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E-PORTAL FILING

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

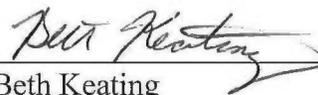
Re: Docket No. 170010-GU - Joint petition requesting approval of territorial agreement for Escambia County, by City of Pensacola d/b/a Pensacola Energy and Florida Division of Chesapeake Utilities Corporation.

Dear Ms. Stauffer:

Attached for filing on behalf of the City of Pensacola d/b/a Pensacola Energy and the Florida Division of Chesapeake Utilities Corporation, please find the Responses of Pensacola Energy and the Florida Division of Chesapeake Utilities Corporation to Commission Staff's Second Data Requests in the above-referenced docket.

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

Kind regards,



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cc:/ Office of General Counsel (Taylor)
Division of Economic Regulation (Guffey, Draper)

Re: Docket No. 170010-GU: Joint Petition requesting approval of territorial agreement for Escambia County, by City of Pensacola d/b/a Pensacola Energy and Florida Division of Chesapeake Utilities Corporation.

Responses to Staff's Second Data Requests

The joint responses of the Florida Division of Chesapeake Utilities Corporation and the City of Pensacola d/b/a Pensacola Energy to Staff's First Data Requests are as follows:

1. Referring to the response to staff's first data request question No. 1, please state whether Gulf South Pipeline is aware of Chesapeake's proposed pipeline construction and/or whether Gulf South Pipeline has been contacted prior to filing of the instant petition to determine whether Pensacola could increase its interstate pipeline capacity on Gulf South Pipeline.

Joint Response: To the best of the parties' knowledge, Gulf South Pipeline is aware, or should be aware, of Chesapeake's proposed pipeline, due to FERC noticing requirements. Gulf South is aware that Pensacola intends to reduce its MDQ, as this was a settlement point in the resolution of Gulf South's recent rate case. Pensacola has no interest in increasing its capacity on the Gulf South Pipeline; rather, its purpose in entering into the agreements with Chesapeake is to provide a redundant source of supply to enhance reliability for Pensacola's customers.

2. Please confirm that the interconnect of Chesapeake's pipeline with the FGT pipeline (FGT-CFG gate) are located within Florida exclusively (FGT maps appear to show that the FGT pipelines crosses the Alabama-Florida border near the FGT-CFG gate).

Chesapeake Response: Chesapeake confirms that the location of the interconnection is within Florida. Chesapeake will take receipts from FGT on the Florida side of the Florida/Alabama boarder at a location south and west of FGT mile marker 238.6. See also attached picture of proposed interconnect point.

3. Section (5) of the definition of "New Industrial Customers" provides that new industrial customers cannot be located within the service territory of a natural gas utility, natural gas district, or municipal natural gas service provider. Please state whether Gulf South Pipeline is included in that list of entities (i.e., natural gas utility, natural gas district, or municipal natural gas service provider). Gulf South Pipeline according to their website is defined as an interstate natural gas pipeline and therefore does not appear to be part of the list of entities.

Joint Response: Gulf South Pipeline is an interstate pipeline, which is not among the entities identified in the referenced definition.

4. The responses to questions Nos. 2 and 5 states at present certain “other large customers” are receiving gas service from Gulf South Pipeline. With respect to those responses, please state:
- a) Please reconcile the response with the statement made in the petition on page 2, paragraph 4, that the proposal would allow certain customers to receive natural gas service that, to date, have been unable to obtain service.

Joint Response: The primary benefit of this project is that it provides a competitive alternative for diversification of interstate pipeline service via the Pensacola lateral for existing large customers, including the City of Pensacola. The location of the facility, as well as the connection with FGT, are also expected to generate interest in receiving gas service from other entities that do not currently receive gas service, as well as entities that may be considering locating their facilities in Escambia County and for whom reliable natural gas access is a necessity.

- b) How many industrial customers in Pensacola and Escambia County currently receive gas service from Gulf South Pipeline?

Joint Response: While this question exceeds the scope of this Petition, in an effort to assist Commission staff, the parties offer that neither is able to confirm the number of customers served by Gulf South Pipeline, although, as noted in Chesapeake’s response to Data Request No. 5 of Staff’s First Set of Data Requests, Chesapeake is aware of some customers served by Gulf South Pipeline, among them being the City of Pensacola.

- c) Please clarify the statement “this project will not displace existing direct connections to the Gulf South Pipeline.”

Joint Response: While this question exceeds the scope of this Petition, in an effort to assist Commission staff, the parties can confirm that, as it relates to Pensacola and the current prospective “New Industrial Customer” that has expressed interest in service from Chesapeake, these entities will maintain their existing connection to the Gulf South Pipeline. The Chesapeake pipeline will serve as an additional supply source.

- d) If the proposed territorial agreement is approved by the Commission, could a “new industrial customer” that currently receives gas from Gulf South Pipeline switch gas providers by discontinuing service from Gulf South Pipeline and receive gas service from Chesapeake instead?

