

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

April 24, 2023

**VIA E-PORTAL**

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

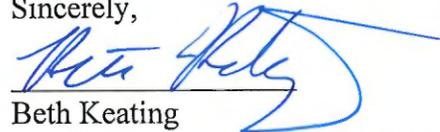
**Re: New Filing:** Petition for Approval of Transportation Service Agreement for the City of Newberry with the Florida Public Utilities Company by Peninsula Pipeline Company, Inc.

Dear Mr. Teitzman:

Attached for filing, please find Peninsula Pipeline Company's Petition for Approval of Transportation Service Agreement for the City of Newberry with the Florida Public Utilities Company by Peninsula Pipeline Company, Inc. Portions of Exhibit A to the Petition are redacted as confidential. The Company is filing a Request for Confidential Classification of the classified material 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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Transportation )  
Service Agreement for the City of Newberry )  
with the Florida Public Utilities Company by )  
Peninsula Pipeline Company, Inc. )  
)

Docket No.:  
Filed: April 24, 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 by the Florida Public Service Commission ("Commission") of a Firm Transportation Service Agreement ("Agreement") between the Company and Florida Public Utilities Company ("FPUC"), which is attached hereto as Attachment A (redacted)<sup>1</sup>. The completion of Peninsula's portion of the project will allow FPUC to provide gas service to residential, commercial, and industrial customers in and near the City of Newberry.

The totality of the project constructed by Peninsula will consist of new pipeline facilities of approximately 93,300 feet of 4-inch steel pipeline, a new metering and regulation ("M&R") station, and an update to a gate station with Florida Gas Transmission ("FGT"). The completion of these facilities PPC will allow transport of FPUC-owned gas supply from FGT to a newly constructed distribution system in the City of Newberry. The project is expected to bring financial and environmental benefits to the City. In support of this request, the Company hereby states:

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<sup>1</sup> 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 368.101, 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

Jason Bennett  
AVP – Regulatory Affairs/Business  
Transformation  
208 Wildlight Ave,  
Yulee, FL 32097  
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.<sup>2</sup>

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<sup>2</sup> 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.<sup>3</sup>
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

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<sup>3</sup> 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.<sup>4</sup> 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

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

requiring prior Commission approval.<sup>5</sup>

8. FPUC is a division of Chesapeake Utilities Corporation (“CUC”), a Delaware corporation authorized to conduct business in Florida. Thus, both Peninsula and FPUC are owned and/or controlled by CUC. Pursuant to the provisions of Chapter 366, Florida Statutes, FPUC is subject to economic regulation by the Commission. FPUC's principal offices are located at 208 Wildlight Ave, Yulee, FL 32097. Because both FPUC 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 FPUC, 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.<sup>6</sup> The Agreement with FPUC would not meet any of the enumerated criteria; thus, Peninsula respectfully seeks Commission approval in this instance.

## II. NEWBERRY PROJECT

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

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

<sup>6</sup> 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.<sup>7</sup>

11. Specifically, this Agreement has been necessitated by a request for service made by FPUC to Peninsula, as discussed in greater detail below. The complete project will ultimately expand the service area of FPUC to new customers in the City of Newberry that currently do not have natural gas service. The project, as designed, will provide natural gas service to residential and commercial customers already in the area as well as future customers expected to locate in the Newberry area due to natural gas availability that the project will bring. The overall scope of Peninsula's project will consist of the installation of 93,300 feet of 4-inch steel pipeline, a new M&R station, and updates to an existing gate station with Florida Gas Transmission Company ("FGT"). The project's location is shown on the Project Map attached hereto as Attachment B.

12. Peninsula will begin by updating an existing gate station by adding a new run with meter and pressure regulation that is necessary in order to support the project. This gate station is located in Trenton, FL off of road of SR 26, and serves as an interconnect with the FGT interstate pipeline. From the Trenton gate, Peninsula will construct approximately 93,300 feet of 4-inch steel pipeline east on SR26, then continue the pipe north-east through the City of Newberry following public street rights-of-way ("ROW"), and ending at a newly-constructed M&R station located off US HWY 41<sup>8</sup>. The entire project is expected to be complete by the second quarter of 2024.

13. Newberry is a City with a growing population in western Alachua County. According to

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<sup>7</sup> 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.")

