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Commission Conference Agenda
January 10, 2023

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Item 1

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: December 28, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Rubottom) *JHR, SMC*
Division of Economics (Guffey) *JGH*
Division of Engineering (Kissel, Graves) *TB, RQ*

RE: Docket No. 20220182-GU – Proposed amendment of Rule 25-12.005, F.A.C., Codes and Standards Adopted.

AGENDA: 01/10/23 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-12.005, Florida Administrative Code (F.A.C.), implements the minimum federal safety standards and reporting requirements for pipeline facilities and transportation of natural gas as prescribed by the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. The adoption of the federal codes is required by the Commission's certification agreement with the PHMSA pursuant to 49 United States Code (U.S.C.) § 60105.¹ The federal regulations are found in 49 Code of Federal Regulations (C.F.R.) Parts 191, 192, and 199.

¹ Under 49 U.S.C. § 60105, PHMSA has no regulatory jurisdiction over safety standards and practices of intrastate pipeline facilities and transportation to the extent that a State authority annually certifies that it implements and enforces applicable federal standards through a compliant pipeline safety program.

Docket No. 20220182-GU

Date: December 28, 2022

Staff initiated rulemaking to amend Rule 25-12.005, F.A.C., for the purpose of incorporating by reference into the rule the updated, October 1, 2021, version of the federal standards (49 C.F.R. Parts 191, 192, and 199) that apply to natural gas pipeline operators under the Commission's jurisdiction.

A Notice of Rule Development for this rule appeared in the August 19, 2022, edition of the Florida Administrative Register, Vol. 48, No. 162. No requests for a rule development workshop were made, and no workshop was held. This recommendation addresses whether the Commission should propose the amendment of Rule 25-12.005, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 368.03, and 368.05, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-12.005, F.A.C., Codes and Standards Adopted?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-12.005, F.A.C., as set forth in Attachment A. The Commission should also certify that Rule 25-12.005, F.A.C., is not a rule the violation of which would be a minor violation pursuant to Section 120.695, F.S. (Rubottom, Kissel)

Staff Analysis: Rule 25-12.005, F.A.C., implements federal reporting requirements and safety standards, including safety and incident reporting requirements, gas transportation safety standards, and drug and alcohol testing protocols for employees of natural gas pipeline operators and emergency response persons under the direct authority or control of a gas utility or gas pipeline operator. The rule incorporates by reference federal regulations found in 49 C.F.R. Parts 191, 192, and 199 that apply to natural gas pipeline operators within the Commission's jurisdiction. Staff recommends that Rule 25-12.005, F.A.C., be amended as set forth in Attachment A to incorporate by reference the updated version of the federal regulations as published in the October 1, 2021, version of the C.F.R.

The updated C.F.R. provisions further clarify and define the standards pertaining to pipeline safety regulations. This includes new requirements for onshore steel transmission lines such as the reconfirmation of maximum allowable operating pressures, the establishment of medium consequence areas, and new requirements for inline inspection tool launcher and receiver safety. The standards for plastic pipe have also been revised to include the use of new material, more stringent standards for plastic fittings and joints, stronger mechanical fitting requirements, and joining tool maintenance and calibration. Other revisions to the C.F.R. include provisions required by the PIPES Act of 2020² and an update to the list of documents that are incorporated into the C.F.R. by reference.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation.³ Rule 25-12.005, F.A.C., is not on the Commission's minor violation rule list because violation of the rule would result in physical harm to a person; adverse effects on the public health, safety, or welfare; or would create a significant threat of such harm. Thus, if the Commission proposes the amendment, staff recommends that the Commission certify that Rule 25-12.005, F.A.C., is not a rule the violation of which would be a minor violation pursuant to Section 120.695, F.S.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule.⁴ Agencies are

² PIPES Act of 2020, Pub. L. No. 116-260, 134 Stat. 2210 (2020).

³ Section 120.695(2)(c)3., F.S.

⁴ Section 120.541(1)(b), F.S.

required to prepare a SERC for any rule that will have an adverse impact on small business or that is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation.⁵ The SERC analysis includes whether the rule will, within five years of implementation, have an adverse impact in excess of \$1 million in the aggregate on economic factors such as economic growth, private sector job creation or employment, private sector investments, or business competitiveness, productivity, or innovation.⁶ If expected adverse impacts or regulatory costs exceed any of the above criteria, a proposed rule may not take effect until it is ratified by the Legislature.⁷

A SERC was prepared and is appended hereto as Attachment B. The SERC concludes that the rule will not have an adverse impact on small business and that the rule is not likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation. Further, the SERC concludes that the rule will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, or business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. None of the adverse impact or regulatory cost criteria set forth in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended amendments to the rule. Thus, the rule does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will have no impact on small cities or counties and will not increase the cost to the Commission to implement and enforce the rule. No regulatory alternatives have been submitted pursuant to Section 120.541(1)(a), F.S.

Conclusion

Based on the foregoing, staff recommends the Commission propose the amendment of Rule 25-12.005, F.A.C., as set forth in Attachment A. In addition, staff recommends that the Commission certify that Rule 25-12.005, F.A.C., is not a rule the violation of which would be a minor violation pursuant to Section 120.695, F.S.

⁵ *Id.*

⁶ Section 120.541(2)(a), F.S.

⁷ Section 120.541(3), F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or JAPC comments are filed, and no proposal for a lower cost regulatory alternative is submitted, the rule may be filed with the Department of State for adoption, and the docket should be closed. (Rubottom)

Staff Analysis: If no requests for hearing or JAPC comments are filed, and no proposal for a lower cost regulatory alternative is submitted pursuant to Section 120.541(1)(a), F.S., the rule may be filed with the Department of State for adoption, and the docket should be closed.

1 **25-12.005 Codes and Standards Adopted.**

2 The reporting requirements for operators of natural gas pipeline facilities and
3 ~~transportation of gas~~ prescribed by the Pipeline and Hazardous Materials Safety
4 Administration in 49 C.F.R. Part 191 (October 1, ~~2021~~ 2018), are is adopted and incorporated
5 by reference as part of these rules and may be accessed at [new hyperlink]
6 ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10790>~~. The ~~m~~Minimum ~~f~~Federal
7 ~~s~~Safety ~~s~~Standards for natural gas pipeline facilities and the transportation of natural gas
8 prescribed by the Pipeline and Hazardous Materials Safety Administration in 49 C.F.R. Part
9 192 (October 1, 2021) Sections 192.121, 192.123, 192.143, 192.145, 192.149, 192.191,
10 192.204, 192.281, 192.283, 192.285, 192.3, 192.313, 192.321, 192.329, 192.367, 192.375,
11 192.376, 192.455, 192.513, 192.59, 192.720, 192.756, of 49 C.F.R. 192, as amended by ~~83~~
12 ~~Federal Register 58716, November 20, 2018~~, are adopted and incorporated by reference as
13 part of these rules and may be accessed at [new hyperlink]
14 ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10792>~~. The remaining sections of 49
15 C.F.R. 192, as of October 1, 2018, are adopted and incorporated by reference as part of these
16 rules and may be accessed at ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10794>~~.
17 49 C.F.R. 199 (October 1, 2018), “Drug and Alcohol Testing,” is adopted and incorporated by
18 reference to control drug use, by setting standards and requirements to apply to the testing and
19 use of all emergency response personnel under the direct authority or control of a gas utility or
20 pipeline operator, as well as all employees directly or indirectly employed by gas pipeline
21 operators for the purpose of operation and maintenance and all employees directly or
22 indirectly employed by intrastate gas distribution utilities for onsite construction of natural gas
23 transporting pipeline facilities. The drug and alcohol testing requirements prescribed by the
24 Pipeline and Hazardous Materials Safety Administration in 49 C.F.R. Part 199 (October 1,
25 2021 2018) are adopted and incorporated by reference as part of these rules and may be

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 accessed at [new hyperlink] <http://www.flrules.org/Gateway/reference.asp?No=Ref-10791>.

2 ~~Part 199 also is adopted to prescribe standards for use of employees who do not meet the~~
3 ~~requirements of the regulations.~~

4 *Rulemaking Authority 368.03, 368.05(2), 350.127(2) FS. Law Implemented 368.03, 368.05*
5 *FS. History—New 11-14-70, Amended 9-24-71, 9-21-74, 10-7-75, 11-30-82, 10-2-84, Formerly*
6 *25-12.05, Amended 8-8-89, 1-7-92, 5-13-99, 4-26-01, 12-15-09, 10-11-12, 3-2-17, 7-10-19,*
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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 6, 2022
TO: Jon Rubottom, Attorney, Office of the General Counsel
FROM: Sevini K. Guffey, Public Utility Analyst III, Division of Economics *SKG*
RE: Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-12.005, Florida Administrative Code (F.A.C.), Codes and Standards Adopted.

Adoption of the current federal codes is required under the 60105 certification agreement between the Pipeline Hazardous Materials Safety Administration (PHMSA) of the federal government and the Florida Public Service Commission. PHMSA prescribes reporting requirements for pipeline facilities and transportation of natural gas in the 49 Code of Federal Regulations (C.F.R.).

The purpose of the proposed revisions to Rule 25-12.005, F.A.C., is to incorporate by reference the most current edition of 49 C.F.R. Parts 191, 192 and 199, as it pertains to the regulation of natural gas. Parts 191, 192, and 199 address gas safety-related condition reports, minimum safety requirements for transportation of gas, and drug and alcohol testing for gas transportation operators. The proposed revisions to Rule 25-12.005, F.A.C., also include updated hyperlinks to Parts 191, 192, and 199 of 49 C.F.R.

The number of entities required to comply with this rule are 58 natural gas companies (includes investor-owned natural gas companies, municipal gas utilities, gas districts, master meter systems, and transmission operators). The proposed rule revisions are not imposing any new regulatory requirements and only seek to reflect the 2021 version of 49 C.F.R. No workshop was requested by affected parties in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(1)(a), Florida Statutes (F.S.). None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-12.005 F.A.C., Codes and Standards Adopted

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: The rule is being amended to reflect the adoption and incorporation by reference, the current 49 Code of Federal Regulations (CFR) parts 191, 192, and 199 as it pertains to the regulation of natural gas. Adoption of the current federal codes is required under the 60105 certification agreement between the Pipeline Hazardous Materials Safety Administration (PHMSA) and the Florida Public Service Commission. PHMSA guidelines requires that the State periodically adopt changes in the federal rules. Benefits of these proposed revisions would be that gas utilities will have clear and consistent reporting requirements that reflect the most current federal and state gas safety regulations and ratepayers will benefit from operators of natural gas pipeline facilities operating their systems in accordance with the most current safety standards.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

58 natural gas operators (including investor-owned natural gas companies, municipal gas utilities, gas districts, master meter systems, and gas transmission operators) are likely to be required to comply with Rule 25-12.005, F.A.C.

(2) A general description of the types of individuals likely to be affected by the rule.

Individuals likely to be affected by the rule are 58 natural gas operators and their customers, and staff of the Florida Public Service Commission's Bureau of Safety.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

None.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

No adverse impact on small business.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
 - Adopted in its entirety.
 - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

Item 2

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: December 28, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper, Jones) *AEH*
Division of Economics (Bruce, Hudson) *JGH*
Division of Engineering (Davis, Ellis) *TB*
Division of Accounting & Finance (Richards, Higgins) *ALM*

RE: Docket No. 20220185-WS – Application for limited alternative rate increase in Hardee, Manatee, Marion, Polk, and Pasco Counties, by Charlies Creek Utilities, LLC, Crestridge Utilities, LLC, East Marion Utilities, LLC, Heather Hills Utilities, LLC, Holiday Gardens Utilities, LLC, Lake Yale Utilities, LLC, McLeod Gardens Utilities, LLC, Orange Land Utilities, LLC, Sunny Shores Utilities, LLC, Sunrise Water, LLC and West Lakeland Wastewater, LLC.

AGENDA: 01/10/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: 02/06/23 (Petition for Temporary Waiver Deemed Approved if Not Granted or Denied by this Date pursuant to Section 1~~x~~20.542(8), Florida Statutes (F.S.))
At 12/28/22

SPECIAL INSTRUCTIONS: None

Case Background

Florida Utility Services 1, LLC (FUS1) is a service company that owns multiple Commission-regulated utilities. On November 4, 2022, FUS1 filed an application for a limited alternative rate increase proceeding (LARI) pursuant to Rule 25-30.457, Florida Administrative Code (F.A.C),

for the following eleven utilities: Charles Creek Utilities, LLC; Crestridge Utilities, LLC; East Marion Utilities, LLC; Heather Hills Utilities, LLC; Holiday Gardens Utilities, LLC; Lake Yale Utilities, LLC; McLeod Gardens Utilities, LLC; Orange Land Utilities, LLC; Sunny Shores Utilities, LLC; Sunrise Water, LLC; and, West Lakeland Wastewater. FUS1 allocates common costs to its Commission-regulated utilities.

Rule 25-30.457(4), F.A.C., requires payment of a filing fee as required by Rule 25-30.020(2)(f), F.A.C., or the application is deemed denied. Pursuant to Rule 25-30.020(1), F.A.C., the utility must pay a separate filing fee for water services and wastewater services. In this docket, there are eleven utilities with fourteen separate water and wastewater systems. Therefore, staff determined and subsequently notified FUS1 that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000. The following table reflects the associated fee for each water and/or wastewater system at issue.

