

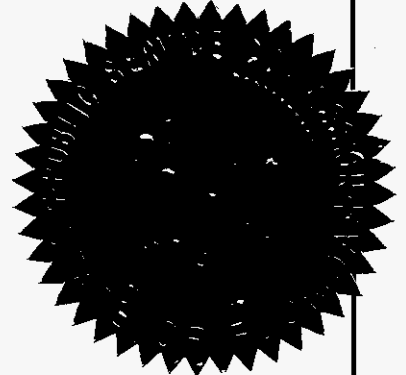
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 090125-GU

PETITION FOR INCREASE IN RATES
BY FLORIDA DIVISION OF CHESAPEAKE
UTILITIES CORPORATION.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 9

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, December 15, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER - DATE

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FPSC-COMMISSIONER

P R O C E E D I N G S

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3 **CHAIRMAN CARTER:** We are back on the record.
4 And when we last left, we had completed an item, and
5 now, Commissioners, we move to Item 9. Staff, you are
6 recognized.

7 **MS. KAPROTH:** Good afternoon, Commissioners.
8 I am Kathy Kaproth with the Commission staff. In a
9 proposed agency action filing, the Florida Division of
10 Chesapeake Utility Corporation requested a \$2.9 million
11 revenue increase, which is addressed in this
12 recommendation. Tom Geoffroy and Beth Keating are here
13 to represent the utility. Staff is ready to answer any
14 questions.

15 **CHAIRMAN CARTER:** Okay. Let's hear from the
16 parties.

17 **MS. KEATING:** Good afternoon, Mr. Chairman,
18 Commissioners. I'm Beth Keating with Akerman Senterfitt
19 here today on behalf of the company. Thank you all for
20 this opportunity to address you on this item.

21 If I may, Mr. Chairman --

22 **CHAIRMAN CARTER:** You're recognized.

23 **MS. KEATING:** -- I'd like to quickly introduce

24 --

25 **CHAIRMAN CARTER:** Excellent. Excellent.

1 **MS. KEATING:** -- the representatives from the
2 company that are here with us today.

3 First right immediately to my right is Mr. Tom
4 Geoffroy, Vice President with Chesapeake. Also with us
5 all the way from Delaware is Mr. Matt Kim, the Corporate
6 Controller for Chesapeake. Behind us is Mr. Jeff
7 Sylvester, who is the Assistant Regional Manager for
8 Florida for the company. And also with us is new to the
9 company, Ms. Cheryl Martin, the Controller for our new
10 subsidiary FPU. And last, but not least, is Mr. Jeff
11 Householder, who's the outside consultant for the
12 company.

13 Again, Mr. Chairman, I'll be brief, but I'd be
14 remiss if I didn't take just a few minutes to thank your
15 staff for working with us throughout this process, for
16 helping us to keep this process on track, and also for
17 their solid recommendation. We'd also like to express
18 our sincere appreciation to the Office of Public Counsel
19 for also working with us throughout this process. We've
20 had some really good, productive discussions with both
21 your staff and also with Public Counsel.

22 Now there are -- there is one particular issue
23 where we would have hoped to have seen a slightly
24 different recommendation from your staff. In
25 particular, we thought we'd made a pretty good case for

1 a higher ROE and would have really liked to have seen an
2 ROE more in line with the company's new subsidiary FPU,
3 who achieved an ROE of 10.85. That being said though,
4 in light of those good discussions that we had with
5 staff and with Public Counsel, the company can agree
6 with and is willing to accept staff's recommendation as
7 it stands now, should you see fit to approve it.

8 There is just one thing we would respectfully
9 ask that you modify, and that is some minor technical
10 wording changes in Issues 19 and 20. And, Mr. Chairman,
11 I have some handouts that may help you just to see what
12 those changes are.

13 **CHAIRMAN CARTER:** You may approach.

14 **MS. KEATING:** And, Mr. Chairman, we did
15 provide this document to your staff and to Public
16 Counsel yesterday. So they have seen it, they are
17 aware.

18 (Pause.)

19 **CHAIRMAN CARTER:** You may proceed.

20 **MS. KEATING:** Okay. Just in a nutshell, we'd
21 respectfully ask that the language in Issues 19 and 20
22 be slightly modified to reflect that the company would
23 be willing to adjust its books and records in light of a
24 decision in the later comeback filing that is discussed
25 here as opposed to restate its books and records. We're

1 also suggesting a couple of other minor wording changes
2 to be consistent with this request.