<sup>8</sup> Peninsula notes that the pipeline will operate at a hoop stress of less than 20% of the specified yield strength, and as such, will not meet the definition of a "natural gas transmission pipeline" for purposes of Part VIII of Chapter 403, Florida Statutes.

the Newberry Economic Development Office, there are an estimated 11,000 homes in various stages of permitting and construction in Newberry. Other parts of the city are planned for commercial and light industrial usage as development continues in Newberry. The City currently consists of several communities, homes, schools, restaurants, and other service providers that could take service from the project currently. In discussions, the City of Newberry has shown a high interest in bringing natural gas service to the area, and the Company has obtained several letters of intent from interested home developers and local businesses in the City of Newberry for gas service interested in replacing their current fuel source with less expensive natural gas.

14. In addition, this extension will support Newberry's economic development plan, which emphasizes development of the commercial and light industrial segments of its local economy. Newberry also recognizes that reliable and reasonable utility services are necessary to support this development plan, particularly natural gas, which PPC and FPUC plan to provide through this project. The availability of natural gas is often a key consideration of commercial and industrial businesses when deciding whether to locate in an area. Communities like Newberry sometimes miss out on the potential for high quality growth because natural gas infrastructure is not present.

15. Although Gilchrist County and Western Alachua County are currently unserved areas of the State of Florida for natural gas distribution, there are several interstate transmission pipeline options to serve these areas. Peninsula Pipeline's project is expected to originate on the West Leg of FGT at Trenton. The West Leg of FGT is an unconstrained supply source, unlike FGT's East Leg. This new infrastructure can also provide incremental supply to natural gas facilities in Central Alachua County supplied by the East Leg, since the East Leg does experience

constraints. Connecting the supply pipeline to the West Leg of FGT makes sense for the long-term growth and development of the region. FPUC anticipates interest from an existing large-scale industrial customer in the area. This customer uses natural gas as well as non-traditional fuel sources such as alternative solid fuels. It is uncertain how long these alternative solid fuels will be able to be consumed, due to their emissions profiles and concerns for long-term availability. Development of the PPC pipeline to serve Newberry will enable the Customer to access low-cost, reliable, clean natural gas. As with all its service territories, FPUC will look to provide gas service to all possible customers.

16. Upon completion of the PPC portion of the project, FPUC will be able to begin development of a distribution system for the City in order to begin serving immediate customers in the City of Newberry. While also ensuring infrastructure in the City is available for larger commercial and industrial development.

### **III. TRANSPORTATION SERVICE AGREEMENT**

17. The Agreement for which Peninsula seeks Commission approval involves FPUC's request for Peninsula to complete the work necessary to construct the pipeline and its associated facilities. The proposed project will allow FPUC to serve growth in and around the City of Newberry in Alachua County that currently do not have access to natural gas service. As such, the Petitioners assert that the proposed Agreement is in the public interest.
18. Peninsula notes that the rate currently reflected in the contract is based upon current cost projections and available information. Both parties to the contract recognize, however, that

additional regulatory and other external approvals must be obtained prior to actual construction, which have the potential to delay the engineering and construction of the project, as well as ordering of materials for construction. Given the current fluctuations in the market, a delay in the project timeline could impact project costs including, but not limited to, interest rates, as well as construction inputs such as labor and materials. Peninsula will use best practices to minimize these impacts on the contract. Nonetheless, given the variables involved, both parties acknowledge that, in the event circumstances arise that make the project uneconomical for Peninsula, the parties agree to endeavor to negotiate a revised rate that is still mutually acceptable and reasonable. In that event, the parties also acknowledge that such revised rate would require Commission approval as an amendment to the contract.

19. The rates in the contract between FPUC and Peninsula meet the requirements of Section 368.105(3), Florida Statutes, and the contract containing those rates is consistent with Order Nos. PSC-06-0023-DS-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 FPUC 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.<sup>9</sup> As such, the Company asks that the Agreement be approved.

WHEREFORE, Peninsula respectfully requests that the Commission approve the

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<sup>9</sup> *Supra*, footnote 5.

