

Eric Fryson

120229-GU

From: Keating, Beth [BKeating@gunster.com]
Sent: Tuesday, August 28, 2012 12:48 PM
To: Filings@psc.state.fl.us
Cc: Connie Kummer; 'Martin, Cheryl'
Subject: New filing: Petition of Florida Division of Chesapeake Utilities Corporation for Approval of a Special Contract with Suwannee American Cement

Attachments: 20120828123245042.pdf

Attached for electronic filing, please find an electronic copy of the Petition of Florida Division of Chesapeake Utilities Corporation for Approval of a Special Contract. Thank you for your assistance with this filing, and as always, please don't hesitate to let me know if you have any questions.

Sincerely,
Beth

a. Person responsible for this electronic filing:

Beth Keating
Gunster, Yoakley & Stewart, P.A.
 215 S. Monroe St., Suite 601
 Tallahassee, FL 32301
bkeating@gunster.com
 Direct Line: (850) 521-1706

b. New Filing: Petition of Florida Division of Chesapeake Utilities Corporation for Approval of a Special Contract with Suwannee American Cement

c. On behalf of: Florida Division of Chesapeake Utilities Corporation

d. Total pages: 28

e. Description: Petition for Approval of Special Contract



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

Beth Keating | Attorney
 Governmental Affairs
 215 S. Monroe Street, Suite 601
 Tallahassee, FL 32301
 P 850-521-1706 C 850-591-9228
gunster.com | [View my bio](#)

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein. Click the following hyperlink to view the complete Gunster IRS Disclosure & Confidentiality note.

<http://www.gunster.com/terms-of-use/>

DOCUMENT NUMBER-DATE

05861 AUG 28 09

8/28/2012

FPSC-COMMISSION CLERK



Writer's E-Mail Address: bkeating@gunster.com

August 28, 2012

VIA E-MAIL FILINGS@PSC.STATE.FL.US

Ms. Ann Cole, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

120229-GU

New Filing: Petition of Florida Division of Chesapeake Utilities Corporation for Approval of Special Contract with Suwannee American Cement

Dear Ms. Cole:

Attached for electronic filing, please find a copy of the Petition of the Florida Division of Chesapeake Utilities Corporation for Approval of a Special Contract with Suwannee American Cement.

Thank you for your kind assistance with this filing. As always, please do not hesitate to contact me if you have any question or concerns whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK

DOCUMENT NUMBER-DATE

0586 | AUG 28 2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Division of
Chesapeake Utilities Corporation for Approval
of Special Contract with Suwannee American
Cement LLC.

Docket No. 120229-GU
Filed: August 28, 2012

PETITION OF THE FLORIDA DIVISION OF
CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL
OF SPECIAL CONTRACT

Pursuant to Section 366.06, Florida Statutes, and in accordance with Rules 25-9.034, Florida Administrative Code, and 28-106.201, Florida Administrative Code, the Florida Division of Chesapeake Utilities Corporation ("CHPK" or "Company"), hereby files this Petition seeking Commission approval of a Special Contract with Suwannee American Cement LLC ("Suwannee"). In support of this request, the Company states:

1. CHPK is a natural gas utility with its principal offices located at:

1641 Worthington Road, Suite 220
West Palm Beach, FL 33409-6703

2. Please send copies of all notices, pleadings and other communications and documents in this docket to the following:

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301

Florida Division of Chesapeake
Utilities Corporation
Cheryl Martin, Director/Regulatory Affairs
1641 Worthington Road, Suite 220
West Palm Beach, FL 33409-6703

3. CHPK is natural gas utilities subject to regulation by the Commission in accordance with Chapter 366, Florida Statutes. As a party to the contract hereby offered for approval, CHPK's substantial interests will be determined in this proceeding, because the Commission's actions

herein will determine whether or not CHPK will be allowed to provide transportation service to Suwannee pursuant to the negotiated contract.

4. Suwannee owns and operates a cement plant located near the City of Branford, Florida in Suwannee County. For nearly ten (10) years, Suwannee has used natural gas in its cement production process, and CHPK has provided the transportation service necessary to deliver the natural gas to Suwannee over the full course of that 10-year period, pursuant to a preceding Special Contract (“Original Agreement”).¹

5. In accordance with Section 8.1 of the Original Agreement, the term of the Original Agreement spanned 10 years from the date CHPK began delivery service to Suwannee. With the end of the term approaching and consistent with Section 7.1 of the Original Agreement, Suwannee and CHPK engaged in extensive negotiations for a new agreement that better reflects the mature relationship of the parties and Suwannee’s position as an established customer of CHPK. The result of those negotiations is the Special Contract now offered for Commission approval, which is attached hereto as Attachment A.