3 Just to be clear, the company still agrees to
4 do the activity that is addressed in the recommendation
5 in these two issues, it's just that that specific word
6 "restate" has some negative connotations in the auditing
7 and accounting world and might prove problematic with
8 the company's outside auditors.

9 **CHAIRMAN CARTER:** Well, we always want to
10 accentuate the positive.

11 **MS. KEATING:** Absolutely, Mr. Chairman. And
12 just so you know, we've talked to Public Counsel about
13 this, and it's my understanding and I believe I'm
14 authorized to represent that Public Counsel does not
15 object to these slight wording changes.

16 **CHAIRMAN CARTER:** Staff, you've had an
17 opportunity to look over the language. Do you have any
18 objections to it?

19 **MS. BANKS:** No, Commissioner, we do not.

20 **CHAIRMAN CARTER:** Oh, excellenté. Okay.

21 **MS. KEATING:** And with that, Mr. Chairman,
22 Commissioners, I promised we'd be brief. But thank you
23 again for this opportunity, and we stand ready to answer
24 any questions you may have.

25 **CHAIRMAN CARTER:** Commissioner Argenziano,

1 you're recognized.

2 **COMMISSIONER ARGENZIANO:** Yes. Thank you.

3 Just quickly, and maybe I didn't read through
4 it properly, but the company is doing remediation on
5 soils and soil contamination; is that correct? And that
6 contamination occurred way back when in the '30s and
7 '40s, I guess. Is that correct?

8 **MS. KEATING:** That is correct.

9 **COMMISSIONER ARGENZIANO:** And I guess the
10 federal government said you've got to clean it up.

11 **MS. KEATING:** And that's also correct.

12 **COMMISSIONER ARGENZIANO:** Can I ask a
13 question? Is the company sharing in the cleanup or is
14 it all on the ratepayer?

15 **MR. GEOFFROY:** The, the recovery of the cost
16 for the remediation is all being borne by the ratepayer.

17 **COMMISSIONER ARGENZIANO:** How come? Is there,
18 is there -- I mean, is the company responsible for the,
19 for the contamination to begin with?

20 **MR. GEOFFROY:** As you indicated, the
21 contamination occurred back in the '30s and '40s. At
22 that point in time the regulations were such that, that
23 the activities at that site were proper and prudent, and
24 as such the Commission has authorized full recovery of
25 that remediation cost that we're incurring to clean up

1 that environmental issue.

2 **COMMISSIONER ARGENZIANO:** Okay. So it wasn't
3 the company not following the rules at the time. They
4 did follow the rules at the time.

5 **MR. GEOFFROY:** That's correct.

6 **COMMISSIONER ARGENZIANO:** Okay. And this is
7 to staff: Is there ever a time that the Commission
8 allows the company to help in the remediation, not just
9 the ratepayer?

10 **MS. BANKS:** Not historically since I've been
11 here. The ones that we've had have been placed upon
12 the, on the utility -- I mean on the utility's customers
13 to recoup those remediation costs.

14 **COMMISSIONER ARGENZIANO:** Is there a reason?
15 I'd just really like to know if it could be shared. I
16 know the company hates hearing that, but I'm just trying
17 to figure out why it isn't more of a shared burden since
18 there's an ROE and the company makes a profit.

19 **MS. BANKS:** I think very similarly to water
20 and wastewater, if you are dictated to do a particular
21 remediation, that's assumed that that's the obligation
22 that you're, you're supposed to do. And then in
23 return -- there's nothing that the utility actually did
24 wrong, I guess, to penalize them.

25 I understand your point. It seems like there

1 could be something along the way. Historic from my,
2 since I've been here in the '80s, I've seen a lot of
3 these sites in natural gas. The difficulties we've had
4 in recouping costs over time is that they start out with
5 experts saying it may cost anywhere from a million to
6 50 million, and it's been very hard for us to project
7 cost as what's appropriate. Some don't seem as bad
8 until you start digging down some layers.

9 But as far as the basis for why there's never
10 been a sharing, I don't know. It's been there since,
11 ever since -- I've been here since 1985.

12 **COMMISSIONER ARGENZIANO:** And I'm not picking
13 on this company in particular. I just have questions as
14 to why if a company is allowed to earn a profit, why
15 can't they share in the, in the costs? It seems like
16 it's always on the ratepayer. And I'm not trying to
17 discriminate against the company, but I'm trying to
18 really figure that out, why that's never done or has not
19 ever been done. And at a time when, you know, the
20 economy hurts for the company as well as the ratepayers,
21 it's just a logical question for me to ask. So it's
22 really not a practice, never really been a practice that
23 the company would share in the remediation unless they
24 were found, I guess, to be the cause, not following the
25 rules. I can understand that.