Table CB-1 – Filing Fees for Systems Included in the LARI

Utility	W/WW	Design Capacity	Equivalent Residential Connection (ERC)	Filing Fee
Charlie Creek Utilities, LLC	W	133,000	380	\$1,000
Crestridge Utilities, LLC	W	432,000	1234	\$1,000
East Marion Utilities, LLC	W	180,000	514	\$1,000
	WW	50,000	179	\$500
Heather Hills Utilities, LLC	W	N/A	355	\$1,000
	WW	N/A	355	\$1,000
Holiday Gardens Utilities, LLC	W	342,000	977	\$1,000
Lake Yale Utilities, LLC	W	468,000	1337	\$1,000
	WW	55,000	196	\$500
McLeod Gardens Utilities, LLC	W	712,800	2037	\$1,000
Orange Land Utilities, LLC	W	100,000	286	\$1,000
Sunny Shores Utilities, LLC	W	N/A	262	\$1,000
Sunrise Water, LLC	W	792,000	2263	\$1,000
West Lakeland Wastewater, LLC	WW	70,000	250	\$1,000
			Total:	\$13,000

On November 7, 2022, FUS1 filed a petition pursuant to Section 120.542, F.S., for waiver of Rule 25-30.020(2)(f), F.A.C., (Petition), requesting that the Commission waive the \$13,000 in filing fees required by the rule and enable FUS1 to instead pay a single filing fee of \$1,000.

On December 6, 2022, staff notified FUS1 that the application had met the initial requirements imposed by Rule 25-30.457, F.A.C. However, staff could not move forward with the application until after the disposition of the rule waiver. In addition, staff confirmed that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000, as shown in the table above.

Applicable Law

Section 120.542, F.S., provides a procedure for agencies to provide relief to persons subject to regulation where the strict application of uniformly applicable rule requirements leads to “unreasonable, unfair, and unintended results in particular instances.” *See* Subsection 120.542(1), F.S. “Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” Subsection 120.542(2), F.S.

Section 367.145, F.S., addresses the filing fees required for LARIs for water and wastewater companies. Specifically, Subsection 367.145(2), F.S., states, in pertinent part, “Each utility shall pay an application fee, established by the commission, for . . . a request for rate relief in accordance with s. 367.081 or s. 367.0814.” Accordingly, the Florida Statutes require utilities to submit an application fee when applying for a LARI.

Rule 25-30.020(2)(f), F.A.C., requires filing fees to be paid by water and wastewater utilities to the Commission for various types of staff-assisted rate cases. In pertinent part, the rule states:

For an application for a limited proceeding pursuant to Section 367.0814, F.S., the amount of the fee shall be as follows:

1. For utilities with the existing capacity to serve up to 100 ERCs, \$200;
2. For utilities with the existing capacity to serve up to 101 to 200 ERCs, \$500;
3. For utilities with the existing capacity to serve more than 200 ERCs, \$1,000. . .

FUS1 Application for LARI

FUS1 filed an application pursuant to Rule 25-30.457, F.A.C. The application requests increases to recover the authorized rate of returns or operating margins that were approved in the utilities’ respective last rate case proceedings and to recover pro forma operation and maintenance, depreciation, and taxes other than income expenses. In addition to the application, FUS1 filed its Petition for a waiver of the filing fees required under Rule 25-30.020, F.A.C.

FUS1 Petition for Rule Waiver

In its Petition, FUS1 recognizes its obligation to comply with the filing requirements of Rule 25-30.020(2)(f), F.A.C., but argues that the filing requirement of \$13,000 will create a substantial economic hardship for the utilities and their customers.

FUS1 argues that the \$13,000 in filing fees greatly places a limit on the utilities’ cash reserves and inhibits the ability to deal with emergencies in a proper manner. Further, the utilities may have to borrow money to pay the filing fees, which would lead to additional costs for customers.

As for the customers, FUS1 asserts that the excess filing fees will have to be paid back through rate case expense and in some cases with the utilities' allowed rate of return. FUS1 alleges that because it filed a single petition for the eleven individual utilities, customers should be paying the Commission to do the work of one system, rather than paying "[ten] times the amount for the work [done]". FUS1 further states, by filing a LARI for common costs only, Commission staff will only "have to make one calculation and apply that calculation eleven times."

Request for Waiver of Filing Fee

Pursuant to Subsection 120.542(6), F.S., a Notice of Variance or Waiver was published in the December 5, 2022 edition of the Florida Administrative Register. The time for filing comments, provided by Rule 28-104.003, F.A.C., expired on December 19, 2022.

This recommendation addresses FUS1's Petition for Rule Waiver only.¹ Pursuant to Subsection 120.542(8), F.S., the Commission must grant or deny a request for waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. As such, the statutory deadline for this proceeding is February 6, 2023.

The Commission has jurisdiction under Section 120.542, F.S., and Chapters 120 and 367, F.S.

¹ The merits of the LARI petition will be addressed once the Commission rules on the rule waiver petition.

Discussion of Issues

Issue 1: Should the Commission grant FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C.?

Recommendation: No, the Commission should deny FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C. (Jones, Hudson, Davis, Richards)

Staff Analysis: Subsection 120.542(2), F.S., provides a procedure for agencies to provide relief to persons when strict application of uniformly applicable rule requirements leads to unreasonable, unfair, and unintended results in particular instances. In this case, FUS1 requests that the Commission grant it a waiver of Rule 25-30.020(2)(f), F.A.C., to remit a single \$1,000 filing fee instead of the \$13,000 in filing fees which was calculated pursuant to the rule for each of the fourteen systems operated by the eleven individual utilities. FUS1 argues the rule waiver is appropriate because by filing a LARI for common costs only, the Commission staff will only have to make one calculation and apply that calculation eleven times.

An agency shall grant variances or waivers from agency rules when the person subject to the rule demonstrates both (1) that the purpose of the underlying statute will be or has been achieved by other means, and (2) that an application of the rule would either cause the person substantial hardship or violate principles of fairness. Subsection 120.542(2), F.S. That subsection goes on to define "substantial hardship" to mean a demonstrated economic, technological, legal, or other type of hardship.

The underlying statute at issue in this case is Sections 367.145, F.S. Specifically, Subsection 367.145(2), F.S., requires that each utility requesting rate relief must pay an application fee to the Commission. The Legislature intended for the Commission to create a filing fee to be paid by each utility to compensate the Commission for its work on LARIs, and the Commission has done so with its implementation of Rule 25-30.020, F.A.C., which sets forth how the filing fee is calculated based on the capacity of each water or wastewater system to serve a specific number of ERCs. Accordingly, staff believes that a modification or waiver of this rule requirement would be inconsistent with the statutes and inappropriate.

In its petition FUS1 claims, "By filing a LARI for common costs only, commission staff will have to make one calculation and apply that calculation 11 times, as they would do anyway." However, because these are not consolidated systems, an individual assessment of each individual utility and system is needed, i.e., staff must conduct a review of each of the fourteen individual systems that are shown in Table CB-1 above. The purpose of the filing fee is to defray some of the costs of processing these applications thereby allowing the Commission staff the ability to assist small water and wastewater systems. As such, a filing fee for each system is consistent with the applicable statutes and rules. Furthermore, Section 367.145(2), F.S., states that the filing fee is to be based upon the capacity of the system, not on the amount of the work

performed by the Commission.² For these reasons, staff believes that FUS1's petition failed to demonstrate how a waiver of filing fees will meet the purpose of the underlying statute.

Moreover, staff believes that FUS1's Petition failed to demonstrate how the application of Rule 25-30.020(2)(f), F.A.C., would create a substantial hardship for the utilities and their customers. While FUS1 argues the application fees would limit the utilities' cash reserves and inhibit the ability to deal with emergencies in a proper manner, staff believes the filing fees are highly predictable and incurred as a regular cost of doing business. Therefore, FUS1 failed to adequately show it meets the requirements for a rule waiver pursuant to Subsection 120.542, F.S.

Conclusion

Based on the above, staff recommends that the Commission deny FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C., to allow FUS1 to file a single filing fee for fourteen separate systems.

² This is consistent with prior Commission practice. *See* Docket No. 20200152-WS, where the Commission accepted a fee of \$4,500 for processing a LARI for Alturas Water, LLC, Sunrise Water, LLC, Pinecrest Utilities, LLC, and East Marion Utilities, LLC.

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open. (Jones)

Staff Analysis: With respect to Issue 1, a Consummating Order should be issued unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action portion of the order. Moreover, the docket should remain open to address the Utility's application for a limited alternative rate increase.

Item 3

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: December 28, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *JGH*
Office of the General Counsel (Dose, Crawford) *JSC*

RE: Docket No. 20220158-GU – Joint petition for approval of territorial agreement in Santa Rosa County, by the City of Gulf Breeze and the Okaloosa Gas District.

AGENDA: 01/10/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 9, 2022, the City of Gulf Breeze (Gulf Breeze) and the Okaloosa Gas District (District), collectively the parties, filed a joint petition seeking Commission approval of a new Territorial Agreement (Agreement) delineating their respective portions of service boundaries in southern Santa Rosa County. Presently, both Gulf Breeze and the Gas District provide retail natural gas service to customers in contiguous areas of southern Santa Rosa County.

The parties currently do not have a Commission-approved territorial agreement. The purpose of the proposed Agreement is to define the parties' respective service areas in southern Santa Rosa County pursuant to amended Chapter 2021-262, Laws of Florida, and to comply with the legislative directive that the Disputed Area be determined by a final Order of the Commission. The Agreement and composite maps depicting the dividing line between Gulf Breeze and the

Docket No. 20220158-GU

Date: December 28, 2022

District service areas in southern Santa Rosa County are shown in Attachment A and Chapter 2021-262, Laws of Florida, is shown in Attachment B to this recommendation.

The redrawing of the subject boundary will transfer one Gulf Breeze residential customer and associated infrastructure to the District. The customer has been notified of the transfer.

Staff issued a data request to the parties for which the responses were received on November 22, 2022. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the proposed new Territorial Agreement between the City of Gulf Breeze and the Okaloosa Gas District in southern Santa Rosa County?

Recommendation: Yes, the Commission should approve the proposed new Territorial Agreement between the City Gulf Breeze and the Okaloosa Gas District in southern Santa Rosa County. The proposed Agreement will define the parties' respective service areas in southern Santa Rosa County pursuant to the amended Chapter 2021-262, Laws of Florida, and comply with the legislative directive that the Disputed Area be determined by a final order of the Commission. Additionally, the proposed Agreement will avoid duplication of service and mitigate the potential for future disputes. (Guffey)

Staff Analysis: Pursuant to Section 366.04(3)(a), F.S., and Rule 25-7.0471, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between natural gas utilities. For purposes of this subsection, Section 366.04(3)(c), F.S., defines natural gas utility to include municipalities and gas districts. Unless the Commission determines that the Agreement will cause a detriment to the public interest, it should be approved.¹

Gulf Breeze is a Florida municipal corporation which owns and operates a natural gas distribution system and has been providing natural gas service since 1964. Its service area includes portions of Escambia and Santa Rosa counties and currently provides retail natural gas service to 4,780 customers in Santa Rosa County.

The District is an independent special district created by the Florida Legislature in 1953 to own and operate natural gas transmission and distribution systems in Okaloosa County.² In 2000, the Legislature expanded in Chapter 2000-443, Laws of Florida, the District's service area to include portions of Santa Rosa and Walton counties. The District provides natural gas service to 50,994 residential, commercial, and industrial customers, as well as military installations, within its entire service area.³ As stated in paragraph 4 of the petition, the District currently serves 4,798 customers in Santa Rosa County. The District's member municipalities are Crestview, Niceville, Valparaiso, and Fort Walton Beach.

In 2021, the Florida Legislature again expanded the service area of the District to include all of Santa Rosa County with two defined areas excluded. The first excluded area is:

The area within the corporate limits of the City of Gulf Breeze and the area from the eastern boundary of the corporate limits of the City of Gulf Breeze extending easterly approximately 11 miles to the line defined as the eastern boundary of Sections 4, 9, 16, 21, and 28 of Township 2 South, Range 27 West, which extends north and south from Santa Rosa Sound to East Bay.

¹ *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

² Chapter 29334, Laws of Florida.

³ Response 2 in Staff's First Data Request, Document No. 11563-2022.

The second excluded area (Disputed Area) is:

The area from the line defined as the eastern boundary of Sections 4, 9, 16, 21, and 28 of Township 2 South, Range 27 West, which extend north and south from Santa Rosa Sound to East Bay, and extending easterly to the line starting at the intersection of US Highway 98 and Shannon Drive, going due south to Santa Rosa Sound, thence turning due north continuing to Manatee Road; thence turning west until the intersection of Basswood Drive; thence turning north until intersecting the Tom King Bayou tributary south of Cove Road; thence following this branch northwest to Tom King Bayou, thence north to East Bay is presently claimed as a service area by the District and by the City of Gulf Breeze and shall not be deemed to be included or excluded as a service area for the District. The service rights for this area shall be determined by a final nonappealable order of the Florida Public Service Commission or any successor agency.

Chapter 2021-262, Laws of Florida 2021 (emphasis added).

In response to staff's data request, the joint petitioners explained that historically the service areas of the two parties have been geographically dispersed such that an agreement was not necessary.⁴ However, over the years, as a consequence of natural growth, portions of the parties' service areas have begun to converge in southern Santa Rosa County near the Dividing Line as defined in the proposed Agreement (separating Gulf Breeze and the District's service area).

With respect to the Disputed Area referenced in Chapter 2021-262, Laws of Florida, the parties explained that after discussions among the parties and members of the local legislative delegation, the Disputed Area was excluded from the service area determination in recognition of the fact that the City and the District both provided service to the area and claimed certain rights. Therefore, resolution of service rights was reserved for determination by the Commission.⁵

Proposed Territorial Agreement

The proposed Agreement defines the Parties' respective service territories in the Disputed Area by establishing a "Dividing Line" that transects the Disputed Area. The Dividing Line is shown on composite Exhibit B of Attachment A to the recommendation (page 10 of 10 of Attachment A). The joint petitioners assert that the proposed new Agreement will formalize the Dividing Line, comply with the legislative directive, eliminate duplication of service and expenditures, and avoid the potential for future disputes. The joint petitioners also assert that the proposed boundary modification will not decrease service reliability to their existing or future customers.

