

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

March 2, 2023

BY E-PORTAL

Mr. Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: [New Filing] - Petition for Approval of Transportation Service Agreement with the Florida Public Utilities Company by Peninsula Pipeline Company, Inc. for service in and around the City of Lake Wales.

Dear Mr. Teitzman:

Attached for filing, please find the enclosed Petition of Peninsula Pipeline Company, Inc. for Approval of Transportation Service Agreement with the Florida Public Utilities Company for service in and around the City of Lake Wales. Also included are the referenced Transportation Service Agreement and a map of the subject area. Certain portions of the Transportation Service Agreement are confidential and provided in redacted only version. The Company is providing a confidential version, along with a Request for Confidential Classification, under separate cover today.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,



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

MEK
cc:/(Certificate of Service)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Transportation Service)	
Agreement with the Florida Public Utilities Company)	Docket No.:
by Peninsula Pipeline Company, Inc. for service in and)	
around the City of Lake Wales.)	Filed: March 2, 2023
)	

PETITION FOR APPROVAL OF TRANSPORTATION SERVICE
AGREEMENT BETWEEN PENINSULA PIPELINE COMPANY, INC. AND
FLORIDA PUBLIC UTILITIES COMPANY

Peninsula Pipeline Company, Inc. ("Peninsula" or "Company"), by and through its undersigned counsel, hereby files this Petition seeking approval of a Firm Transportation Service Agreement ("Agreement") between the Company and Florida Public Utilities Company ("FPU"), which is attached hereto as Attachment A (redacted)¹. The agreement will ensure continuance of gas service to FPU in the immediate area of the City of Lake Wales in Polk County.

Approval of the Agreement is necessitated by the impending acquisition by Peninsula of certain pipeline facilities in that area that, to date, have been leased by FPU in order to serve FPU customers in the area. The totality of the facilities acquired by Peninsula will consist of pipeline facilities of approximately 58,080 feet of 8-inch steel pipeline and associated facilities. The acquisition of these facilities by Peninsula will ensure FPU is able to continue to obtain gas supply from FGT for its existing distribution system in the City of Lake Wales in Polk County and will not otherwise impair the ability of other direct connect customers to the pipeline to obtain necessary gas supplies. In support of this request, the Company hereby states:

¹ Confidential version provided under separate cover consistent with 25-22.004, F.A.C.

1. Peninsula is a natural gas transmission company subject to the Commission's jurisdiction as prescribed under Chapter 368.10I, et. seq., Florida Statutes. Its principal business address is:

Peninsula Pipeline Company, Inc.
208 Wildlight Ave.
Yulee, FL 32097

2. The name and mailing address of the persons authorized to receive notices are:

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

Jason Bennett
AVP – Regulatory Affairs
1635 Meathe Drive
West Palm Beach, FL
33411
jbennett@chpk.com

3. Peninsula, a wholly owned subsidiary of Chesapeake Utilities Corporation ("CUC"), is a Delaware corporation authorized to transact business in the State of Florida. Peninsula is engaged in the business of building pipeline laterals from interstate transmission pipelines for customers. Peninsula provides firm transportation service only and does not engage in the sale of natural gas. Consistent with Section 368.105(6), Florida Statutes, the Company constructs such pipeline lateral facilities and related facilities required for interconnection with a customer only if the potential customer agrees to fully compensate the Company for reasonable costs incurred. Likewise, consistent with the referenced provision, the Company provides transmission access, subject to available capacity, on a basis that is not unreasonable by preferential, prejudicial, or unduly discriminatory.²

² By the same token, Section 368.105(6), Florida Statutes, recognizes that a natural gas transmission company is not required to provide transmission access to a person at rates that are not just and reasonable.

4. The Company is unaware of any material facts in dispute at this time, but the proceeding may involve disputed issues of material fact. The Company's request set forth herein does not involve reversal or modification of a Commission decision or proposed agency action. This is a Petition representing an initial request to the Commission, which is the affected agency located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

I. **BACKGROUND**

5. By Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, the Commission approved the Company's intrastate pipeline tariff, consistent with the Commission's jurisdiction under Chapter 368, Florida Statutes. Therein, the Commission also determined that the tariff was consistent with the Commission's prior Declaratory Statement, which provided additional parameters for Peninsula's operations in the State.³
6. Pursuant to the Company's tariff on file with the Commission, as well as Order No. PSC-07-1012-TRF-GP, the Company is allowed to undertake certain projects without express Commission approval. For instance, the Company is not required to seek prior approval if the customer is not currently receiving natural gas service from another entity, such as a local distribution company ("LDC"), and the customer's facilities are located at a distance greater than one mile from the existing gas facilities of an investor-owned gas utility, a municipal gas utility, or a gas district. The Company also

³ Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, in Re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.10 I, et seq.

need not seek regulatory approval if it is engaged to serve an LDC that is not an affiliate of the Company.⁴ Consistent with Section 368.105(3), Florida Statutes, for contracts such as these, the Company is only required to file affidavits from both the Company and the customer affirming that:

- a. Neither the natural gas transmission company nor the customer had an unfair advantage during the negotiations;
- b. The rates are substantially the same as rates between the natural gas transmission company and two or more of those customers under the same or similar conditions of service; **or**
- c. Competition does or did exist either with another natural gas transmission company, another supplier of natural gas, or with a supplier of an alternative form of energy. Section 368.105(3), Florida Statutes (emphasis added).

7. The Company is, however, required to seek Commission approval of projects in the following categories:

- a. Interconnection to an LDC in order to serve a customer downstream;
- b. Interconnection with an LDC to provide service to another LDC;
- c. Construction of facilities to serve a current LDC customer or one that is within 1 mile of the existing facilities of an investor-owned or municipal gas utility, or a gas district; and
- d. Other projects that are not otherwise specifically identified in the tariff as not

⁴ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Sheet No. 11, Section 3

requiring prior Commission approval.⁵

8. FPU is a division of Chesapeake Utilities Corporation (“CUC”), a Delaware corporation authorized to conduct business in Florida. Thus, both Peninsula and FPU are owned and/or controlled by CUC. Pursuant to the provisions of Chapter 366, Florida Statutes, FPU is subject to economic regulation by the Commission. FPU's principal offices are located at 208 Wildlight Ave, Yulee, FL 32097. Because both FPU and Peninsula are corporate subsidiaries of CUC, the Company is required to seek Commission approval prior to entering into a contract to construct facilities and provide transportation service to FPU, consistent with Sheet 12, Section 4(d).
9. As noted above, the approved tariff, consistent with Order No. PSC-06-0023-DS-GP, provides that the Company must seek approval for agreements unless an individual agreement fits the criteria set forth in the Company's tariff for an agreement that does not require prior Commission approval.⁶ The Agreement with FPU would not meet any of the enumerated criteria; thus, Peninsula respectfully seeks Commission approval in this instance.

II. LAKE WALES PIPELINE ACQUISITION

10. With regard to review of the Agreement under the standard set forth in Section 368.105, Florida Statutes, the Company submits that the Agreement withstands review under the seminal case for review of affiliate transactions, because the rate charged under this

⁵ Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. I, Sheet No. 12, Section 4.

⁶ Moreover, since the tariff expressly provides that the Company need not seek approval if it enters into an agreement with a non-affiliated LDC, the Company believes that it must therefore seek Commission approval when the converse situation arises.

Agreement is not "inherently unfair" or in excess of the going market rate.⁷ Specifically, this agreement has been necessitated by a request for service by FPU to Peninsula in anticipation of Peninsula's acquisition of facilities FPU currently leases, as discussed in greater detail below, the Transportation Agreement will ultimately ensure continued natural gas service in and around the City of Lake Wales.

11. On March 8, 1999, FPU entered into a Lease Agreement with a Citrusuco processing facility in the area (hereinafter, "Lessor" or "Processing Plant") for a segment of pipeline facilities that provide access for the Processing Plant to FGT, which FPU also accesses to serve customers in the Lake Wales area. As part of the lease agreement, FPU has operated and maintained the pipeline for the needs of itself and its customers. Currently, the pipeline provides service to FPU's Lake Wales distribution system, and six other direct connect customers to the pipeline. The pipeline location is shown on the Project Map attached hereto as Attachment B.
12. Peninsula has negotiated an Acquisition Agreement with the Lessor for the referenced pipeline facilities, the closing of which is contingent on the approval of the Transportation Agreement between Peninsula and FPU by the Commission. At closing of the Acquisition Agreement, Peninsula will take over ownership, as well as continued operation and maintenance of the facilities and provide service to FPU pursuant to the subject Transportation Service Agreement.
13. The purchase of the pipeline by Peninsula and the Transportation Agreement ensures that FPU will be able to continue to provide quality natural gas service to the area, and at a

⁷ See also GTE Florida Incorporated v. Deason, 642 So. 2d 545 (Fla. 1994)(determining that the appropriate review of an affiliate transaction considers "... whether the transactions exceed the going market rate or are otherwise inherently unfair.")

cost savings to customers. In looking at a possible project to build another similar feed to its Lake Wales system, FPU estimates that it would cost approximately \$15.46 million.