1 **MS. BANKS:** Right. And we have never had any
2 like that in the companies that -- and, like I said,
3 several of them that we regulate do have contaminated
4 sites that are very, very old that they're trying to get
5 to, and we've, the Commission has always given
6 100 percent recovery. I'm sorry I can't provide any --

7 **COMMISSIONER ARGENZIANO:** No. That's okay.
8 And just to the company, has the remediation began or is
9 it finished, is it in progress?

10 **MR. GEOFFROY:** The remediation began about 20
11 years ago. A lot of it is interactions between the
12 Florida Department of Environmental Protection and the
13 company to determine what is the right remediation
14 process to employ for the cleanup.

15 **COMMISSIONER ARGENZIANO:** You're not telling
16 me it's taken 20 years just to get the paperwork done,
17 are you?

18 **MR. GEOFFROY:** No. There's --

19 **COMMISSIONER ARGENZIANO:** I mean, have the
20 people been drinking contaminated water for 20 years?

21 **MR. GEOFFROY:** No. There's been work that's
22 been ongoing throughout the process. But every step of
23 the way when you find remediation that needs to occur,
24 you have to get a plan approved by the Florida DEP. And
25 we are --

1 **COMMISSIONER ARGENZIANO:** I understand now why
2 you said 20 years. Okay.

3 **MR. GEOFFROY:** We are now, we are now, we
4 believe, very close to completing that remediation
5 activity.

6 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

7 **CHAIRMAN CARTER:** Thank you, Commissioners.
8 Commissioners, anything further from the
9 bench? Commissioner Edgar, you're recognized for a
10 motion.

11 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
12 I move at this time that we approve the staff
13 recommendation on all issues with the wording changes,
14 but also then adopting the wording changes that have
15 been passed out to all of us for Issues 19 and 20.

16 **CHAIRMAN CARTER:** There's a motion. Is there
17 a second?

18 **COMMISSIONER KLEMENT:** Second.

19 **CHAIRMAN CARTER:** A motion and a second.
20 Commissioners, any further questions? Any
21 further debate? Hearing none, all in favor, let it be
22 known by the sign of aye.

23 (Simultaneous vote.)

24 All those opposed, like sign. Show it done.

25 Thank you, staff. Thank you, Ms. Keating.

1 Good to see you again.

2 **MS. KEATING:** Thank you very much, Mr.

3 Chairman, Commissioners.

4 (Agenda Item 9 concluded.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of January, 2009.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

Issue 19: Should the Commission approve Chesapeake's request (1) to defer amortization of a positive acquisition adjustment that resulted from the acquisition of Florida Public Utilities Company by Chesapeake Utilities Corporation and (2) to allow Chesapeake to start amortizing the acquisition adjustment should the Company experience overearnings?

Recommendation: Based on Chesapeake's agreement that it will ~~restate~~ adjust its books to properly reflect the Commission's future decision on the appropriate treatment of the acquisition adjustment, staff recommends that Chesapeake be permitted to defer amortization of the positive acquisition adjustment. However, Chesapeake should not be allowed to begin amortizing the acquisition adjustment for any reason, without prior Commission approval. Deferred amortization does not imply future rate recovery of these deferred costs. (Kaproth, Bulecza-Banks)

Staff Analysis: Chesapeake Utilities Corporation (CUC) acquired Florida Public Utilities Company (FPUC) on October 28, 2009 in a corporate transaction, whereby FPUC became a wholly-owned subsidiary of CUC. Unlike FPUC, Florida Division of Chesapeake Utilities (Chesapeake) is an operating division of CUC. In the instant case, Chesapeake did not request recovery of dollars related to the positive acquisition adjustment resulting from the purchase of FPUC by CUC. Chesapeake has, however, requested the Commission allow it to defer amortization of the proposed acquisition adjustment, until such time that the regulatory treatment of the acquisition adjustment has been voted on by the Commission. That decision would occur if and when Chesapeake filed a petition requesting recovery of the acquisition adjustment.

Chesapeake informed staff that if it was allowed to defer amortization of its proposed acquisition adjustment, it would ~~restate all pertinent prior period books and records to reflect~~ adjust the appropriate books and records to properly reflect whatever the Commission determines to be the appropriate treatment of the positive acquisition adjustment and the amortization period.