The proposed Agreement will become effective on the day the Commission Order becomes final and will continue in effect until termination or modification is approved by the Commission or

⁴ Response No. 3 in Staff's First Data Request, Document No. 11563-2022.

⁵ Response No. 6 in Staff's First Data Request, Document No. 11563-2022.

mandated by a government entity. In response to staff's data request, the parties confirmed that there is no specified termination date for the proposed Agreement.⁶

Infrastructure and Customer Transfer and Notification

The Parties explained in the petition that the Dividing Line in the Agreement has been drawn to avoid the need to transfer any customers or utility facilities, with the exception of one residential customer of Gulf Breeze. Pursuant to Section 4(b) of the Agreement, the customer will be transferred following the effective date of this Agreement and upon written notification from the District stating it is prepared to provide service to the transferred customer. On August 17, 2022, Gulf Breeze notified the customer of the transfer and provided rate comparisons. Pursuant to the customer notification, the District will waive the \$55 service activation fee and Gulf Breeze will credit the customer's \$50 deposit towards any outstanding amounts due and refund the remainder.⁷ The parties assert that they have not received a response or objections from the customer.

Along with the customer transfer, approximately 1,200 feet of pipeline and associated infrastructure will be transferred to the District. The District will pay \$24,163.05, representing the depreciated value of the infrastructure to Gulf Breeze.

Conclusion

After review of the joint petition and the petitioners' joint responses to Commission staff's data request, staff believes that the proposed Agreement is in the public interest and will enable Gulf Breeze and the District to serve their current and future customers efficiently. The proposed Agreement will define the parties' respective service areas in southern Santa Rosa County pursuant to the amended Chapter 2021-262, Laws of Florida, and comply with the legislative directive that the Disputed Area be determined by a final order of this Commission. Additionally, the proposed Agreement will avoid duplication of service and mitigate the potential for future disputes. Therefore, staff recommends that the Commission should approve the proposed Territorial Agreement between the City Gulf Breeze and the Okaloosa Gas District in southern Santa Rosa County.

⁶ Response No. 4 in Staff's First Data Request, Document No. 11563-2022.

⁷ Response No. 5 in Staff's First Data Request, Document No. 11563-2022.

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. (Dose)

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 a Consummating Order.

TERRITORIAL AGREEMENT

31 THIS TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this day of August 2022 by and between the City of Gulf Breeze, a municipal corporation organized and existing under the laws of the State of Florida ("City") and the Okaloosa Gas District, a public body corporate and Independent Special District of the State of Florida ("District"). City and District are hereinafter sometimes referred to singularly as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City is a "natural gas utility" as defined in Section 366.04(3)(c), Florida Statutes and is subject to the Florida Public Service Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 366.04(3), Florida Statutes; and

WHEREAS, District is a "natural gas utility" as defined in Section 366.04(3)(c), Florida Statutes and is subject to the Florida Public Service Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 366.04(3), Florida Statutes; and

WHEREAS, both District and City are presently providing retail natural gas service to customers in contiguous portions of South Santa Rosa County, Florida; and

WHEREAS, the Parties desire to avoid future unnecessary and uneconomic duplication of natural gas distribution facilities in South Santa Rosa County, which would be contrary to Florida Public Service Commission policies and detrimental to the interests of their customers and the general public, and to expedite the handling of applications for service by future gas customers near such locations; and

WHEREAS, the Florida Public Service Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), Florida Statutes, to approve and supervise territorial agreements between and among natural gas utilities.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties, subject to and upon the terms and conditions herein set forth, agree as follows:

Section 1. Retail Natural Gas Service Areas

(a) This Agreement governs the Parties' furnishing of gas by pipeline for consumption to one or more members of the public in portions of South Santa Rosa County, Florida, inclusive of natural gas, manufactured gas, liquified gas with air mixture, or similar gaseous substances ("Retail Natural Gas Service"). The map attached hereto and incorporated herein as **Exhibit "A"** depicts boundary lines in portions of South Santa Rosa County delineating the natural gas service area reserved to City and the natural gas service area reserved to District. City's service area is depicted in orange on **Exhibit A** and consists of all areas within the Fairpoint Peninsula lying west of the Dividing Line as defined below (the "City's Service Area"). District's service area is

depicted in purple on **Exhibit A** and consists of all areas within Santa Rosa County east of the Dividing Line that are bordered to the south by Santa Rosa Sound, to the north by East Bay and East Bay River, and to the east by Highway 87 (the "District's Service Area").

City's Service Area and District's Service Area are separated by a dividing line (the "Dividing Line") which Dividing Line is more particularly identified in **Exhibit "B"** and described as follows:

POINT OF BEGINNING of the "Dividing Line" herein described, also being the northwest corner of Parcel ID 032S270000001050000, said point being at the Mean High Tide of East Bay, in Santa Rosa County, Florida.

From said POINT OF BEGINNING (POB); Thence, running in a southeasterly direction, along the westerly property line to the southwest corner of the of the aforementioned Parcel ID 032S270000001050000; Thence crossing over East Bay Blvd to a point at the northwest corner of Lot 16 Block 110 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southeasterly direction to a point at the northwest corner of Lot 15 Block 110 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southeasterly direction to a point at the southwest corner of Lot 15 Block 110 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a northeasterly direction along the boundary of Block 110 as recorded in First Corrected and Amended Plat of Holley-by the Sea Plat Book C, Page 166 to a point at the westerly Right-of-Way of Desoto St. (a.k.a. Candlewood St per First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166, said point being further described as the southeast corner of Lot 8 Block 110 as recorded in First Corrected and Amended Plat of Holley-by the Sea Plat Book C, Page 166; Thence running in a northwesterly direction along the Westerly Right-of-Way of Desoto St. (a.k.a. Candlewood St per First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166), to a point at the northeast corner of Lot 8 Block 110 as recorded in First Corrected and Amended Plat of Holley-by the Sea Plat Book C, Page 166; Thence running in a northeasterly direction to a point at the northwest corner of Lot 1A Block 111 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southeasterly direction along the northerly boundary of Lot 1A Block 111 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166 to a point at the northeast corner of Lot 1A Block 111 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southwesterly direction along the easterly boundary of Block 111 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166 to a breakpoint for Tract 1 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southeasterly direction along the northern boundary of Block 111 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166 to a point at the northeast corner of Lot 1-A Block 118 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southwesterly direction along the eastern boundary of Block 118 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166, to a point at the southeast corner of Lot 39 Block 118 First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running in a southwesterly direction to a point at the northeast corner of Lot 40 Block 118 Holley-by the Sea as recorded in Plat Book B, Page 155; Thence running in a southeasterly direction to a point at the northeast corner of Lot 41 Block 118 Holley-by the Sea as recorded in Plat Book B, Page 155; Thence running in a southwesterly direction to a point at the northwest corner of Lot 41 Block 118 Holley-by the Sea as recorded in Plat Book B, Page 155, said

point being on the easterly Right-of-Way of Sherwood Dr.; Thence running in a southwesterly direction along the east Right-of-Way of Sherwood Dr. to a point parallel to the South Right-of-Way of Bellingham St. (a.k.a. Flagler St. as recorded in Plat Book C, Page 166); Thence running in a northwesterly direction along the southern Right-of-Way of Bellingham St. (a.k.a. Flagler St. as recorded in Plat Book C, Page 166) until the said southerly Right-of-Way intersects with the easterly Right-of-Way of Edgewood Dr. as recorded in Plat Book C, Page 166; Thence running in a southwesterly direction along the easterly Right-of-Way of Edgewood Dr. as recorded in Plat Book C, Page 166 to a point at the northwest corner of Lot 13 Block 49 Holley-by the Sea as recorded in Plat Book B, Page 155; Thence running in a southeasterly direction to a point at the northeast corner of Lot 6 Block 49 Holley-by the Sea as recorded in Plat Book B, Page 155; Thence running in a southwesterly direction to a point on the southerly Right-of-Way of Lansford St. (a.k.a. Center St as recorded in Plat Book C, Page 166); Thence running along said southerly Right-of-Way of Lansford St. (a.k.a. Center St as recorded in Plat Book C, Page 166) in a northwesterly direction to a point at the easterly Right-of-Way of Edgewood Dr. as recorded in Plat Book C, Page 166; Thence running along said easterly Right-of-Way of Edgewood Dr. as recorded in Plat Book C, Page 166 to a point at the southwest corner of Tract V-V First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166; Thence running along the southern boundary lines of Tract V-V First Corrected and Amended Plat of Holley-by the Sea as recorded in Plat Book C, Page 166 until it intersects with the easterly Right-of-Way of Sunrise Dr. as recorded in Plat Book C, Page 166; Thence running in a southwesterly direction along the easterly Right-of-Way of Sunrise Dr. and extending to the southern Right-of-Way of US Highway 98 (a.k.a. Navarre Pkwy); Thence running in a northwest direction along the southern Right-of-Way of US Hwy 98 (a.k.a. Navarre Pkwy) to the northwest corner of Parcel ID 222S270000001000000; Thence running in a southwesterly direction to the NW corner of Lot 5 Sea Lark Landing as recorded in Plat Book E, Page 8; Thence running along the western boundary of Sea Lark Landing as recorded in Plat Book E, Page 8 in a southwesterly direction to the Mean High Tide of Santa Rosa Sound, said point being the "Point of Commencement" (POC) of the "Dividing Line" as shown on Exhibit "B".

(b) As between the Parties, and except as otherwise expressly provided in Section 2 of this Agreement, City shall have the exclusive authority to furnish Retail Natural Gas Service to all existing and future customers in City's Service Area and District shall have the exclusive authority to furnish Retail Natural Gas Service to existing and future customers in District's Service Area. If a customer's end-use natural gas facilities ("Point of Use") is located in one Party's Service Area and such customer's point connection or point of metering is located in the other Party's Service Area, such customer shall be deemed a customer of the Party in whose Service Area the Point of Use is located.

(c) Except as otherwise expressly provided in Section 2 of this Agreement, City agrees that it will not knowingly provide or offer to provide Retail Natural Gas Service to existing or potential customers within District's Service Area and District agrees that it will not knowingly provide or offer to provide Retail Natural Gas Service to existing or potential customers within City's Service Area. If a prospective customer requests service from a Party in whose Service Area the customer is not located, the Party receiving such request shall promptly refer the prospective customer to the other Party with citation to this Agreement and provide email notification in accordance with the notice provisions hereof to the other Party of such request.

(d) Nothing in this Agreement is intended to affect the gate stations, regulators, gas transmission mains, or other appurtenances related to the supply and transmission of gas of one

Party which are now, or which may in the future be, located in the Service Area of the other Party, it being understood that both Parties may continue to construct, own, operate and maintain such facilities in the Service Area of the other Party and elsewhere as permissible under applicable law and as necessary or convenient in connection with their operations; provided, however that each Party shall abide by its obligation to refrain from furnishing Retail Natural Gas Service to customers in the other Party's Service Area.

(c) Both Parties provide Retail Natural Gas Service outside of the City Service Area and District Service Area depicted on **Exhibit A**. The terms of this Agreement are expressly limited to the Parties' provision of Retail Natural Gas Service within the City Service Area and District Service Area and this Agreement shall have no effect whatsoever on either Party's rights, obligations or ability to provide natural gas service outside of the boundaries of the City Service Area and District Service Area.

Section 2. Exceptions to Exclusive Service Rights

(a) The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer within one Party's Service Area either cannot or should not be immediately served by the Party in whose Service Area the customer is located. In such instances, upon written request by the Party in whose Service Area the customer is located, to the other Party, the other Party has the right, but not the obligation, to agree in writing to temporarily provide service to such customer. Any such agreement for temporary service that is anticipated to last more than one (1) year shall be jointly submitted by the Parties to the Florida Public Service Commission (the "**Commission**") for approval; provided, however, that the Party providing temporary service hereunder shall not be required to pay the other Party for any loss of revenue associated with the provision of temporary service.

(b) The Parties further recognize that economic constraints or good engineering practices may indicate that District is better positioned to provide transmission-level Retail Natural Gas Service to one or more future industrial or institutional customers in City's Service Area. Therefore, upon mutual agreement of City and District, District may provide Retail Natural Gas Service to one or more future transmission-level industrial and institutional customers not presently receiving natural gas services from City. Such agreement, if any, shall be in written form and duly executed by authorized signatories for City and County with citation to this Agreement. For avoidance of doubt, either Party may withhold its consent to such an agreement in such Party's sole discretion.

Section 3. Bulk Gas Supply

This Agreement governs the Parties' provision of Retail Natural Gas Service to end-use customers in their respective Service Areas. Nothing in this Agreement shall be construed to prevent either Party from providing bulk/wholesale gas supply for resale purposes, regardless of where the purchaser for resale may be located. Further, no provision of this Agreement shall be construed as applying to a bulk/wholesale gas supply for resale purposes.

Section 4. Transfer of Gas Infrastructure and Customers

(a) With the limited exception of the customer and associated distribution infrastructure identified in Section 4(b) below, no customers or natural gas infrastructure shall be subject to transfer or removal under this Agreement, it being understood that, except as provided in Section 4(b) below, each Party will retain its existing customers and existing infrastructure.

(b) Following the Effective Date of this Agreement and upon receipt of written notice from District that District is prepared to provide service, City shall promptly transfer to District natural gas service to a single customer located at 7095 Webster Street, Navarre, FL 32566 and bearing City Account No. 52265-023534. Contemporaneously therewith, City shall transfer to District ownership of approximately 1,200 feet of two-inch diameter polyethylene piping and fittings (the "Transferred Infrastructure") via a bill of sale or similar document evidencing transfer of title in exchange for the payment by District to City of \$24,163.05 representing the depreciated value of the Transferred Infrastructure. District acknowledges and agrees that City makes no representations or warranties regarding the Transferred Infrastructure and that such transfer is being made on an "as is" "with all faults" basis. District further agrees that continuity and reliability of natural gas service to the transferred customer will not be impaired as a consequence of this transfer.