6. The primary distinctions between the Original Contract and the proposed Special Contract are found in the rate and rate structure set forth in Exhibit A to the Special Contract and in the elimination of the requirement for an irrevocable letter of credit or surety bond provided by Suwannee. The initial term of the new Special Contract is three (3) years with provisions for extension unless either party gives notice of termination to the other party.

7. With regard to the new rate set forth in Exhibit A to the Special Contract, the transportation rate will now be set at \$4,563.28 per month. This rate better reflects current use of capacity for Suwannee when compared to the old mechanism of charging a monthly reservation

¹ Contract approved by PAA Order No. PSC-02-0162-PAA-GU, issued February 4, 2002, in Docket No. 011620-GU.

fee of \$20,075.00, which was then subject to reduction on a monthly basis depending upon the number of days in each month that CHPK recalled from Suwannee any relinquished FGT pipeline capacity.

8. CHPK's tariff allows for Special Contracts of this nature consistent with Original Sheet No. 19, which provides, in pertinent part:

c. Special Contract Service (SCS)

Transportation Service provided to a Consumer, at the sole option of the Company pursuant to Commission Rule 25-9.034, F.A.C., where the rates, terms and/or conditions of service may be different than those set forth in the Company's approved tariff. All SCS Consumers shall enter into a Special Contract Agreement with the Company, subject to the approval of the Commission.

9. Approval of this Special Contract will allow CHPK to continue to be the transportation service provider for Suwannee, which benefits not just the parties to the Special Contract, but also CHPK's general body of ratepayers. Moreover, the rate set forth in the Special Contract will continue to allow CHPK to appropriately recover its ongoing costs to serve Suwannee as demonstrated in Attachment B to this Petition. As with the prior Original Agreement, Suwannee's facility will continue to be subject to CHPK's Curtailment Plan on file with the Commission.

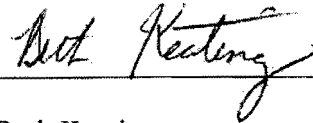
10. CHPK is aware of no disputed issues of fact pertaining to this Special Contract and suggests that approval of the Special Contract is appropriate and consistent with Chapter 366, Florida Statutes.

WHEREFORE, the Florida Division of Chesapeake Utilities Corporation hereby respectfully requests that the Commission approve the Special Contract with Suwannee

Petition for Approval of Special Contract

American Cement LLC, effective as of the date of the Commission's vote. In the event that the Commission's vote is protested, CHPK further requests that the parties be allowed to operate under the terms of the new Special Contract, subject to refund, pending resolution of the protest.

Respectfully submitted this 28th day of August, 2012, by:

A handwritten signature in cursive script, reading "Beth Keating", positioned above a horizontal line.

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301

*Attorneys for Florida Division of
Chesapeake Utilities Corporation*

ATTACHMENT A

SPECIAL CONTRACT
BETWEEN
SUWANNEE AMERICAN CEMENT
AND
FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

SPECIAL CONTRACT
BETWEEN
CHESAPEAKE UTILITIES CORPORATION
AND
SUWANNEE AMERICAN CEMENT LLC

SPECIAL CONTRACT

THIS AGREEMENT, entered into by and between Chesapeake Utilities Corporation, a Delaware corporation, doing business in Florida as Central Florida Gas Company, and hereinafter referred to as "Company" and Suwannee American Cement LLC, hereinafter referred to as "Shipper."

WITNESSETH:

WHEREAS, the Company operates facilities for the distribution of natural gas in the State of Florida and currently provides natural gas transportation service to Shipper; and

WHEREAS, Shipper has requested that the Company receive from Transporter certain quantities of Gas for Shipper's account, transport such quantities on Company's distribution system, and redeliver same to Shipper's facilities located in Suwannee County, and Company agrees to provide such service in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the premises and 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 shall 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 Florida Gas Transmission Company ("FGT") 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 FGT's tariff.
- 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 "Gas" means natural gas which is in conformance with the quality specifications of the Transporter.
- 1.6 "Maximum Daily Transportation Quantity" or "MDTQ" means the largest quantity of Gas, expressed in Dekatherms, that the Company is obligated to transport and make available for delivery to Shipper under this Agreement.
- 1.7 "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 FGT 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 FGT's tariff.
- 1.8 "P.O.I." means Point of Interest, that is, the point at which control and possession of Gas passes from FGT to the Company.
- 1.9 "p.s.i.a." means pounds per square inch absolute.
- 1.10 "p.s.i.g." means pounds per square inch gauge.
- 1.11 "Receipt Point" means the point at which Gas is received by Transporter into Transporter's system from an upstream service or facility.
- 1.12 "Shipper's Facilities" means the cement plant located in Suwannee County, Florida owned by Suwannee American Cement LLC.
- 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 Shipper's Facilities.

