

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 26, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Doherty, Draper) *ESD*
Office of the General Counsel (Mapp) *CRM JSC*

RE: Docket No. 20170180-GU – Petition by the Florida Division of Chesapeake Utilities Corporation for approval of special contract with Mosaic Fertilizer LLC.

AGENDA: 11/07/17 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

RECEIVED - FPSC
2017 OCT 26 AM 9:12
COMMISSION
CLERK

Case Background

On August 23, 2017, the Florida Division of Chesapeake Utilities Corporation (Chesapeake or company) filed a petition for approval of a special contract with Mosaic Fertilizer, LLC (Mosaic). Chesapeake is a local distribution company subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes (F.S.). Mosaic is in the business of mining, processing phosphate, and manufacturing fertilizer. Mosaic purchases natural gas for its New Wales facility in Polk County, Florida, which is involved in the production of phosphate fertilizer.

During its evaluation of the petition, staff issued a data request to Chesapeake for which a response was received on September 19, 2017. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the special contract between Chesapeake and Mosaic?

Recommendation: Yes. The Commission should approve the special contract shown in Attachment A between Chesapeake and Mosaic. The contract should be effective as of the date of the Commission's vote. (Doherty, Draper)

Staff Analysis: To evaluate the proposed special contract, staff is providing some background information regarding Chesapeake's transportation service provided to Mosaic.

Background

Mosaic is a large volume natural gas transportation customer and currently takes service under Chesapeake's Firm Transportation Service - 13 (FTS-13) rate schedule. The FTS-13 rates were approved by the Commission in Chesapeake's 2009 rate case.¹ The FTS-13 rate schedule contains a flat monthly rate of \$16,692.25 and no per therm usage charge. Mosaic continues to be the only customer on the FTS-13 rate schedule. In the 2009 rate case, the FTS-13 rate was designed based on Mosaic's cost to bypass the company's distribution system while also recovering Chesapeake's cost to provide service to Mosaic. Mosaic has the ability to bypass Chesapeake's distribution system since the Florida Gas Transmission (FGT) pipeline traverses Mosaic's property and Mosaic could directly interconnect with FGT.

Chesapeake only provides transportation service to Mosaic as Chesapeake does not purchase the actual gas commodity for its customers; rather, customers purchase gas from third party marketers or shippers. The FTS-13 rate is available to customers whose annual transportation volume is greater than 12,500,000 therms.

In October 2014, the Commission closed the FTS-13 rate schedule to new customers and grandfathered Mosaic under the FTS-13 rate.² Since the FTS-13 rate was designed based on Mosaic's cost to serve, a new customer seeking service under the same tariff may not have the same cost profile as Mosaic, potentially resulting in the new customer being subsidized by the general body of ratepayers.

Due to Mosaic's current business requirements and processes, its gas transportation volumes have dropped below the 12,500,000 therms annual transportation requirement of the FTS-13 rate schedule. As a result of this reduced level of usage, Mosaic now qualifies for the FTS-12 rate schedule that is available to customers with annual therm usage between 2,500,000 and 12,500,000 therms. Under the current Commission approved FTS-12 charges, Mosaic would have to pay a firm transportation charge (\$9,000) as well as a usage charge (\$0.06123 per therm), resulting in a monthly bill of approximately \$72,372.

¹ Order No. PSC-10-0029-PAA-GU, issued January 14, 2010, in Docket No. 090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation.*

² Order No. PSC-14-0592-TRF-GU, issued October 22, 2014, in Docket No. 140151-GU, *In re: Petition of the Florida Division of Chesapeake Utilities Corporation to Close Rate Schedule Firm Transportation Service - 13 (FTS-13).*

Chesapeake explained in the petition that reclassifying Mosaic as an FTS-12 customer would significantly increase Mosaic's monthly bill; therefore, Chesapeake identified the most practical step was to negotiate the proposed contract as requested by Mosaic. Rule 25-9.034, Florida Administrative Code, and Chesapeake's tariff require that special contracts be approved by the Commission.