Section 5. Regulatory Approval and Term

This Agreement, after execution by the Parties, shall be submitted jointly by the Parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. If the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this Agreement.

Section 6. Non-Waiver

The failure of either Party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 7. Termination of Commission Jurisdiction

This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

Section 8. Governing Law/Venue

This Agreement shall be interpreted and governed by the laws of the State of Florida and all disputes between the Parties relating to the interpretation, breach, or enforcement of this Agreement shall be submitted to the Commission for resolution.

Section 9. Notices

All notices under this Agreement shall be in writing and must be sent by (i) electronic mail, with an electronic mail delivery receipt, and with the following subject line (in all caps and bold print): **NOTICE UNDER TERRITORIAL AGREEMENT; TIME SENSITIVE**; (ii) certified mail, return receipt requested, (iii) a nationally recognized overnight courier service, with delivery receipt requested, or (iv) hand delivery, to the parties at the addresses set forth below:

To City:

City Manager
City of Gulf Breeze
1070 Shoreline Drive
Gulf Breeze, Florida 32561
Emails: sabell@gulfbreezefl.gov;
cityclerks@gulfbreezefl.gov

To District:

Chief Executive Officer
Okaloosa Gas District
364 Valparaiso Parkway
Valparaiso, Florida 32580
Email: GordonKing@okaloosagas.com

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by electronic mail shall be deemed to have been received upon the sending party's receipt of an electronic mail delivery receipt. If the day on which such receipt is received is not a business day or, if the receipt is after 5:00 p.m. on a business day, then such notice shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by certified mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

Section 10. Successors and Assigns

This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the Parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas.

Section 11. Counterparts

This Agreement may be executed in one or more counterparts and by original, facsimile or electronic signatures, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Section 12. Interpretation/Presumptions

Each of the Parties acknowledges that it has been represented by independent counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed

ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 13. Entire Agreement

This Agreement supersedes any other agreements, whether written or oral, that may have been made or entered into between the Parties concerning the subject matter of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no other agreements or commitments with respect such subject matter except as set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

CITY OF GULF BREEZE,
A Florida municipal corporation

By: 
Cherry Fitch, Mayor

(AFFIX CITY SEAL)

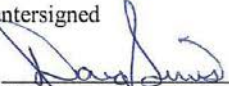


ATTEST:

Leslie A. Guyer, CMC, City Clerk

OKALOOSA GAS DISTRICT,

By: 
Chief Executive Officer

Countersigned
By: 
Chairman Board of Directors,
Okaloosa Gas District

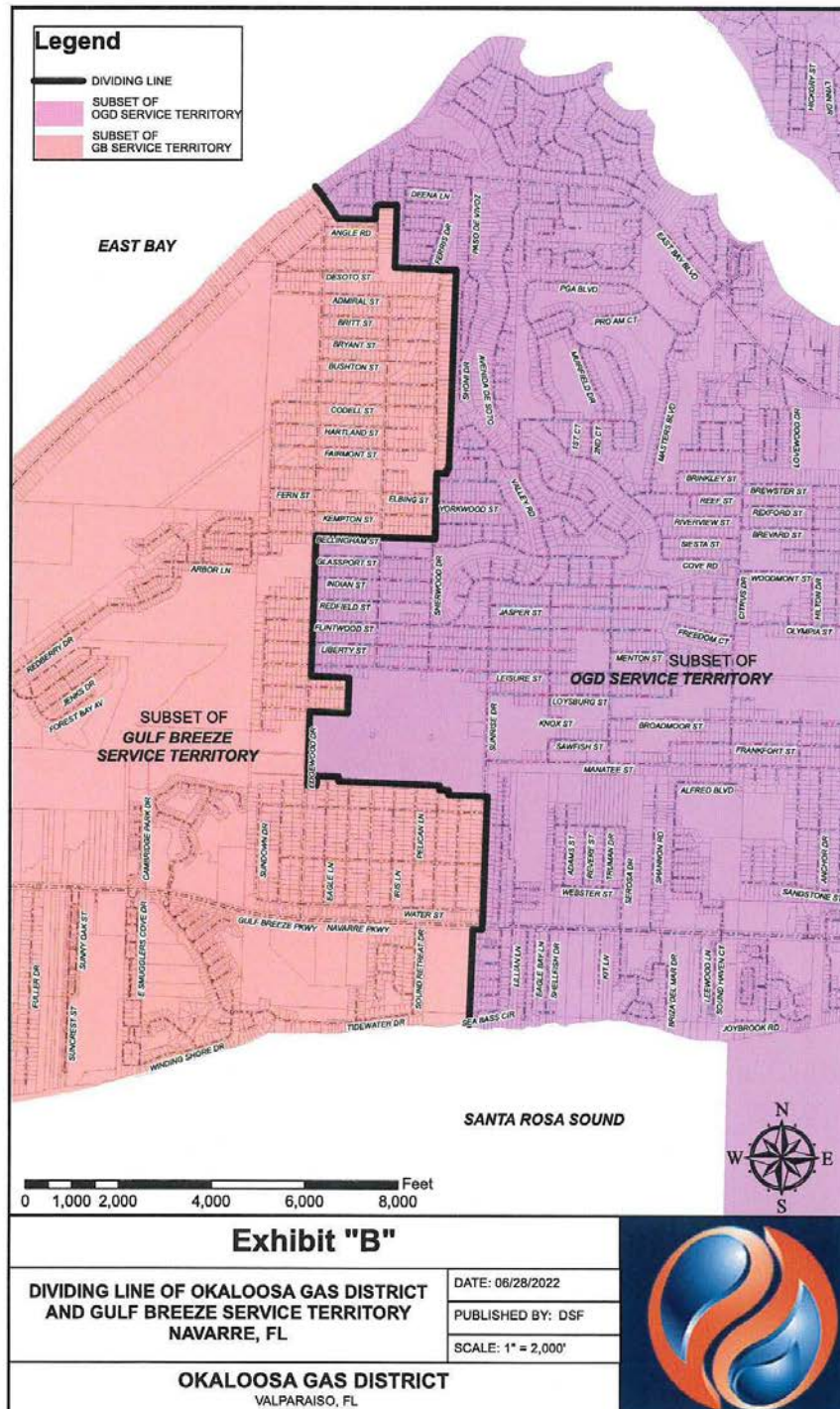
Approved as to Legality of Form

By: 
Attorney, Okaloosa Gas District



EXHIBIT A – TERRITORIAL MAP





CHAPTER 2021-262

Committee Substitute for House Bill No. 1633

An act relating to Okaloosa Gas District, Okaloosa, Santa Rosa, and Walton Counties; amending ch. 2000-443, Laws of Florida; revising the territorial limits and area of service of the district to include all of Santa Rosa County and all of Walton County; providing exceptions; revising the membership of the Board of Directors to include one member appointed by each of the Board of County Commissioners of Santa Rosa and Walton Counties; revising the director's fee for each meeting attended by a member of the Board of Directors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 3 and 8 of section 2 of chapter 2000-443, Laws of Florida, are amended to read:

Section 3. Area of service.—The territorial limits and area of service of the District shall be Okaloosa County, Florida, and the following described areas in Santa Rosa County, Florida, and Walton County, Florida, to-wit:

(1) In Santa Rosa County, ~~all of Santa Rosa County an area 20 miles wide, extending from the eastern boundary of Santa Rosa County, to the western boundary of said county, the center line of which shall be the presently existing transmission line of the District, excepting, however, from the above described area of Santa Rosa County:~~

(a) The area within the corporate limits of the ~~City Town~~ of Milton and the surrounding territory presently served by the gas distribution system of said ~~city town~~; however, nothing in this act shall be construed to restrict or limit the City of Milton's right to serve gas customers within its territorial grants and in all areas where the district territories overlap with territories of the City of Milton authorized by chapter 61-2489 and chapter 71-773, Laws of Florida;

(b) The area adjacent to State Highway 87 (Brewton Highway) from the intersection of said highway and the transmission line of the District northerly along said highway for a distance of 2 miles;

(c) The area adjacent to the New Chumuckla Highway from the intersection of said highway and State Highway 87 (Brewton Highway) westerly along said New Chumuckla Highway for a distance of 2 miles; ~~and~~

(d) The area adjacent to said Highway and the transmission line of the District east of Milton, in a westerly direction along said Highway 90 to the corporate limits of the ~~City Town~~ of Milton;

(e) The area within the corporate limits of the City of Gulf Breeze and the area from the eastern boundary of the corporate limits of the City of Gulf

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Breeze extending easterly approximately 11 miles to the line defined as the eastern boundary of Sections 4, 9, 16, 21 and 28 of Township 2 South, Range 27 West, which extends north and south from Santa Rosa Sound to East Bay;

(f) The area from the line defined as the eastern boundary of Sections 4, 9, 16, 21 and 28 of Township 2 South, Range 27 West, which extends north and south from Santa Rosa Sound to East Bay, and extending easterly to the line starting at the intersection US Highway 98 and Shannon Drive, going due south to Santa Rosa Sound, thence turning due north continuing to Manatee Road; thence turning west until the intersection of Basswood Drive; thence turning north until intersecting the Tom King Bayou tributary south of Cove Road; thence following this branch northwest to Tom King Bayou, thence north to East Bay is presently claimed as a service area by the District and by the City of Gulf Breeze and shall not be deemed to be included or excluded as a service area for the District. The service rights for this area shall be determined by a final nonappealable order of the Florida Public Service Commission or any successor agency; and

(g) The area within the corporate limits of the Town of Jay and the existing customers presently served by the gas distribution system of said town.

(2) In Walton County, all of Walton County extending from the eastern boundary of Walton County to the western boundary of said county, excepting, however, from the above described area of Walton County, that area lying south of the section lines commencing at the Western Boundary of Walton County at the Northwest corner of Section 31, Township 4 North, Range 21 West and running easterly along the northern section lines of Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 21 West, Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 20 West, Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 19 West, and Section 31, 32, and 33 of Township 4 North, Range 18 West, ending at the Eastern Boundary of Walton County located at the Northeast corner of Section 33, Township 4 North, Range 18, south to the current gas distribution system of the City of DeFuniak Springs, the area within the corporate limits of the City of DeFuniak Springs and the customers served by the gas distribution system of said city. However, should the District request in writing to the city and the city agrees through written agreement, the District is authorized to serve any mutually agreed portion of the excepted area above the area shall be all of that portion of Walton County lying south of Highway 20 and 10 miles north of Highway 20.

The District may acquire a supply of gas either within or without the District's territorial limits and area of service and may transport and transmit gas from the point of such acquisition to the system or systems of the District. The District may also sell and transport gas for delivery beyond the territorial limits and area of service of the District and acquire, finance, operate, maintain, extend, and improve gas transmission lines, laterals, and facilities beyond the territorial limits and area of service of the District for such purposes and also for the purpose of making direct sales to industrial

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and institutional users and to line tap commercial and residential users, but the District shall not acquire, construct, own, or operate any gas distribution system in any area other than within Santa Rosa, Okaloosa, or Walton Counties ~~the territorial limits and area of service of the District~~ as provided in this section, unless authorized by special act of the Legislature to do so.

Section 8. The Board of Directors.—The District shall have a Board of Directors, consisting of one member of each member municipality and one member appointed by the Board of County Commissioners of Okaloosa, Santa Rosa, and Walton Counties ~~County~~, to represent the interest of the unincorporated areas and the interest of the nonmember cities. The member for each member municipality shall be appointed by the governing body of such member municipality and the Board of County Commissioners of the respective counties ~~Okaloosa County~~ shall appoint one member from each county. The member shall serve for a term of 4 years and until his or her successor is appointed in like manner and qualified. Appointments to fill a vacancy shall be for the unexpired term. The representative of each municipality may, but need not be, the mayor or chief executive officer of such municipality and the member appointed by the Board of County Commissioners of ~~Okaloosa County~~ may, but need not be, an elected official, except and provided that no member of the Board of County Commissioners of ~~Okaloosa County~~ shall serve in such capacity. The members of the Board of Directors shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in and about the performance of their duties thereunder and, at the discretion of the Board of Directors, they may be paid a director's fee of not exceeding \$244 ~~\$25~~ for each directors' meeting attended by them, not exceeding one meeting during each calendar month. The appointing authority may remove any member of the Board of Directors within the term for which such member shall have been appointed for malfeasance or misfeasance in office or other just cause after giving to such member a copy of the charges against him or her and an opportunity to be heard in his or her defense.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.

Item 4

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: December 28, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *JGH*
Office of the General Counsel (Watrous, Crawford) *JSC*

RE: Docket No. 20220164-GU – Joint petition for approval of territorial agreement in Santa Rosa County, by the Okaloosa Gas District and the City of Milton.

AGENDA: 01/10/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 22, 2022, the City of Milton (Milton) and the Okaloosa Gas District (District), collectively the parties, filed a joint petition seeking Commission approval of a new Territorial Agreement (Agreement) delineating their respective service boundaries in Santa Rosa County. Presently, both Milton and the District provide retail natural gas service to customers in contiguous areas in Santa Rosa County pursuant to service territories established by the Florida Legislature.

The Florida Legislature enacted Chapters 61-2489 and 29334 (1953), Laws of Florida, to establish Milton’s and the District’s natural gas service areas respectively. Therefore, the parties in this docket currently do not have a Commission-approved territorial agreement.¹ The purpose of the proposed Agreement is to clearly define, by mutual agreement, specific service boundaries

¹ Response No. 5 in Staff’s First Data Request, Document No. 11469-2022.