Chesapeake also requested that it be allowed to begin amortization should it experience earnings in excess of the high point of its authorized return on equity, inclusive of the positive acquisition adjustment, transaction costs, and transition costs. Moreover, Chesapeake believes the overearnings calculation should be based on the "combined company." As the assets and operations of FPUC and Chesapeake have not been combined, overearnings based on the "combined company" would be inappropriate. Staff does not believe Chesapeake should be allowed to begin amortizing the deferred costs in order to offset potential overearnings, either on a stand alone basis, or on a combined basis. Further, as staff has no basis to recommend approval of the recovery of the acquisition adjustment, transition costs, or transaction costs, the inclusion of these items to calculate overearnings is improper. The calculation and disposition of any potential overearnings should be determined by the Commission should such overearnings occur.

Staff believes there is insufficient information available upon which to base a recommendation on the appropriate amortization period. Further, the final amount of the acquisition adjustment, if any, has yet to be determined. As a result, staff believes that it would be more appropriate to determine the appropriate amortization period if and when Chesapeake seeks Commission approval of the positive acquisition adjustment.

Based on Chesapeake's agreement that it will ~~restate~~ adjust its books to properly reflect the Commission's future decision on the appropriate treatment of the acquisition adjustment, staff recommends that Chesapeake be permitted to defer amortization of the positive acquisition adjustment. However, Chesapeake should not be allowed to begin amortizing the acquisition adjustment for any reason, without prior Commission approval. Deferred amortization does not imply future recovery of these deferred costs.

Issue 20: Should the Commission allow Chesapeake (1) to record transaction and transition costs related to the purchase of Florida Public Utilities by Chesapeake Utilities Corporation as Regulatory Assets, (2) to suspend the amortization of these costs until such time that the regulatory treatment of the transition and transaction costs has been determined by the Commission, and (3) to allow Chesapeake to begin amortizing the Regulatory Assets should the Company experience overearnings?

Recommendation: Based on Chesapeake's agreement that it will ~~restate~~ adjust its books to properly reflect the Commission's future decision on the appropriate treatment of the transition and transaction costs, staff recommends that Chesapeake be permitted to record the transaction and transition costs as Regulatory Assets and defer amortization of these costs. However, Chesapeake should not be allowed to begin amortizing the Regulatory Assets for any reason, without prior Commission approval. Deferred amortization does not imply future rate recovery of these deferred costs. (Kaproth, Bulecza-Banks)

Staff Analysis: As stated in Issue 19, Chesapeake Utilities Corporation (CUC) purchased Florida Public Utilities Company (FPUC) on October 28, 2009 in a corporate transaction, whereby FPUC became a wholly-owned subsidiary of CUC. Unlike FPUC, Florida Division of Chesapeake Utilities (Chesapeake) is an operating division of CUC. In the instant case, Chesapeake did not request recovery of dollars related to the Regulatory Assets associated with the transaction and transition costs resulting from the purchase of FPUC by CUC. Chesapeake has, however, requested the Commission allow it to defer amortization of the Regulatory Assets, until such time that the regulatory treatment of the transition and transaction costs has been voted on by the Commission. That decision would occur if and when Chesapeake files a petition requesting recovery of the transition and transaction costs.

Chesapeake informed staff that if it was allowed to defer amortization of the Regulatory Assets, it would ~~restate all pertinent prior period books and records to reflect~~ adjust the appropriate books and records to properly reflect the Commission's vote on the establishment of the Regulatory Assets.

Chesapeake also requested that it be allowed to begin amortization should it experience earnings in excess of the high point of its authorized return on equity, inclusive of the positive acquisition adjustment, transaction costs, and transition costs. Moreover, Chesapeake believes the overearnings calculation should be based on the "combined company." As the assets and operations of FPUC and Chesapeake have not been combined, overearnings based on the "combined company" would be inappropriate. Staff does not believe Chesapeake should be allowed to begin amortizing the deferred costs in order to offset potential overearnings, either on a stand alone basis, or on a combined basis. Further, as staff has no basis to recommend approval of the recovery of the acquisition adjustment, transition costs, or transaction costs, the

inclusion of these items to calculate overearnings is improper. The calculation and disposition of any potential overearnings should be determined by the Commission should such overearnings occur.

Based on Chesapeake's agreement that it will ~~restate~~ adjust its books to properly reflect the Commission's future decision on the appropriate treatment of the transition and transaction costs, staff recommends that Chesapeake be permitted to record the transaction and transition costs as Regulatory Assets and defer amortization of these costs. However, Chesapeake should not be allowed to begin amortizing the Regulatory Assets for any reason, without prior Commission approval. Deferred amortization does not imply future recovery of these deferred costs.