 561-833-8562

**ARTICLE XV**  
**Mutually Beneficial Transactions**

**15.1** Company may, from time to time, request Shipper to vary its daily deliveries from the scheduled delivery quantities. On those occasions, Company may request, at its sole discretion, and the Shipper may agree, at its sole discretion, that Shipper change its nominated Gas supply quantities. Terms and conditions of such transactions shall be agreed upon at the time of the transaction and shall be recorded and confirmed in writing within two (2) business days after the transaction.

**ARTICLE XVI**  
**Miscellaneous Provisions**

**16.1** 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.

**16.2** 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.

**16.3** 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 14.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 14.1 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.

**16.4 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.

**16.5 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.

**16.6 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.

**16.7 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.

**16.8 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.

**16.9 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. The 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 16.9, 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.

**16.10 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 Martin County, Florida.

**16.11 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.

ATTEST:

By: Kimberly M Beck

Name: KIMBERLY M BECK

Indiantown Gas Company, Inc.

By: Brian Fouens

Name: Brian Fouens


Title: President

ATTEST:

By: Chandra Saylor

Name: Chandra Saylor

Florida Public Utilities Company

By: C.L. Stein 

Name: C.L. Stein

Title: SR. Vice President, COO

EXHIBIT A

To  
Firm Transportation Service Agreement  
Between  
Indiantown Gas Company, Inc.  
And  
Florida Public Utilities Company

**Transportation Rate:** The rates for gas transportation service provided to Shipper by Company under this Agreement shall be as follows:

Reservation Charge:	\$0.04 per Dekatherm X MDTQ X Number of Days in a billing month.
Firm Transportation Charge:	\$0.15 per therm measured at the Delivery Point.

**MDTQ:** 500 Dt/day

**Delivery Pressure:** 30 psig at the Delivery Point

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

Indiantown Gas Company, Inc.

By: Brian Power

Name: Brian Power

Title: President

Date: 7/1/06

Florida Public Utilities Company

By: C.L. Stein P

Name: C.L. Stein

Title: SR. Vice President, COO

Date: 6/27/06