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Date: December 28, 2022

of the parties within Santa Rosa County and avoid duplication of services and facilities. No customers will be transferred pursuant to the Agreement. The Agreement, Laws of Florida describing Milton's and the District's current service areas, and map depicting the service boundaries are shown in Attachment A to this recommendation.

Staff issued a data request to the parties for which the responses were received on November 22, 2022. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the proposed new Territorial Agreement between the City of Milton and the Okaloosa Gas District in Santa Rosa County?

Recommendation: Yes, the Commission should approve the proposed new Territorial Agreement between the City of Milton and the Okaloosa Gas District in Santa Rosa County. The proposed Territorial Agreement will clearly define specific service boundaries within Santa Rosa County between Milton and the Gas District and will avoid duplication of facilities and services. (Guffey)

Staff Analysis: Pursuant to Section 366.04(3)(a), F.S., and Rule 25-7.0471, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between natural gas utilities. Section 366.04(3)(c), F.S., defines natural gas utility to include municipalities and gas districts. Unless the Commission determines that the Agreement will cause a detriment to the public interest, it should be approved.²

Milton, the county seat of Santa Rosa County, is serving approximately 4,500 natural gas customers in a defined area pursuant to Chapter 71-773, Laws of Florida.³ Chapter 71-773, Laws of Florida, is included as Exhibit A to the petition and page 11 of 27 of Attachment A to the recommendation.

The Okaloosa Gas District is an independent special district created and established by the Florida Legislature in 1953 to own and operate natural gas transmission and distribution systems in Okaloosa County.⁴ In 2000, the Legislature expanded in Chapter 2000-443, Laws of Florida, the District's service area to include portions of Santa Rosa and Walton counties. Chapter 2000-443, Laws of Florida, is included in Exhibit A to the petition and on pages 12 through 23 of Attachment A to the recommendation. The District provides natural gas service to 50,996 residential, commercial, and industrial customers within its entire service area and to approximately 4,800 customers in Santa Rosa County.⁵ In response to staff's first data request, the parties explained that under the provisions of Chapter 71-773, Laws of Florida, and Chapter 2021-262, Laws of Florida, both parties were granted the right to serve some of the same geographic areas, which has resulted in some overlapping service areas.⁶

In 2021, the Florida Legislature enacted Chapter 2021-262,⁷ Laws of Florida, to expand the service area of the District to include all of Santa Rosa and Walton counties except for certain areas explicitly excluded. Specifically, the City of Milton and its rights to serve natural gas customers within its territorial grants are excluded from the District's service area. Chapter 2021-262, Laws of Florida, is shown in Exhibit B to the petition and on pages 24 through 26 of Attachment A to the recommendation.

² *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

³ Chapter 71-773 amended Chapter 61-2489, Laws of Florida.

⁴ Chapter 29334, Laws of Florida.

⁵ Response No. 2 in Staff's First Data Request, Document No. 11469-2022.

⁶ Response No. 5 in Staff's First Data Request, Document No. 11469-2022.

⁷ Chapter 2021-262 amended Chapter 2000-443, Laws of Florida.

Proposed Territorial Agreement

Chapter 2021-262, Section 3(1)(a), Laws of Florida, provides the following language:

The area within the corporate limits of the ~~City Town~~ of Milton and the surrounding territory presently served by the gas distribution system of said ~~city town~~; however, nothing in this act shall be construed to restrict or limit the City of Milton's right to serve gas customers within its territorial grants and in all areas where the district territories overlap with territories of the City of Milton authorized by chapter 61-2489 and chapter 71-773, Laws of Florida;

The underlined language shows the amendment from Chapter 2000-443, Laws of Florida, and is shown on page 24 of 27 of Attachment A to the recommendation. Through this proposed Agreement, the parties stated that they desire to clearly define their specific territorial boundaries within Santa Rosa County, provide efficient service to customers, and avoid duplication of service and facilities.

There are no customer or infrastructure facility transfers contemplated in this proposed Agreement. The initial term of the Agreement is for 25 years and unless modified by mutual agreement, the Agreement will be renewed every five years thereafter.

Conclusion

After review of the joint petition and the petitioners' joint responses to Commission staff's data request, staff believes that the proposed new Agreement is in the public interest and will enable Milton and the District to serve their current and future customers efficiently in Santa Rosa County. The proposed Agreement will clearly define specific service boundaries within Santa Rosa County between Milton and the District and will avoid duplication of facilities and services. Therefore, staff recommends that the Commission should approve the proposed new Agreement between the City of Milton and the Okaloosa Gas District in Santa Rosa County.

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. (Watrous)

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 a Consummating Order.

AGREEMENT

Section 0.1 This AGREEMENT is made and entered into this 24 day of MAY, 2022, by and between The CITY OF MILTON, a municipal corporation organized and existing under the laws of the State of Florida ("Milton"), and OKALOOSA GAS DISTRICT, a special District of the State of Florida ("OGD"). Milton and OGD are hereinafter sometimes referred to singularly as "Party" and collectively referred to as "Parties".

WITNESSETH:

Section 0.2 WHEREAS, Milton is presently serving the defined area outlined in Chapter 71-773, House Bill No. 2580 (Exhibit A) and providing natural gas service to private individuals, firms, corporations, and governmental entities in Santa Rosa County; and

Section 0.3 WHEREAS, OGD is presently serving the defined areas in Okaloosa, Santa Rosa and Walton Counties as outlined in Chapter 2000-443, House Bill No. 443 (Exhibit B) and providing natural gas service to private individuals, firms, corporations, and governmental entities within the defined areas; and

Section 0.4 WHEREAS, the Parties recognize that the described areas of service as outlined in Chapter 71-773, House Bill No. 2580 and Chapter 2000-443, House Bill No. 443 provide overlapping service areas in regards to providing natural gas service to potential customers that are located in Santa Rosa County; and

Section 0.5 WHEREAS, Milton and OGD desire to clearly define, by mutual agreement, specific territorial boundaries within Santa Rosa County in order that present and future applicants for natural gas service may expeditiously obtain natural gas service from one of the Parties; and

Section 0.6 WHEREAS, the respective areas of retail service of the Parties are contiguous with the result that duplication of service facilities may occur in the future unless such duplication is precluded by virtue of this Agreement; and

Exhibit "A"

Section 0.7 WHEREAS, the Parties recognize that any duplication of said service facilities may result in needless and wasteful expenditures that are detrimental to the public interest; and

Section 0.8 WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to the aforesaid potential duplications and toward that end have established a Territorial Boundary Line to delineate their respective retail territorial areas with Santa Rosa County; and

Section 0.9 WHEREAS, the Parties mutually acknowledge that the jurisdiction of the Public Service Commission is limited by the legislature of the State of Florida, pursuant to section 366.04 (3) (a), Florida Statutes, to approve territorial agreements or modifications of them between natural gas entities, and to resolve territorial disputes under such agreements, but does not extend to resolving or approving termination of such agreements in accordance with their terms;

Section 0.10 NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties, subject to and upon the terms and conditions herein set forth do hereby agree as follows:

ARTICLE I - DEFINITIONS

Section 1.1 Natural Gas As used herein, the term "Natural Gas" shall mean: natural gas, manufactured gas, liquefied gas with air mixture, or a similar gaseous substance furnished to the public by pipeline.

Section 1.2 Milton Territorial Area As used herein, the term "Milton Territorial Area" shall mean the area highlighted in light red depicted on the map of a portion of Santa Rosa County labeled Exhibit C of this agreement.

Section 1.3 OGD Territorial Area As used herein, the term "OGD Territorial Area" shall

mean the area NOT highlighted in light red depicted on the map or a portion of Santa Rosa County labeled Exhibit C of this agreement.

Section 1.4 Adjacent Parcels As used herein, the term “Adjacent Parcels” shall mean the areas highlighted with red cross hashes depicted on the map or a portion of Santa Rosa County labeled Exhibit C of this agreement that fall outside of the Milton Territorial Area that will be served by OGD or Milton as agreed upon by mutual agreement.

Section 1.5 Existing Customers As used herein, the term “Existing Customers” shall mean those natural gas customers of either Party taking service from the Party on the effective date of this Agreement.

Section 1.6 Point of Use As used herein, the term “Point of Use” shall mean the end-use natural gas facilities of a customer, as distinct from the point of connection or point of metering.

Section 1.7 New Customers As used herein, the term “New Customers” shall mean those consumers applying for natural gas service for a Point of Use in the Territorial Area of either Party beginning with the inception of this Agreement.

Section 1.8 Territorial Area As used herein, the term “Territorial Area” shall mean either or both, where appropriate, the Milton Territorial Area or the OGD Territorial Area.

Section 1.9 Territorial Boundary Line As used herein, the term “Territorial Boundary Line” shall mean the boundary line so labeled, designating the dividing line between the areas shown on Exhibit C of this Agreement, which dividing line is further described as below:

An area of land situated in Santa Rosa County, Florida, shown herein as Exhibit “A” and being more particularly described as follows:

POINT OF BEGINNING of the area of land herein described, also being the northwest corner of Section 11, Township 2 North, Range 29 West in Santa Rosa County, Florida.

From said **POINT OF BEGINNING**; Thence, in an easterly direction, along the north line of the of the aforementioned Section 11, Township 2 North, Range 29 West, and extending along the section line to the northeast corner of Section 7, Township 2 North, Range 28, also being within the Right-of-Way of FL SR 89; Thence, running along the center of the Right-of-Way of FL SR

89 in a southeasterly direction to the intersection of the eastern boundary of Section 8, Township 2 North, Range 28 West; Thence, running in a southerly direction along said eastern boundary of Section 8, Township 2 North, Range 28 West to the northwest corner of Section 16, Township 2 North, Range 28 West; Thence running in a easterly direction along said northern boundary of Section 16, Township 2 North, Range 28 West to the northwest corner of Section 14, Township 2 North, Range 28 West, said point also being along the southern boundary of NAS Whiting Field; Thence running in a easterly direction along said southern boundary of NAS Whiting field boundary in an easterly and northerly direction until said boundary of NAS Whiting Field intersects with Section 1, Township 2 North, Range 28 West; Thence running in an easterly direction, along the north line of the of the aforementioned Section 1, Township 2 North, Range 28 West, and extending along the section line to the northeast corner of Section 4, Township 2 North, Range 27 West; Thence in an southerly direction, along the eastern boundary line of the of the aforementioned Section 4, Township 2 North, Range 27 West, and extending along the section line to the intersection of the centerline of Right-of-Way for US 90; Thence, running along the center of the Right-of-Way of US 90 in a southwesterly direction to the intersection of the centerline of the Right-of-Way for FL 87 S; Thence, running along the center of the Right-of-Way of FL 87 S in a southeasterly direction to the intersection of main branch of Yellow River; Thence, running along the center of the main branch of Yellow River in a westerly direction to the intersection with eastern shoreline of Blackwater Bay; Thence, running along the eastern shoreline of Blackwater Bay in a northerly direction to the intersection with the southern Right-of-Way of Interstate I-10; Thence, running along the southern Right-of-Way of Interstate I-10 to the western shoreline of Blackwater Bay; Thence, running along the western shoreline of Blackwater Bay from the aforementioned southern Right-of-Way of Interstate I-10 in a southerly direction to where Blackwater Bay meets East Bay; Thence, running along the shoreline in a southerly direction to where East Bay meets Pensacola Bay also known as White Point; Thence, leaving White Point and running along the shoreline in a westerly direction to where Pensacola Bay meets Escambia Bay also known as Hernandez Point; Thence, running along the shoreline of Escambia Bay in a northerly direction to southern most point of Section 22, Township 1 North, Range 29 West; Thence, in an northwesterly direction, along the western line of the of the aforementioned Section 22, Township 1 North, Range 29 West to the southwest corner of Section 18, Township 1 North, Range 29 West; Thence, in an southeasterly direction, along the southern line of the of the aforementioned Section 18, Township 1 North, Range 29 West to intersection of the center of the Right-of-Way of Woodbine Rd.; Thence, running along the center of the Right-of-Way of Woodbine Rd. in a northerly direction to the Northwestern corner of Section 32, Township 2 North, Range 29 West including the following adjacent Parcels on the western side of the Right-of-Way of Woodbine Rd.,

Parcel Identification Numbers

071N290000005000000	312N29008700A000340	312N29008700C000470	312N29008700C000030
071N290000006000000	312N29008700A000360	312N29008700C000520	312N29008700C000040
071N290000010000000	312N29008700A000450	312N29008700A000050	312N29008700C000120
071N290000004000000	312N29008700A000480	312N29008700A000150	312N29008700C000420
071N290000009000000	312N29008700A000510	312N29008700A000160	312N29008700C000440
071N290000009020000	312N29008700A000520	312N29008700A000210	312N29008700C000500
071N290000015000000	312N29008700A000540	312N29008700A000220	312N29008700C000530
071N290000016120000	312N29008700A000560	312N29008700A000230	312N29008700C000540
071N290000005010000	312N29008700A000600	312N29008700A000250	312N29008700A000010
071N290000016020000	312N29008700A000650	312N29008700A000260	312N29008700A000020
071N290000016030000	312N29008700A000660	312N29008700A000370	312N29008700A000030