Petition for Approval of TSA with FPUC by Peninsula

Transportation Service Agreement (“Newberry Project”) between Peninsula Pipeline Company, Inc., and Florida Public Utilities Company.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of April 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.*

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 24<sup>th</sup> day of April, 2023:

Walt Trierweiler, Public Counsel  
Office of Public Counsel  
c/o the Florida Legislature  
111 West Madison Street, Rm 812  
Tallahassee, FL 32399-1400  
Trierweiler.Walt@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

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**THIS FIRM TRANSPORTATION SERVICE AGREEMENT** (the "Agreement") entered into this 5<sup>th</sup> day of April, 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 a "Party" and collectively as "Parties."

**WITNESSETH**

**WHEREAS**, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

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

**WHEREAS**, Shipper desires Company to construct an intrastate pipeline in Alachua County, Florida, the origin of which will be a modified gate station with Florida Gas Transmission and the terminus of which will be a new point of delivery at or near the intersection of Route 27 and NW 9<sup>th</sup> Place, allowing for the Shipper's distribution meter to be placed into service (the "Project").

**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**

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 charged to Shipper beginning at the notification of in-service by Company (the "In-Service Date"), and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 Consistent with Section 9.10 of this Agreement, the Parties recognize and acknowledge that certain regulatory and governmental approvals are required for this Agreement and the Project contemplated herein. In the event that Company is not able to obtain all necessary authorizations from all Governmental Authorities within twelve (12) months of the execution of this Agreement, and such delay results in an increase in the costs associated with the Project such that proceeding with the Project would produce an economic detriment to the Company, Company may request the opportunity to negotiate a modification of the rates or terms of this Agreement, and the Parties shall negotiate such modification in good faith. Any such new rate will be implemented, and Exhibit A updated accordingly, on the In-Service Date. Notwithstanding the above, and regardless of when the Company receives all necessary authorizations from Governmental Authorities, if there is a material impact on Project costs related to materials (such as a material change in the construction fee or the cost of steel), ROW, labor or interest rates, the Company may also request the opportunity to negotiate a modification of the rates or terms of this Agreement and the Parties shall negotiate such modification in good faith. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company may unilaterally terminate this Agreement upon ninety (90) days' notice.

3.3 The parties agree to execute and administratively file with the Commission an affidavit, in the form provided in Company's Tariff to comply with the provisions of the Natural Gas Transmission Pipeline Intrastate Regulatory Act.

3.4 If, at any time after the Execution Date (as herein defined) 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.

#### **ARTICLE IV** **TERM AND TERMINATION**

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution by both Parties (the "Execution Date") and shall continue in full force for an initial period of twenty (20) years from the In-Service Date ("Initial Term"). Thereafter, the Agreement shall be extended on a year to year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either Party gives written notice of termination to the other Party, not less than (90) days prior to the expiration of the 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.

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 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 or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff or 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.

4.5 If, during the Current Term of the Agreement, a new customer with usage of 1,000 Dekatherms per day or greater takes service from the Company on the pipeline system serving the Shipper's facility, the Company and Shipper shall renegotiate a reduction in the Monthly Reservation Charge as set forth on Exhibit A. In such event,

the Shipper shall also have the first option, but not the obligation, to release the amount of capacity needed to serve the new customer at the presiding monthly charge as set forth in Exhibit A.

**ARTICLE V**  
**COMPANY'S TARIFF PROVISIONS**

5.1 Company's Tariff approved by the Commission, including any amendments 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 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 recognize the desirability of maintaining a uniform rate 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 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 at the following addresses:

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

Shipper: Florida Public Utilities Company  
500 Energy Lane, Suite 200  
Dover, Delaware 19901  
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 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 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 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 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 Section 3.3 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 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) 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.

**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.

SHIPPER  
Florida Public Utilities Company

By: Marissa Stipa  
Marissa Stipa

By: Bill Hancock  
Bill Hancock

Title: Director

Title: AVP - Energy Logistics and Pipelines

Date: 04/06/2023 , YYYY

Date: 04/06/2023 , YYYY

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT  
**EXHIBIT A**  
**TO**  
**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- Trenton gate station</u>	<u>At or near the vicinity of the intersection of NW State Road 45 and NW 9<sup>th</sup> Place</u>

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

MHTP: 4.17%

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

# ATTACHMENT B

## Project Map