III. TRANSPORTATION SERVICE AGREEMENT

14. The Transportation Agreement for which the Petitioner seeks Commission approval will allow FPU to continue to serve natural gas to customers in and around the City of Lake Wales in Polk County once Peninsula has acquired the referenced pipeline facilities. As such, the Petitioner asserts that the proposed Agreement is in the public interest.
15. The Petitioner further respectfully asks that the Commission consider this agreement at its April 4, 2023, Agenda Conference. This expedited treatment will avoid delay in the closing of the Acquisition Agreement and transition of facilities, and likewise facilitate a continuation of service to customers in the area. In furtherance of this request, the Company commits to providing responses to any data requests from Commission Staff on an expedited basis and to make pertinent personnel from Peninsula and FPU available for informational meeting as may be necessary.
16. The rates in the contract between FPU and Peninsula meet the requirements of Section 368.105(3), Florida Statutes, and the contract containing those rates is consistent with Order Nos. PSC-06-002-3DS-GP and PSC-07-1012-TRF-GP and with Peninsula's tariff on file with the Commission. Moreover, the rates set forth therein are consistent with a "market rate" in that they are within the range of the rates set forth in similar agreements between Peninsula and other customers, including the agreement between FPU and Peninsula for a project in Nassau County, approved by the Commission by Order No. 2019-0356-PAA-GU, issued August 23, 2019, in Docket No.20190128-GU. Likewise, the rates are not otherwise

"inherently unfair," as proscribed by the Court in the GTE Florida v. Deason decision.⁸ As such, the Company asks that the Agreement be approved.

WHEREFORE, Peninsula respectfully requests that the Commission consider this Transportation Service Agreement at the April 4, 2023, Agenda Conference, and approve the Transportation Service Agreement ("Lake Wales Acquisition") between Peninsula Pipeline Company, Inc., and the Florida Public Utilities Company.

RESPECTFULLY SUBMITTED this 2nd day of March 2023.



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

*Attorneys for Peninsula Pipeline
Company, Inc.*

⁸ *Supra*, footnote 5.

CERTIFICATE OF SERVICE

I HEREBY ATTEST that a true and correct copy of the foregoing Petition has been served upon the following by Electronic Mail (redacted only) this 2nd day of March, 2023:

Charles Rehwinkel, Interim Public Counsel
Office of Public Counsel
c/o the Florida Legislature
111 West Madison Street, Rm 812
Tallahassee, FL 32399-1400
rehwinkel.charles@leg.state.fl.us

Keith Hetrick, General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
khetrick@psc.state.fl.us

By:



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

Attorneys for Peninsula Pipeline Company, Inc.

ATTACHMENT A

Transportation Service Agreement

(Redacted Version)

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

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

WITNESSETH

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

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

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

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

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

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

ARTICLE I
DEFINITION

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

ARTICLE II
QUANTITY & UNAUTHORIZED USE

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

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

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

ARTICLE III
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

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

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

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

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

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

ARTICLE IV
TERM AND TERMINATION

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

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

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

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

ARTICLE V
COMPANY'S TARIFF PROVISIONS

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

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

ARTICLE VI
REGULATORY AUTHORIZATIONS AND APPROVALS

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

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

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

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

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

ARTICLE VIII
SCHEDULING AND BALANCING

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

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

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

ARTICLE IX
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.3 or 3.4 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of firm transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

- (ii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120)

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days prior written notice to Shipper.

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

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

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

COMPANY
Peninsula Pipeline Company, Inc.

By: Marissa Stipa
Marissa Stipa

SHIPPER
Florida Public Utilities Company

By: Bill Hancock
Bill Hancock

Title: Director

Title: Assistant Vice President

Date: March 1, 2023

Date: March 1, 2023

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

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE

EXHIBIT A

FIRM TRANSPORTATION SERVICE AGREEMENT BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

FLORIDA PUBLIC UTILITIES COMPANY

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

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

MHTP: [REDACTED]%

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

ATTACHMENT B

Project Map