071N290000016050000	312N29008700A000040	312N29008700A000380	312N29008700A000060
071N290000016070000	312N29008700A000070	312N29008700A000420	312N29008700A000080
071N290000016090000	312N29008700A000120	312N29008700A000460	312N29008700A000170
071N290000016010000	312N29008700A000140	312N29008700A000470	312N29008700A000290
071N290000016040000	312N29008700A000180	312N29008700A000500	312N29008700A000350
071N29000003020000	312N29008700A000190	312N29008700A000530	312N29008700A000400
071N29000004010000	312N29008700A000240	312N29008700A000630	312N29008700A000410
071N29000009010000	312N29008700A000270	312N29008700A000640	312N29008700A000550
071N290000012000000	312N29008700A000280	312N29008700B000010	312N29008700A000570
071N290000013000000	312N29008700A000331	312N29008700B000020	312N29008700A000680
071N290000016060000	312N29008700A000440	312N29008700B000050	312N29008700B000080
071N290000016110000	312N29008700A000580	312N29008700B000200	312N29008700B000170
071N290000016130000	312N29008700A000590	312N29008700B000210	312N29008700B000190
061N290000002000000	312N29008700A000610	312N29008700B000290	312N29008700B000250
061N290000005030000	312N29008700A000620	312N29008700C000010	312N29008700B000300
061N290000006010000	312N29008700B000060	312N29008700C000070	312N29008700B000320
061N290000006020000	312N29008700B000070	312N29008700C000100	312N29008700C000050
061N290000006030000	312N29008700B000090	312N29008700C000340	312N29008700C000080
061N290000006070000	312N29008700B000180	312N29008700C000370	312N29008700C000090
061N290000006060000	312N29008700B000220	312N29008700C000380	312N29008700C000110
061N290000006000000	312N29008700B000230	312N29008700C000430	312N29008700C000130
312N29008700A000090	312N29008700B000260	312N29008700C000450	312N29008700C000140
312N29008700A000100	312N29008700B000270	312N29008700C000460	312N29008700C000350
312N29008700A000110	312N29008700B000280	312N29008700A000670	312N29008700C000390
312N29008700A000130	312N29008700C000020	312N29008700B000030	312N29008700C000400
312N29008700A000200	312N29008700C000060	312N29008700B000040	312N29008700C000410
312N29008700A000300	312N29008700C000150	312N29008700B000160	312N29008700C000480
312N29008700A000310	312N29008700C000330	312N29008700B000240	312N29008700C000490
312N29008700A000330	312N29008700C000360	312N29008700B000310	312N29008700C000510

Thence, running in an easterly direction, along the northern line of the of the aforementioned Section 32, Township 2 North, Range 29 West and extending to the southeast corner of Section 26, Township 2 North, Range 29 West; Thence, running in an northerly direction, along the western line of the of the aforementioned Section 26, Township 2 North, Range 29 West and extending to the northeast corner of Section 11, Township 2 North, Range 29 West otherwise known as the **POINT OF BEGINNING** of the area of land herein described; Containing approximately 96,820 Acres of land more or less.

Section 1.10 Through Pipelines As used herein, the term “Through Pipelines” shall mean pipelines traversing the Territorial Area of the other Party but not serving customers within that Territorial Area.

ARTICLE II – RETAIL NATURAL GAS SERVICE

Section 2.1 In General Except as otherwise specifically provided herein, Milton shall have the authority to furnish natural gas service to all New Customers within the Milton Territorial Area,

and OGD shall have the authority to furnish natural gas to all New Customers within all its Existing Customers and all New Customers in the OGD Territorial Area.

Section 2.2 Service to New Customers The Parties agree that neither of them will serve or attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party except as provided in Section 2.4.

If a New Customer or prospective New Customer requests or applies for service from either Party, but such Customer's Point of Use is located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer such New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the Public Service Commission.

Section 2.3 The Parties recognize that, in specific instances, good engineering and safety practices or economic constraints on one of the Parties may from time-to-time indicate that small service areas and/or New Customers should not be served by the Party whose territory such areas or Customers are then located under Section 2.2. In such instances, the Parties agree to jointly and expeditiously seek approval of the Public Service Commission for modification of this Agreement in order to permit the appropriate Party to provide service to such small service areas and/or New Customers.

Section 2.4 To help facilitate the provisions of natural gas service to Customers and to minimize costs and delays in providing such service, a Party which has a gas main installed on its side of the Territorial Boundary Line may temporarily serve Customers located on the other side of such Territory Boundary Line in territory herein reserved to the other Party only (a) if requested by such other Party or (b) if such other Party is unable to provide such service within a reasonable time; provided, however, that when such temporary service is contemplated by a Party, it shall give written notice, setting forth the details of such contemplated service, to the Party in whose

territory the Customer is located under Section 2.1 of the Agreement, and to the Public Service Commission, before installing any additional facilities needed for the provision of such temporary service. At such time as the Party in who's such Customers are located under Section 2.1 has a gas main available for providing or is otherwise able to provide natural gas service to such Customers, the Party providing temporary service pursuant to this section shall surrender any such Customers any such upon request of the Party in whose territory such Customers are located, and shall convey to such other Party, at replacement cost less depreciation, such gas mains, service lines, and appurtenances thereto previously used by the Party in providing temporary service whether or not such facilities are necessary for the provision of service by the acquiring Party and located in the territory of the Party which will provide service thereafter. Any Customer who receives the temporary natural gas service under the provisions of this section shall be notified in advance that when service becomes available from the Party whose territory such Customer is located, the Customer will be required to receive service from such Party at such Party's then-current rates, and that such temporary service is provided only as a temporary convenience to the Customer.

ARTICLE III – OPERATION, MAINTENANCE AND TRANSMISSION LINE CUSTOMERS

Section 3.1 Facilities to Remain Nothing in this Agreement is intended to affect the gate stations, regulators or gas mains of either Party which are now or which in the future be located in the service area of the other Party; provided, however, that each Party shall operate and maintain said lines and facilities in such a manner as to minimize any interferences with the operations of the other Party. No such facilities shall be used by either Party to provide retail natural gas service to Customer located in the Territorial Area of the other Party except as may be necessary to implement the provisions of Section 2.3 or 2.4 hereof. Henceforth, by mutual agreement, Okaloosa Gas may provide service to future main line industrial and institutional customers not presently

receiving natural gas services within the Milton Territorial Area and which Milton is unable to provide the services requested. Such agreement will be documented with both parties with citation to this agreement as approved by the Public Service Commission, as outlined in Section 2.2.

ARTICLE IV – PREREQUISITE APPROVAL

Section 4.1 Public Service Commission Approval The provisions and the Parties performance of the Agreement are subject to the statutory authority of the Public Service Commission, and appropriate approval by that body of the provisions of this Agreement, or any later modification of it shall be an absolute condition precedent to the validity, enforceability and applicability of the Agreement. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of expiration of the appeal period following issuance of the Order granting Public Service Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Public Service Commission for approval. In addition, the Parties agree to jointly petition the Public Service Commission to resolve any dispute concerning the provisions of the Agreement or the Parties' performance of this agreement.

Section 4.2 Liability in the Event of Disapproval In the event approval pursuant to Section 4.1 is not obtained, neither Party will have any claim against the other arising under this agreement.

ARTICLE V – DURATION & TERMINATION

Section 5.1 The initial term of this agreement shall be for twenty-five (25) years, and unless modified by mutual agreement, shall be renewed every five (5) years thereafter. Prior to the termination date of this Agreement the Parties may meet to review the status of this Agreement and shall submit a joint status report to the Commission.

After this Agreement becomes effective pursuant to Section 4.1 hereof, it shall continue in effect in accordance with its stated duration and term until modification shall be mutually agreed upon and approved by the Public Service Commission or until termination shall occur or otherwise be mandated by a governmental entity or court having jurisdiction to mandate such termination or modification.

ARTICLE VI – MISCELLANEOUS

Section 6.1 Negotiations Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be writing, attached hereto, signed by both Parties, and approved by the Public Service Commission.

Section 6.2 Successors and Assigns Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation, other than the Parties hereto, any right, remedy or claim under or by the reason of this Agreement or any provision or conditions hereof; and all of the provisions representations, covenants and conditions herein contained shall inure to the sole benefit of, and shall be binding only upon, the Parties hereto and their respective representatives, successors and assigns.

Section 6.3 Notices Notices given hereunder shall be deemed to have been given to Milton if mailed by certified mail to: City Manager, City of Milton, 6738 Dixon Street, Milton, FL 32572 and OGD if mailed by certified mail to: Chief Executive Officer, Okaloosa Gas District, 364 Valparaiso Parkway, Valparaiso, FL 32580. Such address to which such notice shall be mailed may be, at any time changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed

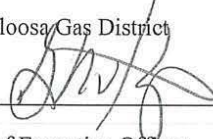
in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officer on the day and year first written above.

City of Milton

By:  _____


City Manager

Okaloosa Gas District

By:  _____

Chief Executive Officer

Countersigned

By:  _____

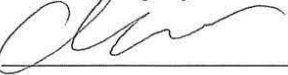
Mayor, City of Milton

Countersigned

By:  _____

Chairman Board of Directors, Okaloosa Gas District

Approved as to Legality of Form

By:  _____

City Attorney, City of Milton

Approved as to Legality of Form

By:  _____

Attorney, Okaloosa Gas District

EXHIBIT A

CHAPTER 71-773

House Bill No. 2580

AN ACT relating to the City of Milton, Santa Rosa County; amending section 2, chapter 61-2489, Laws of Florida; describing new boundaries for the natural gas service area; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 2 of chapter 61-2489, Laws of Florida, is amended to read:

Section 2. The area of the natural gas service area created in section 1 shall be as follows:

All that part of Santa Rosa County lying East of Escambia River, South of a line parallel to and two miles north of the township line between township three north and township four north, west of the east boundary of Santa Rosa County, and north of a line beginning at the intersection of the east boundary of Santa Rosa County, and center of Yellow River, thence down Yellow River to the mouth of Yellow River where it enters Blackwater Bay, thence down the center of Blackwater Bay to East Bay and Pensacola Bay to the West boundary of Santa Rosa County in Pensacola Bay.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 30, 1971.

CHAPTER 2000-443

House Bill No. 1637

An act relating to the Okaloosa Gas District; codifying the District's charter, chapter 29334, Laws of Florida, 1953, as amended; reestablishing and recreating the Okaloosa Gas District for purposes of acquiring, constructing, owning, operating, managing, maintaining, extending, improving, and financing one or more gas distribution systems or one or more gas transmission systems or gas transmission and gas distribution systems for its member municipalities of Crestview, Niceville, Valparaiso, and Fort Walton Beach and such other municipalities as may become members of said District; providing such services for the benefit of the public and other users of gas in Okaloosa County and areas in Santa Rosa County and areas in Walton County and other areas of service; providing and prescribing the territorial limits and areas of service of the District; granting powers to the District, including the power of eminent domain; providing the means of exercising such powers; declaring the purposes of the District to constitute a public purpose; defining the powers of the District; providing for a Board of Directors as the governing body of the District to exercise the powers of the District and direct District affairs; providing officers for the District; authorizing the District to issue and sell bonds or revenue certificates payable solely from the revenues of a gas system or systems; authorizing judicial validation of such bonds or certificates; providing for execution and delivery by the District of mortgages, deeds of trust, and other instruments of security for the benefit of the holders of such bonds or revenue certificates; providing for remedies and rights available to the holders of the bonds or revenue certificates; prohibiting distribution of net profits to member municipalities; prohibiting the District from exercising any power of taxation; exempting property and income of the District from taxation; exempting District bonds or revenue certificates and interest thereon from taxation; exempting deeds, mortgages, trust indentures, and other instruments of, by, or to the District from taxation; providing for the use and distribution of the revenues of the gas systems of the District; exempting the District, its activities and functions, and the exercise of its powers from the jurisdiction and control of all state regulatory bodies and agencies; regulating the use of the proceeds from the sale of any such bonds or revenue certificates; providing such bonds or revenue certificates as legal investments for banks, trust companies, fiduciaries, and public agencies and bodies; providing for use of public roads by the District; providing for a covenant by the state not to alter the provisions of the act to the detriment of the holders of bonds or revenue certificates of the District; providing for acquisition, construction, maintenance, operation, financing, and refinancing of a gas system or systems by the District; providing for discontinuance of customer service for nonpayment; repealing all prior special acts of the Legislature relating to the Okaloosa County Gas District; providing for protection against impairment of contracts and obligations of the District; providing that the act takes precedence over

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any conflicting law to the extent of the conflict; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapters 29334, 1953, 31051, 1955, 63-1697, and 86-468, Laws of Florida, are codified, reenacted, amended, and repealed as provided in this act.

Section 2. The Okaloosa Gas District is reestablished and re-created as an independent special district and the charter for such District is re-created and reenacted to read:

Section 1. Definitions.—Whenever used in this charter, unless a different meaning clearly appears from the context:

(1) “Gas transmission system” means a supply of natural gas, whether acquired from wells or deposits or from a pipeline or other source of supply and a pipeline or lines, plant and system for the acquisition and the transportation, transmission, and delivery of natural gas, or a plant for the manufacture of gas and the transportation, transmission, and delivery thereof, together with all appurtenances thereto and all property, real, personal, or mixed, used or useful in connection therewith, including franchises, rights-of-way, and easements. A gas transmission system may include facilities for making deliveries of gas to industrial and institutional users and to line tap residential and commercial users as well as to gas distribution systems.

(2) “Gas distribution system” means a plant and system for the distribution and sale of gas and gas services in a municipality and the surrounding territory, including the sale and distribution of gas to residential, commercial, industrial, institutional, and other users, together with all appurtenances thereto and all property, real, personal, or mixed, used, or useful in connection therewith, including franchises, rights-of-way, and easements.

(3) “System” means a gas transmission system or systems and a gas distribution system or systems, or any one or more of such systems.

(4) “District” means the Okaloosa Gas District, created and established by this charter.

(5) “Board of Directors” and “board” means the Board of Directors hereinafter provided for and constituting the governing body of the District.

(6) “Municipality” means incorporated cities, towns, and villages and other municipal corporations of this state.

(7) “Member municipalities” means the municipalities of Crestview, Valparaiso, Niceville, and Fort Walton Beach and such other municipalities as may become members of the District in the manner provided in this charter.