ARTICLE II
POINTS OF DELIVERY AND REDELIVERY

- 2.1 Shipper shall cause the Transporter to deliver to Company at the Delivery Point on 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 Transporter at Transporter's Delivery Point. Company shall deliver such quantities of Gas received from Transporter at Transporter's Delivery Point for Shipper's account to Company's Delivery Point at the Shipper's Facilities (hereinafter referred to as "Company's Delivery Point").

ARTICLE III
QUANTITIES

- 3.1 Subject to the terms and conditions of this Agreement, Company agrees to receive from 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 of Gas to Shipper at Company's Delivery Point located at Shipper's Facilities. 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 Transporter to Transporter's Delivery Point and delivered by Company to Shipper's Facilities. Shipper shall promptly provide notice to Company of all such nominations. Such notices shall be provided to Company electronically as both parties may agree. Imbalances between quantities (i) scheduled for delivery by the Transporter to Company and/or delivery by Company to Shipper's Facilities, and (ii) actually delivered by the Transporter and/or 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 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 to the provisions of Articles V and IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's gas distribution system 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, which is attached hereto and made a part hereof by this reference.

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 to the extent of Shipper's commercial control, 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 Facilities, 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 Point.
- 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 or underrun 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;

3. any claim against Company relating to any obligation or liability of Shipper; and
4. the operations or activities of Shipper in performance of this Agreement.

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, 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;
 3. any claim against Shipper relating to any obligation or liability of Company, or its affiliates; and
 4. the operations or activities of Company in performance of this Agreement.

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 Company's delivery charge per month for Gas transported

and redelivered under this Agreement and does not include any charges for transportation service by FGT or any other Transporter transporting 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 only by Order of the FPSC. Company shall notify SAC as soon as it receives any notice form FPSC of a proposed rate change.

- 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 in 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 be separately stated as a reduction in the amount of the bill retroactive to the effective date of such tax reduction. Does not include property taxes—that can't be added. Because that property tax doesn't relate to the service provided by the Company.

ARTICLE VIII **TERM**

- 8.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective on November 1, 2012, and shall continue in full force and effect for an initial period of three (3) years, and shall thereafter be extended for additional periods of one year each; unless either party gives written notice of termination to the other party, not less than one hundred and twenty (120) 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 or if mutually agreed to by the parties in writing.

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 cannot 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 Company's applicable Rate Schedule provisions to the extent mutually agreed upon by the parties in writing, may be incorporated into this Agreement, and applicable Subsections of the Rules and Regulations of 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. In the event of any conflict between said provisions of Company's FPSC Natural Gas 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 warrants that its distribution system is currently built and maintained in accordance with the Federal Department of Transportation ("FDOT") Regulations, Sections 191 and 192 and Chapters 25-7 and 25-12 of the Florida Public Service Commission, and covenants that it shall maintain its distribution system in accordance with the Federal Department of Transportation ("FDOT") Regulations, Sections 191 and 192 and Chapters 25-7 and 25-12 of the Florida Public Service Commission, which has statutory powers granted to establish rules and standards for safe design, installation, operation and maintenance of natural gas systems. Company covenants and agrees it

shall maintain, repair and replace equipment to assure the safety and good working order of the Company natural gas system at no cost to Shipper for the term of this agreement.

- 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.
- 11.3 Shipper shall have the right to periodic third-party independent inspections of equipment. Inspections performed shall be at Shipper's cost. Company covenants and agrees to correct any defects noted by such inspection which are not in conformance with FDOT and FPSC Regulations referenced above in Section 11.1 at Company's cost.