Proposed Contract

The cost of service study provided by Chesapeake shows current total annual operating costs of \$102,316 for the Mosaic facilities. The cost of service includes operation and maintenance costs and taxes. Chesapeake explained that the facilities to serve Mosaic are fully depreciated. Therefore, there is no investment and no associated depreciation and return on investment included in the cost of service.

The negotiated annual fixed rate contained in the special contract (confidential) is designed to enable Chesapeake to cover its cost of service. The special contract amount is to be paid by Mosaic to Chesapeake in monthly reservation charges that are fixed and do not vary based on actual usage. The initial maximum daily quantity of gas Chesapeake is obligated to transport to Mosaic is 5,100 dekatherms, with the option for Mosaic to adjust the maximum daily quantity up to 6,100 dekatherms. The term of the special contract is five years and will be extended for additional periods of one year each unless either party gives written notice of termination.

Based on the cost of service study provided, staff agrees with Chesapeake's assertion that the monthly reservation charge recovers Mosaic's cost of service and, therefore, will provide benefits to Chesapeake's general body of ratepayers.

Conclusion

Based on the review of the petition and responses to staff's data requests, staff believes Chesapeake's representations to be reasonable and recommends that the Commission approve the special contract between Chesapeake and Mosaic as shown in Attachment A. The special contract should be effective as of the date of the Commission's vote.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Mapp)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of the Consummating Order.

SPECIAL CONTRACT

THIS AGREEMENT, entered into by and between Florida Division of Chesapeake Utilities Corporation, a Delaware corporation, d/b/a Central Florida Gas ("CFG"), and hereinafter referred to as "Company" and Mosaic Fertilizer, 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 Polk 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") or Gulfstream Natural Gas System, LLC ("Gulfstream") 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(s).
- 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 and/or Gulfstream 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 Transporters into Transporters' system from an upstream service or facility.
- 1.12 "Shipper's Facilities" means the New Wales Plant located in Polk County, Florida owned by Mosaic Fertilizer 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 fall within the range of the quantities of Gas per day as shown in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof. The initial amount of the MDTQ shall be the minimum amount identified in the MDTQ range. By mutual agreement of the Parties, in writing, adjustments to the MDTQ may be made to correspond with adjustments to capacity relinquished to Shipper pursuant to that certain Capacity Relinquishment Agreement entered into by the Parties on September 1, 2017, whereby Shipper may request modification of the capacity quantities to be effective with the subsequent Renewal Term and Company, as Relinquishing Shipper, may, but is not obligated to, agree to the requested modification or other mutually-acceptable modification to the capacity quantities for the subsequent Renewal Term.

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.

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 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 Shipper as soon as it receives any notice from 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.

ARTICLE VIII
TERM

- 8.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective on, and shall continue in full force and effect for an initial period of five (5) 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 eighty (180) 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: Mosaic Fertilizer LLC

Attention: Michele Bidulka

Phone: 306-523-2810

E-mail: Michele.bidulka@mosaicco.com/

brett.belknap@mosaicco.com/steve.davis@mosaicco.com

Company: Central Florida Gas Company

Attention: Energy Logistics

Phone: 561-846-1019

Facsimile: 561-366-1523

E-mail: cfdgascontrol@chpk.com; jbauersmith@chpk.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 venture, 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 September 1, 2017 the Company shall retroactively adjust any rendered bills to Shipper for the period beginning September 1, 2017 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 December 31, 2017, 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.

MOSAIC FERTILIZER LLC

BY: [Signature]

NAME: W. D. [Signature]

TITLE: Senior Vice President - phosphates

DATE: 7/17/2017

CHESAPEAKE UTILITIES CORPORATION

BY: [Signature]

NAME: Kevin [Signature]

TITLE: Vice President

DATE: 7/19/17