(8) “Bonds” means bonds or revenue certificates or other financial obligations of the District maturing over 3 years from date of issue, issued pursuant to this charter.

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Section 2. Creation and establishment of the Okaloosa Gas District.—The Okaloosa Gas District is hereby created and established as an independent special district. The public and governmental purposes of the District are to acquire by purchase or construction, one or both, and to own, finance, operate, maintain, extend, and improve one or more gas systems described as follows:

(1) A gas transmission system or systems to connect each of the member municipalities and such other municipalities in the District's area of service as the District may determine to serve, with an adequate supply of natural gas, at such point or points, as the District may determine.

(2) A gas transmission line or lines for the purpose of supplying gas to any gas system even though located outside of the area of service of the District.

(3) A gas manufacturing plant and system.

(4) Such gas distribution system or systems serving such member municipalities and other municipalities as the District may determine.

(5) Such other facilities and lines as may be necessary or desirable to serve such other customers along the District's supply lines as the District may determine to serve or as the District as a public agency deriving income from a public utility, may be obligated to furnish service under the laws of this state or the United States.

(6) Such gas transmission lines, laterals, gas distribution systems, and facilities to serve such customers in the District's area of service as the District or the District's Board of Directors may determine.

(7) The District may itself own and operate gas distribution systems in the District's area of service, whether in the municipality which is a member of the District or in some other municipality or in unincorporated territory.

Section 3. Area of service.—The territorial limits and area of service of the District shall be Okaloosa County, Florida, and the following described areas in Santa Rosa County, Florida, and Walton County, Florida, to-wit:

(1) In Santa Rosa County, an area 20 miles wide, extending from the eastern boundary of Santa Rosa County, to the western boundary of said county, the center line of which shall be the presently existing transmission line of the District, excepting, however, from the above described area of Santa Rosa County:

(a) The area within the corporate limits of the Town of Milton and the surrounding territory presently served by the gas distribution system of said town;

(b) The area adjacent to State Highway 87 (Brewton Highway) from the intersection of said highway and the transmission line of the District north-erly along said highway for a distance of 2 miles;

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(c) The area adjacent to the New Chumuckla Highway from the intersection of said highway and State Highway 87 (Brewton Highway) westerly along said New Chumuckla Highway for a distance of 2 miles; and

(d) The area adjacent to said Highway and the transmission line of the District east of Milton, in a westerly direction along said Highway 90 to the corporate limits of the Town of Milton.

(2) In Walton County, the area shall be all of that portion of Walton County lying south of Highway 20 and 10 miles north of Highway 20.

The District may acquire a supply of gas either within or without the District's territorial limits and area of service and may transport and transmit gas from the point of such acquisition to the system or systems of the District. The District may also sell and transport gas for delivery beyond the territorial limits and area of service of the District and acquire, finance, operate, maintain, extend, and improve gas transmission lines, laterals, and facilities beyond the territorial limits and area of service of the District for such purposes and also for the purpose of making direct sales to industrial and institutional users and to line tap commercial and residential users, but the District shall not acquire, construct, own, or operate any gas distribution system in any area other than within the territorial limits and area of service of the District as provided in this section, unless authorized by special act of the Legislature to do so.

Section 4. Declaration of policy.—That the undertakings enumerated in section 2 constitute a proper public purpose for the benefit and welfare of the inhabitants of the District and it is hereby found and declared that in the construction, acquisition, improvement, maintenance, operation, extension, and improvement of any or all of said gas systems, the District will be exercising a proper governmental function.

Section 5. Members of the District.—The members of the District shall be the municipalities of Crestview, Niceville, Valparaiso, and Fort Walton Beach. Other municipalities in Okaloosa County may become members of the District by filing with the Secretary of State a resolution, duly adopted by such municipality's governing body, declaring the desire and intention of such municipality to become a member of the District and the municipality's willingness to be bound in all respects by the obligations of the District and the by-laws, resolutions, and acts of the Board of Directors relating to the business and affairs of the District; provided, that the filing of such resolution with the Secretary of State shall not be effectual to make such municipality a member of the District unless and until the Board of Directors of the District shall first have adopted and filed with the Secretary of State a resolution signifying their willingness and desire to accept said municipality as a member of the District. Other municipalities in other counties adjoining Okaloosa County may, if authorized by special act of the Legislature, become members of the District in the same manner.

Section 6. Powers of the District.—The District shall have each and all of the following powers, together with all powers incidental to such powers or necessary to the discharge of such powers:

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- (1) To sue and be sued and to defend suits against the District.
- (2) To have and use an official seal for attesting bonds and other official acts and deeds and to alter the same at the District's pleasure.
- (3) To receive, acquire, take, and hold, whether by purchase, gift, or lease, devise, or otherwise, real, personal, and mixed property of any nature whatsoever that the Board of Directors may deem a necessary or convenient part of, or useful in connection with, any system or systems authorized in this charter.
- (4) To make contracts extending over a period not exceeding 40 years for a supply and supplies of natural gas and for the sale and delivery of natural or manufactured gas.
- (5) To contract with any person, firm, or corporation for the entire supervision, operation, and management of any one or more of the systems of the District, including the collection and distribution of the revenues from such system or systems, for such period of time as the board may deem advisable not exceeding 10 years and at such compensation and upon such terms as may be agreed upon and approved by the Board of Directors.
- (6) To borrow money for any authorized purpose and to issue in evidence of the borrowing interest bearing bonds payable solely from the revenues derived from the operation of any one or more of the District's systems.
- (7) To pledge to the payment of the District's bonds any revenues from which said bonds are made payable and to mortgage, pledge, or otherwise convey as security for such bonds the system or systems the revenues from which are so pledged.
- (8) To make such covenants in connection with the issuance of bonds, or in order to secure the payment of bonds, as are needful to secure and protect the rights of the holders of such bonds, notwithstanding that such covenants may operate as limitations on the exercise of other powers granted by this charter.
- (9) To establish, by resolution, rates and charges for the District's gas and gas services and to alter such rates and charges.
- (10) To collect and enforce collection of such charges.
- (11) To lease, exchange, sell, convey, and otherwise dispose of the District's real, personal, or mixed property by any form of conveyance or transfer, provided that the District does not sell and convey a gas system or systems to private ownership.
- (12) To appoint and employ officers, agents, and employees, including attorneys, as the District's business may require, and to fix the compensation of such persons.
- (13) To provide for such insurance as the District's Board of Directors may deem advisable.

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(14) To exercise all powers of eminent domain now or hereafter conferred on counties in this state.

Section 7. Eminent domain.—The powers of eminent domain granted in this charter and conferred upon Districts incorporated under this charter shall be exercised in the same manner and subject to the same limitations as in the case of counties in this state.

Section 8. The Board of Directors.—The District shall have a Board of Directors, consisting of one member of each member municipality and one member appointed by the Board of County Commissioners of Okaloosa County, to represent the interest of the unincorporated areas and the interest of the nonmember cities. The member for each member municipality shall be appointed by the governing body of such member municipality and the Board of County Commissioners of Okaloosa County shall appoint one member. The member shall serve for a term of 4 years and until his or her successor is appointed in like manner and qualified. Appointments to fill a vacancy shall be for the unexpired term. The representative of each municipality may, but need not be, the mayor or chief executive officer of such municipality and the member appointed by the Board of County Commissioners of Okaloosa County may, but need not be, an elected official, except and provided that no member of the Board of County Commissioners of Okaloosa County shall serve in such capacity. The members of the Board of Directors shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in and about the performance of their duties thereunder and, at the discretion of the Board of Directors, they may be paid a director's fee of not exceeding \$25 for each directors' meeting attended by them, not exceeding one meeting during each calendar month. The appointing authority may remove any member of the Board of Directors within the term for which such member shall have been appointed for malfeasance or misfeasance in office or other just cause after giving to such member a copy of the charges against him or her and an opportunity to be heard in his or her defense.

Section 9. Organization of the board; officers.—After appointment of the members, the members of the Board of Directors of the District shall meet and organize. At such meeting, the members of the board shall choose from their number a president. They shall also choose a secretary and a treasurer, who may but need not be members of the board, and such other officers, agents, and employees as may appear to be desirable. One person may serve as both secretary and treasurer.

Section 10. Authority of the board.—The Board of Directors shall constitute the governing body of the District. The board shall exercise all the powers of the District and the board shall do all things necessary or convenient in acquiring, owning, operating, developing, extending, improving, financing, and refinancing the gas system or systems owned or to be owned by the District, including, but not limited to: the adoption and amendment of by-laws for the management and regulation of the District's affairs and the enterprises in which the District is engaged; to use, with the consent of any of the District's member municipalities, the agent, employees, or facilities or property of such municipalities and to provide for the payment of the

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agreed proportion of the costs therefor; and to appoint officers, agents, and employees, including attorneys, and to fix their compensation to provide for the execution of deeds, mortgages, indentures of trust, bonds, gas supply contracts, gas service contracts, supervision contracts, and other instruments and contracts of the District. Action of the directors shall be taken by resolution. Such resolution shall be effective without posting or publication.

Section 11. Bonds of the District.—The bonds of the District shall be authorized by resolution of the Board of Directors of the District and may be issued in one or more series, may bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, or both, be executed in such manner, be payable in such medium of payment, at such place or places, either within or without this state, be nonredeemable or subject to such terms of redemption, with or without premium, be subject to being declared or becoming due before the maturity date of such bonds, as such resolution or resolutions may provide. Said bonds may be issued for money, property, labor, or services, either at public or private sale, for such price or prices, including interest costs, as determined by the Board of Directors, the determination of which shall be conclusive. Such authorizing resolution shall provide for the execution and delivery of bonds of the District by officers of the District designated in such resolution. Coupons may be executed with the facsimile signature of any officer designated by the Board of Directors. Any bonds issued by the District may thereafter at any time, whether before, at, or after the maturity of such bonds, and from time to time be refunded by the issuance of refunding bonds, which may be sold by the District at public or private sale, at such price or prices as may be determined by its Board of Directors, or which may be exchanged for the bonds to be refunded. The District may pay all expenses, premiums, and commissions which the District's Board of Directors may deem necessary or desirable in connection with any financing done by the District. All bonds issued by the District shall be construed to be negotiable instruments, although payable solely from a specified source, and bona fide holders of such bonds for value shall be entitled to all benefits provided by the negotiable instruments law of this state. Pending the preparation or execution of definitive bonds, interim receipts, or certificates or temporary bonds may be delivered to the purchaser or purchasers of said bonds. Any bonds issued by the District may be purchased by the District out of any funds available for such purposes but such right of purchase may be limited in the authorizing resolution. All bonds so purchased shall be canceled. Bonds of the District and all matters connected with such bonds may be validated pursuant to the provisions of chapter 75, Florida Statutes, and any other applicable provisions of the Florida Statutes.

Section 12. Liability on bonds and other obligations.—Neither the bonds nor any other obligations of the District shall be a debt or obligation of the State of Florida, or a debt or obligation of Okaloosa County, or a debt or obligation of any municipality which is a member of the District. Neither the state nor Okaloosa County nor any such municipality shall be liable in any way whatsoever on such bonds or obligations, nor may the holder of any such bonds or obligations compel the levy of any taxes for the payment of such bonds or obligations. Such bonds shall not be payable out of any funds other

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than the revenues of the gas system or systems of the District. Such bonds are not subject to any statutory or other limitations upon indebtedness. Neither the members of the Board of Directors nor any person executing such bonds shall be liable personally on such bonds by reason of the issuance of such bonds. No referendum or election shall be required for the issuance of bonds of the District, except in such cases as such referendum or election may be required by the Constitution of the State of Florida.

Section 13. No power to tax or assess.—The District shall have no power or authority to levy or collect any tax, assessment, or charge other than the rates, fees, and charges for selling gas and furnishing gas services as provided in this charter, and any such tax or assessment levy is hereby specifically prohibited.

Section 14. Mortgage; deed of trust; security agreements.—Any mortgage, deed of trust, or pledge agreement made by the District for the security of any of the District's bonds or to define the rights, remedies, and privileges of the holders of such bonds and the duties of the District to such holders, may contain such agreements, obligations, covenants, and provisions as the Board of Directors may deem advisable respecting the operation and maintenance of the gas system or systems and the collection and application of the revenues subject to such mortgage, deed of trust, or pledge agreement, and respecting the rights and duties of the parties to such instrument or the parties for the benefit of whom such instrument is made; provided, that no such mortgage or deed of trust shall be subject to the sale of the system or systems at foreclosure to private ownership. To further secure the repayment of any money borrowed by the District, the District may enter into a contract or contracts binding the District for the proper application of the money borrowed, for the continued operation and maintenance of any gas system or systems owned or to be acquired or constructed by the District, or any part of parts of such system or systems, for the imposition and collection of reasonable rates for, and the promulgation of reasonable regulations respecting any service furnished from the District's gas system or systems, for the disposition and application of the District's gross revenues or any part of such revenues, and for any other act or series of acts not inconsistent with the provisions of this charter for the protection of the loan and the assurance that the revenues from the District's gas system or systems will be sufficient to operate such system or systems, maintain the same in good repair and in good operating condition, pay all reasonable insurance on such system or systems, pay the principal of and interest on any bonds payable from such revenues, and maintain such reserves and funds as may be deemed appropriate for the protection of the loan and the efficient operation of such system or systems.