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: Suwannee American Cement LLC
P.O. Box 410
Branford, Florida 32008

Attention: Controller
Phone: (386) 935-5003
Facsimile: (386) 935-5080
E-mail: jeffm@suwanneecement.com

Company: Chesapeake Utilities Corporation
1641 Worthington Road, Suite 220
West Palm Beach, FL 33409-9988

Attention: Director of Regulatory Affairs
Phone: (561) 838-1725
Facsimile: (561) 838-0151
E-mail: cherylmartin@fpuc.com

- 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 12.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 12.1 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 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 dispute arising concerning this Agreement, the parties shall in the first instance attempt informal Mediation to resolve the dispute. Thereafter, in the event of litigation relative to, or arising out of the relationship of the Parties as evidenced by this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other sums which may be found to be due, all costs incurred and reasonable attorneys' fees, including, but not limited to, all such costs and fees incurred during investigation, in preparation for trial, at trial, at retrial, upon rehearing or appeal of the decision of any tribunal, in bankruptcies, and in any administrative proceedings.
- 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 sixty (60) business days an appropriate petition with the FPSC seeking approval of this Agreement as a Special Contract. In the event FPSC approval occurs after November 1, 2012, the Company shall retroactively adjust any rendered bills to Shipper for the period beginning November 1, 2012 through the FPSC approval date. 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, or in the event FPSC has not approved this Agreement as a Special Contract by November 1, 2012, 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 Law Governing Agreement; Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be before an agency or a court of the State of Florida having jurisdiction.
- 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 on the dates stated below.

SUWANNEE AMERICAN CEMENT LLC

BY: MAT FALCON

NAME: MARTIN ISALCON

TITLE: President & CEO

DATE: 7-3-12

CHESAPEAKE UTILITIES CORPORATION

BY: JEFF HOUSEHOLDER

NAME: JEFF HOUSEHOLDER

TITLE: President

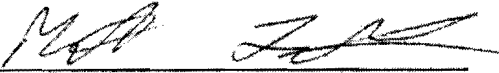
DATE: 8/21/12

EXHIBIT A
TO
SPECIAL CONTRACT
BETWEEN
CHESAPEAKE UTILITIES CORPORATION
AND
SUWANNEE AMERICAN CEMENT LLC

Transporter's Delivery Points:	Interconnection between FGT pipeline and Company in the vicinity of Branford, Florida
MDTQ:	8,000 DT/Day
Company's Delivery Point:	The outlet side of the measuring equipment of the distribution facilities at Shipper's Facilities.
Transportation Rate:	\$4,563.28 per Month
Term:	Three (3) years.
Delivery Pressure:	100 p.s.i.g.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit A with their duly authorized officers on the dates stated below.

SUWANNEE AMERICAN CEMENT LLC

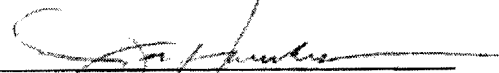
BY: 

NAME: MARTIN FALCON

TITLE: CEO

DATE: 7-3-12

CHESAPEAKE UTILITIES CORPORATION

BY: 

NAME: JEFF HOWERTON

TITLE: PROVINT

DATE: 8/21/12

CFTS AFFIDAVIT

To: Chesapeake Utilities Corporation
Florida Division
P. O. Box 960
Winter Haven, FL 33882-0960
Attention: Director, Regulatory Affairs

From: Company Name: Suwannee American Cement LLC
Address: 8529 Park Circle, Suite 320
Orlando, FL 32819
Contact: Martin Fallon, President
Telephone/Fax: (407) 802-3552 / (407) 226-0359
Location of Facility
Receiving Offer: Suwannee County, Florida

Alternate Fuel Offer

- Fuel Supplier _____
- Fuel Type _____
- Quantity _____
- Term _____
- Price per Unit _____
- Taxes _____
- Fuel Delivery Cost _____
- Offer Expires _____

Third Party Natural Gas Costs

- Gas Supplier _____
 - Gas Supply Cost (Total) _____
-
-

Bypass Alternative

- Distance from Interstate Pipeline (Feet) 100 feet
- Construction Cost \$328,500
- Payback (Years) 5 Years
- Quantity (Annual Therms) N/A
- Bypass Avoidance Rate (per Month) \$5,475

Issued by: John R. Schimkaitis, President
Chesapeake Utilities Corporation

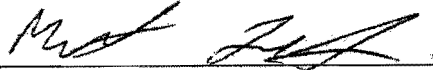
Effective:

CFTS AFFIDAVIT
(Continued)

As an Authorized Representative of Suwannee American Cement LLC, I hereby certify that the foregoing information is true, complete and correct, and that the Company has the capability to either utilize the designated alternate fuel in the quantities specified or bypass the Florida Division at the above referenced facility. A copy of the Alternate Fuel Offer and the Third Party Natural Gas Costs or the detailed Construction Costs is attached as evidence of the bona fide offer from the Alternate Fuel provider and the natural gas costs from the third party provider or a copy of the detailed Construction Costs is attached as evidence of the bona fide opportunity to bypass.