Chesapeake Response: Yes, a “New Industrial Customer” that currently receives gas from Gulf South Pipeline could discontinue service on the Gulf South Pipeline and receive gas from the service provided by Chesapeake, but only by the terms of the territory agreement. This is not inconsistent with the Commission’s standard for approval of a territorial

agreement. The Companies note here that, as the Commission and the courts have recognized, the Commission should approve a territorial agreement unless it makes a determination that the agreement will cause a detriment to the public.¹ Moreover, to the extent that the Commission has deemed certain factors relevant to its consideration of whether uneconomic duplication is likely to occur, the Commission's historic consideration of the lost revenues of a "non-serving utility" is not a factor here², as Gulf South Pipeline is a non-jurisdictional entity for whom the Commission has no rate-making authority.³ In fact, consideration of lost revenues of a non-jurisdictional entity in this context would be directly contrary to the Commission's approval in other contexts of gas transportation special contracts, such as Flexible Gas Service agreements, which are specifically designed to facilitate retention by the utility of large customers for whom bypass and interconnection with an interstate pipeline is a viable option.⁴

- e) If the answer to the above question is yes, please state whether Chesapeake will actively seek to serve industrial customers currently being provided service by Gulf South Pipeline.

Chesapeake Response: While this question exceeds the scope of this Petition, in an effort to assist Commission staff, Chesapeake is interested in serving New Industrial Customers as the opportunity arises and has identified one New Industrial Customer with whom it anticipates to contract. Opportunities to serve others will be evaluated on a case by case basis subject the terms of the Territorial Agreement with Pensacola, as well as relevant economic and engineering factors.

Chesapeake's activity in Escambia County is not designed to disrupt Pensacola's business, rather it provides the City of Pensacola the opportunity for more economical transportation services and redundant supply thereby enhancing reliability, as well as provide the opportunity to serve customers that also seek a redundant feed and those that might not otherwise be able to receive natural gas service.

Consistent with the overall purpose of any territorial agreement, this Agreement provides for the avoidance of uneconomical duplication of facilities in the area by ensuring there is clear delineation and communication between Pensacola Energy and Chesapeake.

¹ Order No. PSC-16-0201-PAA-GU, issued May 19, 2016, in Docket No. 160050-GU; *citing Utilities Commission of the City of New Smyrna v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985); *supra* Joint Responses to Staff's First Data Requests, p. 5.

² See *Choctawhatchee Electric Cooperative, Inc. v. Art Graham*, 132 So. 3d 208, 215-16 (Fla. 2014); *citing Gulf Coast Elec. Coop. Inc. v. Clark*, 674 So. 2d 120 (Fla. 1996).

³ Likewise, the Commission's authority to approve territorial agreements, and resolve territorial disputes, extends only to entities that meet the definition of "natural gas utility" as set forth Section 364.04(3)(c), Florida Statutes. Interstate transmission companies are not included within that definition. To be clear, by offering this reference point, Chesapeake does not suggest that a dispute with Gulf South Pipeline exists or is likely to occur.

⁴ See Dockets Nos. 980895-GU and 140204-GU.

5. Referring to the response to question 5 (“ . . . more economical transportation service and natural gas supply via FGT . . .”), please discuss whether the response states that capacity on FGT is more economical/less costly than capacity on Gulf South Pipeline.

Chesapeake Response: The capacity contracted for by Pensacola on FGT will be less expensive than Gulf South. Chesapeake understands that is likely to be the case for other potential customers. Access to FGT via the Pensacola lateral also provides Pensacola a competitive alternative for future supply decisions, as it would for New Industrial Customers with existing connections to Gulf South Pipeline.

6. Assuming Chesapeake serves a new industrial customer, please clarify whether Chesapeake or the customer would need to require capacity on the FGT line and buy the natural gas on the open market.

Joint Response: The new customer(s) would need to acquire capacity on FGT and commodity on the open market or buy bundled service in the open market delivered to Chesapeake’s Pensacola Lateral interconnection with FGT.

7. Response to question 6 states that “Pensacola pursued a sole source option working with Chesapeake”. Is this normal business practice for the City of Pensacola/Pensacola Energy and are there any regulations that would require Pensacola to contact other entities for the purpose of constructing the proposed pipeline interconnect?

Pensacola Response: Please note this question exceeds the scope of the Commission’s limited jurisdiction as it relates to municipal utilities and is not relevant to the scope of this Petition. With that stated objection, to assist staff, the City can confirm that its participation in this project is in compliance with applicable regulations and has been approved by the Pensacola City Council.⁵

⁵ See Section 366.11, Florida Statutes.

8. Referring to the responses to question 13 b, please elaborate on the response as to how inspectors and gas utility workers will identify any Chesapeake facilities behind the Chesapeake Delivery Point and distinguish them from facilities owned by Pensacola.