Section 15. Mortgage or pledge of property or revenue not in existence; recording notice of mortgage and pledge liens.—Any mortgage or conveyance of property and any pledge of revenues to secure the bonds of the District shall be valid and binding from the time when such mortgage or conveyance is delivered or such pledge made, and the system, properties, revenue, income, and moneys so mortgaged, conveyed, or pledged and thereafter received by such District shall immediately be subject to the lien of such mortgage, conveyance, or pledge without any physical delivery of such

mortgage, conveyance, or pledge or further act, and the lien of any such mortgage, conveyance, or pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the District, irrespective of whether such parties have notice of such claims, from the time when a statement thereof is filed in the county court of Okaloosa County or other office where deeds and mortgages of real property are recorded and in the proper public office in any other county or counties where any part of the system or systems or properties of the District are located. Such notice shall be sufficient if the notice states the date of the resolution authorizing the issuance of the bonds, the date of the bonds, the principal amount of such bonds, the maturity dates of such bonds, and whether the system is one or more gas transmission systems or one or more gas distribution systems or both. The county judge or other officer in charge of the recording office shall file and index such notice in the record of mortgages in their offices.

Section 16. Rights and remedies of bondholders.—In addition to all other rights and all other remedies, any holder or holders of any bond or bonds of the District, including a trustee for a bondholder, shall have the right, subject to any contractual limitation binding upon such bondholder or bondholders or trustee, and subject to the prior or superior rights of others:

(1) To sue on the bonds.

(2) By mandamus or other suit, action or proceeding, at law or in equity, to enforce the bondholder's rights against the District and the Board of Directors, including the right to require the District and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require such District and such board to carry out the other covenants and agreements with such bondholder and to perform the District's and the board's duties under this charter and under any mortgage, indenture of trust, or contract.

(3) By action or suit in equity, to require such District to account as if the District were the trustee of an express trust for such bondholder.

(4) By action or suit in equity, to enjoin any act or things which may be unlawful or a violation of the rights of such bondholder.

(5) By suit, action, or proceeding in any court of competent jurisdiction, to obtain in the event of the default by the District in the payment when due of the bondholder's bond or bonds or interest thereon, which default shall have continued for a period in excess of 60 days, or default in the performance of any other covenants or obligations of the District, which default shall have continued for a period of 60 days after notice to cure such default, the appointment of a receiver for the gas system or systems of the District, which receiver may enter and take possession of such system or systems or any part or parts thereof, including all property, land, property rights, easements, franchises, books, records, papers, accounts, and other adjuncts of the gas system or systems of the District, and such receiver may operate and maintain such gas system or systems, fix and collect all rates and charges, and receive all revenues thereafter arising therefrom in the same manner

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as the District itself might do, and shall deposit all moneys in a separate account or accounts and apply the same in accordance with the obligations of such District and as the court shall direct.

Section 17. Proceeds from the sale of bonds.—All moneys derived from the sale of any bonds issued by the District shall be used solely for the purpose or purposes for which such bonds are authorized, including any engineering, legal, or other expenses incident to such purposes, and, in the case of bonds issued in whole or in part for the construction of a gas system or systems or any part of such system or systems, interest on such bonds, or, if only a part of the bonds are issued for the purpose of such construction, on the part of such bonds issued for that purpose, prior to and during such construction and for not exceeding 2 years after completion of such construction and, in the case of bonds issued by the District for the purpose of refunding outstanding bonds of such District, any premium which the District may deem necessary to pay in order to redeem or retire the bonds to be refunded. The treasurer or other officer designated by the Board of Directors shall give a receipt for the purchase price to the purchaser of any such bonds, which receipt shall be full acquittal to such purchaser and the purchaser shall not be under any duty to inquire as to the application of the proceeds of such bonds.

Section 18. Disposition of net profits of District.—No distribution of net profits shall be made to the member municipalities.

Section 19. Bonds; legal investments.—Notwithstanding any provision of any other law or laws to the contrary, all bonds, including refunding bonds, issued pursuant to this charter, shall constitute legal investments for savings banks, banks, trust companies, executors, administrators, trustees, guardians, and other fiduciaries, and for any board, body, agency, or instrumentality of the State of Florida, or of any county, municipality, or other political subdivision of the state, and shall be and constitute securities which may be deposited by banks or trust companies as security for deposits of state, county, municipal, and other public funds.

Section 20. Tax exemption.—All property and all income of the District shall be exempt from all state, county, municipal and other taxation in the State of Florida. All bonds of such District and the interest on such bonds shall be exempt from all state, county, municipal, and other taxation in the State of Florida. All deeds, mortgages, indentures of trust and other documents executed by or delivered to any such District shall be exempt from all state, county, and municipal and other taxation in the State of Florida.

Section 21. Consent of state agencies.—It shall not be necessary for the District, in proceeding under this charter, to obtain any certificates of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the State of Florida or Okaloosa County, in order to construct, acquire, or improve such system or systems or to exercise any of the powers granted in this charter.

Section 22. Regulation by state agencies.—Neither the rates, fees, rentals, or other charges to be established and collected for gas and services of

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such system or systems, when constructed, acquired, or improved as provided in this charter, nor bonds which may be issued under this charter, shall be subject to approval, supervision, regulation, or control of any bureau, board, commission, or other like instrumentality of the state.

Section 23. Covenants of the state.—That the State of Florida hereby covenants with the holders of any bonds or other obligations issued pursuant to this charter, and the coupons appertaining to such bonds or obligations, that the state will not in any manner limit or alter the power and obligation vested by this charter in the District to fix, establish, and collect, in the matter provided in this charter, such fees, rentals, or other charges for the facilities and services of such system or systems, and to revise such fees, rentals or other charges from time to time whenever necessary, as will always be sufficient, together with any other pledged funds, to pay the expenses of operation, maintenance, and repair of such system or systems, the principal of and interest on all bonds or other obligations issued pursuant to this charter for such system or systems, and to comply fully with and fulfill the terms of all agreements and covenants made by the District with holders of such bonds or other obligations, until all such bonds or other obligations, together with all interest accrued or to accrue on such bonds, and all costs or expenses in connection with any action or proceedings by or on behalf of the holders of such bonds or other obligations are fully paid and discharged, or adequate provision made for the payment of discharge of such bonds.

Section 24. Use of public roads.—The District is hereby authorized to use the right of way of all public roads, whether state or county, without securing the prior approval of the state or any agency or department of the state or the governing body of any county.

Section 25. Discontinuance of customer services.—If any rates, fees, or charges for the services and facilities furnished by any gas system or systems constructed or reconstructed by the District under the provisions of this charter shall not be paid when due, the District may discontinue and shut off the supply of the services and facilities of the system to the customer so supplied with such services or facilities until such fees, rentals, or other charges, including the interest, penalties, and charges for the shutting off and discontinuance or the restoration of such services or facilities are fully paid, and for such purposes may enter on any lands, waters, and premises of such delinquent customers, within or without the boundaries of the District. Such delinquent fees, rentals, or other charges, together with interest, penalties, and charges for the shutting off and discontinuance or the restoration of such services or facilities, and reasonable attorney's fees and other expenses, may be recovered by the District by suit in any court of competent jurisdiction. The District may also enforce payment of such delinquent fees, rentals, or other charges by any other lawful means of enforcement.

Section 3. Chapter 29334, Laws of Florida, 1953, chapter 31051, Laws of Florida, 1955, chapter 63-1697, Laws of Florida, and chapter 86-468, Laws of Florida, are repealed.

Section 4. The contracts and obligations heretofore made and incurred and other actions heretofore taken by the Okaloosa Gas District shall not

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be impaired or otherwise affected by enactment of this codification of the special acts referred to in sections 1 and 3 or by the repeal of such special acts provided for in such sections.

Section 5. In the event of a conflict of the provisions of this act with the provisions of any other act the provisions of this act shall control to the extent of such conflict.

Section 6. In the event any section or provision of this act is determined to be invalid or unenforceable, such determination shall not affect the validity of or enforceability of each other section and provision of this act.

Section 7. This act shall take effect upon becoming a law.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.

EXHIBIT B

CHAPTER 2021-262

Committee Substitute for House Bill No. 1633

An act relating to Okaloosa Gas District, Okaloosa, Santa Rosa, and Walton Counties; amending ch. 2000-443, Laws of Florida; revising the territorial limits and area of service of the district to include all of Santa Rosa County and all of Walton County; providing exceptions; revising the membership of the Board of Directors to include one member appointed by each of the Board of County Commissioners of Santa Rosa and Walton Counties; revising the director's fee for each meeting attended by a member of the Board of Directors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 3 and 8 of section 2 of chapter 2000-443, Laws of Florida, are amended to read:

Section 3. Area of service.—The territorial limits and area of service of the District shall be Okaloosa County, Florida, and the following described areas in Santa Rosa County, Florida, and Walton County, Florida, to-wit:

(1) In Santa Rosa County, ~~all of Santa Rosa County an area 20 miles wide, extending from the eastern boundary of Santa Rosa County, to the western boundary of said county, the center line of which shall be the presently existing transmission line of the District, excepting, however, from the above described area of Santa Rosa County:~~

(a) ~~The area within the corporate limits of the City Town of Milton and the surrounding territory presently served by the gas distribution system of said city town; however, nothing in this act shall be construed to restrict or limit the City of Milton's right to serve gas customers within its territorial grants and in all areas where the district territories overlap with territories of the City of Milton authorized by chapter 61-2489 and chapter 71-773, Laws of Florida;~~

(b) The area adjacent to State Highway 87 (Brewton Highway) from the intersection of said highway and the transmission line of the District northerly along said highway for a distance of 2 miles;

(c) The area adjacent to the New Chumuckla Highway from the intersection of said highway and State Highway 87 (Brewton Highway) westerly along said New Chumuckla Highway for a distance of 2 miles; and

(d) The area adjacent to said Highway and the transmission line of the District east of Milton, in a westerly direction along said Highway 90 to the corporate limits of the ~~City Town~~ of Milton;

(e) The area within the corporate limits of the City of Gulf Breeze and the area from the eastern boundary of the corporate limits of the City of Gulf

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Breeze extending easterly approximately 11 miles to the line defined as the eastern boundary of Sections 4, 9, 16, 21 and 28 of Township 2 South, Range 27 West, which extends north and south from Santa Rosa Sound to East Bay;

(f) The area from the line defined as the eastern boundary of Sections 4, 9, 16, 21 and 28 of Township 2 South, Range 27 West, which extends north and south from Santa Rosa Sound to East Bay, and extending easterly to the line starting at the intersection US Highway 98 and Shannon Drive, going due south to Santa Rosa Sound, thence turning due north continuing to Manatee Road; thence turning west until the intersection of Basswood Drive; thence turning north until intersecting the Tom King Bayou tributary south of Cove Road; thence following this branch northwest to Tom King Bayou, thence north to East Bay is presently claimed as a service area by the District and by the City of Gulf Breeze and shall not be deemed to be included or excluded as a service area for the District. The service rights for this area shall be determined by a final nonappealable order of the Florida Public Service Commission or any successor agency; and

(g) The area within the corporate limits of the Town of Jay and the existing customers presently served by the gas distribution system of said town.

(2) In Walton County, all of Walton County extending from the eastern boundary of Walton County to the western boundary of said county, excepting, however, from the above described area of Walton County, that area lying south of the section lines commencing at the Western Boundary of Walton County at the Northwest corner of Section 31, Township 4 North, Range 21 West and running easterly along the northern section lines of Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 21 West, Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 20 West, Sections 31, 32, 33, 34, 35, and 36 of Township 4 North, Range 19 West, and Section 31, 32, and 33 of Township 4 North, Range 18 West, ending at the Eastern Boundary of Walton County located at the Northeast corner of Section 33, Township 4 North, Range 18, south to the current gas distribution system of the City of DeFuniak Springs, the area within the corporate limits of the City of DeFuniak Springs and the customers served by the gas distribution system of said city. However, should the District request in writing to the city and the city agrees through written agreement, the District is authorized to serve any mutually agreed portion of the excepted area above the area shall be all of that portion of Walton County lying south of Highway 20 and 10 miles north of Highway 20.

The District may acquire a supply of gas either within or without the District's territorial limits and area of service and may transport and transmit gas from the point of such acquisition to the system or systems of the District. The District may also sell and transport gas for delivery beyond the territorial limits and area of service of the District and acquire, finance, operate, maintain, extend, and improve gas transmission lines, laterals, and facilities beyond the territorial limits and area of service of the District for such purposes and also for the purpose of making direct sales to industrial

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and institutional users and to line tap commercial and residential users, but the District shall not acquire, construct, own, or operate any gas distribution system in any area other than within Santa Rosa, Okaloosa, or Walton Counties the territorial limits and area of service of the District as provided in this section, unless authorized by special act of the Legislature to do so.

Section 8. The Board of Directors.—The District shall have a Board of Directors, consisting of one member of each member municipality and one member appointed by the Board of County Commissioners of Okaloosa, Santa Rosa, and Walton Counties County, to represent the interest of the unincorporated areas and the interest of the nonmember cities. The member for each member municipality shall be appointed by the governing body of such member municipality and the Board of County Commissioners of the respective counties ~~Okaloosa County~~ shall appoint one member from each county. The member shall serve for a term of 4 years and until his or her successor is appointed in like manner and qualified. Appointments to fill a vacancy shall be for the unexpired term. The representative of each municipality may, but need not be, the mayor or chief executive officer of such municipality and the member appointed by the Board of County Commissioners of ~~Okaloosa County~~ may, but need not be, an elected official, except and provided that no member of the Board of County Commissioners of ~~Okaloosa County~~ shall serve in such capacity. The members of the Board of Directors shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in and about the performance of their duties thereunder and, at the discretion of the Board of Directors, they may be paid a director's fee of not exceeding ~~\$244~~ \$25 for each directors' meeting attended by them, not exceeding one meeting during each calendar month. The appointing authority may remove any member of the Board of Directors within the term for which such member shall have been appointed for malfeasance or misfeasance in office or other just cause after giving to such member a copy of the charges against him or her and an opportunity to be heard in his or her defense.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.

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EXHIBIT C