I further certify that Suwannee American Cement LLC will terminate Firm Transportation Service from the Florida Division on January 1, 2011 unless the total price for natural gas service is adjusted, as provided in the Florida Division's Rate Schedule Rider CFTS, to compete with the alternate fuel price or bypass price indicated above.

Customer Name: Suwannee American Cement LLC

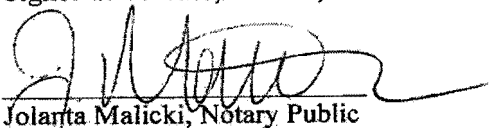
By: 

Name: Martin Fallon

Title: President & CEO

On this 31 day of July, 2012, before me, a Notary Public, in and for the Province of Ontario, at the pleasure of the Lieutenant-Governor, personally appeared Martin Fallon, President & CEO, to me known to be the person who executed on behalf of Suwannee American Cement LLC this document entitled "CFTS Affidavit".

Signed at Toronto, Ontario, Canada and sealed with my notarial seal by my hand.


Jolanta Malicki, Notary Public

(Notarial seal)

Issued by: John R. Schimkaitis, President
Chesapeake Utilities Corporation

Effective:

ATTACHMENT B

**COST OF SERVICE STUDY
FOR
SPECIAL CONTRACT
BETWEEN
SUWANNEE AMERICAN CEMENT
AND
FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION**

**COST OF SERVICE STUDY
SUWANNEE AMERICAN CEMENT LLC**

Page 1

FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

CALCULATION OF RATE BASE, RETURN REQUIREMENTS AND INCOME TAXES

<u>DESCRIPTION</u>	<u>AMOUNT</u>
Gross Investment in Plant	\$343,241
Less: Accumulaed Depreciation (13 month average)	<u>(\$115,901)</u>
13 Month Average Rate Base	\$227,340
Overall Cost of Capital (December 31, 2011 ESR)	7.43%
Return Requirements	<u>\$16,891</u>
Less: Interest on Debt	<u>(\$4,501)</u>
Net Income after Taxes	\$12,390
Divide by 1-Tax Rate	61.42%
Taxable Income	<u>\$20,173</u>
Income Taxes @ 38.58%	<u>\$7,783</u>

**COST OF SERVICE STUDY
SUWANNEE AMERICAN CEMENT LLC**

Page 2

FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

Cost of Service

<u>Cost of Service</u>	<u>AMOUNT</u>
Operation & Maintenance	\$8,372
Depreciation	\$12,013
Insurance	\$5,000
Taxes Other than Income	\$4,633
Income Taxes	\$7,783
Return Requirements	\$16,891
Total Cost of Service	<u>\$54,692</u>

NOTES:

Taxes Other than Income - Property Taxes and Revenue Related

2011 Property Tax Expense	\$832,317	RAF Percentage	0.5%
13 month average rate base - 12/31/11 ESR	\$43,410,686	Projected Annual Revenues	\$54,759
Average Tax Rate	1.92%	Revenue Related Taxes	\$274
Rate Base	\$227,340	Total Taxes Other Than Income	\$4,633
Property Tax Expense	\$4,359		

**COST OF SERVICE STUDY
SUWANNEE AMERICAN CEMENT LLC**

Page 3

FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

Estimated O&M Expenses

<u>Description</u>	<u>AMOUNT</u>
Meter - Spin Test - 2 times per year (16 hours/year @ \$31.61/hour)	\$506
Meter Test - every 5 years (8 hours/5 years @ \$31.61/hour + Parts \$550/year)	\$601
Meter Parts	\$165
Repaint Station every 3 Years (20 hours/ 3 years @ \$68/hour, \$201/year Supplies & Misc. Exp)	\$654
Maintenance & Calibration of EFM Equipment	
16 hours/year @ \$31.61	\$506
Replacement Board	\$1,375
Replacement Modem	\$523
Replacement Battery (Every 5 Years)	\$23
Misc. Materials	\$135
Annual Regulator Testing & Repair (16 hours @ \$31.61/hour)	\$506
Misc. Materials	\$704
Miscellaneous Expense	<u>\$2,675</u>
TOTAL ESTIMATED O&M EXPENSES	<u><u>\$8,372</u></u>

**COST OF SERVICE STUDY
SUWANNEE AMERICAN CEMENT LLC**

FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

CAPITALIZATION AS FILED IN DECEMBER 31, 2011 EARNINGS SURVEILLANCE REPORT

30.02%	Debt, Customer Deposits
<u>70.74%</u>	Common Equity, DIT, ITC
100.76%	

1.98% Weighted Average Cost of Debt, Cust Deposits

\$227,340 Rate Base

\$4,501 Interest Expense