Chesapeake Response: As is normal practice, Chesapeake will label or affix signage as appropriate to all facilities it owns.

9. The response to question 15 states that no distinction was intended in referring to the same entity as Chesapeake Utilities Corporation (CUC) and as Central Florida Gas (CFG) in the Gas Transportation Agreement and in the proposed Escambia County Territorial Agreement. Please reconcile the name differences in the two agreements with the utilities registered name in Florida to avoid confusion and misrepresentation.

Joint Response: The Company's response to question 15 provides a complete reconciliation of the names used within the agreements. Both agreements use the name certified by the Commission, the Florida Division of Chesapeake Utilities Corporation. The only distinction is that the Territorial Agreement also includes the Company's fictitious name and abbreviation. To the extent that this data request is asking the parties to revisit and amend the agreements to add/delete the referenced fictitious name, the parties respectfully decline as such request is unnecessary, is inconsistent with the Commission's authority as it relates to territorial agreements, and would necessitate that Pensacola seek approval of any amended agreement from the Pensacola City Council.

10. The response to question 18 states that the rates shown in Exhibit A to the Gas Transportation Service Agreement are designed to recover the costs associated with Pensacola's portion of the pipeline. What is Pensacola's portion of the pipeline stated as a percentage of the total pipeline?

Chesapeake Response: The capacity of the Pipeline Lateral will vary based on receipt pressure received from FGT and delivery pressure and hourly flow rates to customers. Given current forecasted receipt pressures from FGT and customer's maximum contractual quantities, Pensacola portion of capacity will be between 28% and 32%.

11. The response to question 20 states that Chesapeake will recover the costs of the facility through the contract price with Pensacola Energy and any new contracts with customers who will connect to Chesapeake's facilities. Has Chesapeake identified any new customers that may contract with Chesapeake to connect to the pipeline? Please discuss any potential new customers.

Joint Response: Yes, a performance materials and chemicals provider. Please also refer to Chesapeake's response to Staff's question 4 (e) above.

12. Please expand on the response provided to question No. 19 and state clearly how Chesapeake will treat the revenues (below the line or above the line) received from Pensacola pursuant to the Gas Transportation Service Agreement.

Joint Response: While this question exceeds the scope of this Petition, in an effort to assist Commission staff, Chesapeake clarifies that this project is expected to inure to the benefit of the general body of ratepayers. As such, revenues will be accounted for above-the-line.

13. Please state whether Chesapeake has received all the necessary permitting to construct the Escambia pipeline.

Chesapeake Response: The permitting is ongoing and expected to be complete by June 1, 2017.

Supplemental {Response to Staff's additional verbally stated concern}

14. Will customers be confused as to which entity will provide service?

Chesapeake Response: Staff has verbally identified a concern that, as structured, customers may not be readily aware whether they would be served by Chesapeake or by Pensacola. Chesapeake emphasizes that the customers at issue will be limited to large commercial and industrial customers. The Agreement does not contemplate that Chesapeake would serve, in any instance, small commercial or residential customers.

Territorial agreements are not designed to serve as notice to customers of their provider, even the most traditionally structured territorial agreements. Instead, the territorial agreement is entered into as a means for the companies involved to define who will serve whom in order to avoid conflict.⁶ The instant agreement provides a mechanism by which the parties can clearly define which entity will serve which customers, which will enable the parties to avoid potential conflict and uneconomic duplication of facilities.

Furthermore, as it currently stands today, in instances where a potential customer's load or location exceeds Pensacola's ability to serve, Pensacola would necessarily decline to serve; thus, the potential customer would either be without natural gas service or would default to Gulf South. Therefore, even now, customers meeting the definition of New Industrial Customer have no guarantee that Pensacola will be their provider.

This is not unlike situations in areas near territorial boundaries for other gas utilities. In such areas, it is not uncommon for customers to call one or the other LDC to inquire about service when, in fact, they may actually be located in the other LDC's territory. In instances where a

⁶ Commission approval is necessary to avoid antitrust implications otherwise associated with the division of territory between otherwise monopoly providers. City Gas Co. v. Peoples Gas System Inc., 182 So.2d 429, 433 (Fla.1965).

customer's location is near a boundary, a customer service representative may need to confirm that the location of the inquiring customer is actually within the contacted LDC's service territory and with the potential that the customer may be directed to the other LDC for service. In certain other instances, based upon good engineering practices, it may be that the utility in whose territory the customer is located is unable to serve the inquiring customer as economically and consistent with good engineering practices as the other utility, in which case both parties may agree that the utility better situated to serve the customer may do so, subject to Commission approval. In fact, territorial agreements typically recognize this in express contractual terms.⁷ Ultimately, this territorial agreement will not generate customer confusion.

⁷ In addition to Sections IV and v of the instant Agreement, see for example Sections 2.3 and 2.4 of the Peoples Gas/Clearwater agreement approved by Order No. PSC-00-0371-PAA-GU, issued in Docket No. 991758-GU.

