

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower) *ALM*
Division of Economics (Guffey) *SKG*
Division of Engineering (Ellis) *POE*
Office of the General Counsel (Dziechciarz, DuVal) *MS*

RE: Docket No. 20180054-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

The Florida Public Service Commission opened Docket No. 20180054-GU on February 23, 2018, to consider the tax impacts affecting Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) resulting from the passage of the Tax Cuts and Jobs Act of 2017. Chesapeake is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is the parent of Florida Public Utilities Company (FPUC). FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180052-GU, and 20180053-GU were opened to address the tax impacts affecting FPUC, Fort Meade and Indiantown.

On April 25, 2018, an Order Establishing Procedure (OEP) for the docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the OEP that allowed the Company to file revised and supplemental testimony, and to extend testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On Monday, November 9, 2018, OPC filed an agreed Motion to Consolidate, for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU. On November 16, 2018, Prehearing Order No. PSC-2018-0535-PHO-GU was issued and reflected proposed stipulations between Chesapeake and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the dockets for the purpose of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. This recommendation addresses the remaining contested issues. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: Chesapeake should be allowed to retain the annual amortized amount of the protected excess deferred tax balance less the unprotected deferred tax amortization of \$250,042. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Chesapeake should be allowed to retain the estimated amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing Chesapeake to continue making capital improvements and potentially delaying a rate proceeding.

OPC: The Company should not be allowed to retain the benefit of the protected excess accumulated deferred income tax (ADIT). The protected excess ADIT should be reversed using an Average Rate Assumption Method (“ARAM”) if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if the Company does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that the Company is projected to be earning at the bottom of its allowable range of return on equity.¹ (Chesapeake BR 8; TR 138) In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately \$369,596, less the unprotected excess deferred tax amortization annual amount of \$119,554, for an annual net savings of \$250,042. (Chesapeake BR 9; TR 139, 140) Chesapeake argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of return on equity (ROE), while also enabling the Company to provide utility service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Chesapeake BR 9-10; TR 140) Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 10.90 percent. (Chesapeake BR 11; EXH 12, BSP 00064) Chesapeake also argued that if it is required to reduce its base rates by \$250,042 for the net excess deferred tax savings, its projected 2019 return on equity would be 10.43 percent. (Chesapeake BR 11; EXH 12, BSP 00061)

¹Although Chesapeake witness Cassel's testimony stated that the Company expects to be earning *at* the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 9.77 percent, which is *below* its allowable range. (EXH 10, BSP 00044)

OPC

OPC argued that the Commission should reject Chesapeake's proposal to retain the tax savings associated with the protected excess deferred taxes as being unjust, unfair, and unreasonable, and should apply the annual tax savings of \$369,596 for the benefit of customers in the form of a rate reduction. (OPC BR 1, 4; TR 292-294) OPC also argued that the tax savings represents money that was previously paid by Chesapeake's customers, and the money therefore belongs to those customers and should be returned to them. (OPC BR 4, 5) Finally, OPC argued that the TCJA did not contain any language, express or otherwise, that suggested an intended goal of the TCJA was to allow a utility to keep tax savings so as to continue making capital investments while potentially delaying the need for a rate proceeding. (OPC BR 4; TR 212)

ANALYSIS

Both Chesapeake and OPC agree on the amount of the protected excess deferred tax of \$9,609,491, and that amount should be amortized over 26 years, resulting in an annual tax savings of \$369,956. (TR 140; TR 290-292) Where the parties differ is how the disposition of the tax savings should be resolved. OPC argued that the tax savings should be returned to Chesapeake's customers regardless of the Company's earnings posture to satisfy the intent of the TCJA. (OPC BR 4, 5) Chesapeake proposed to retain the tax savings, asserting that retention of the tax savings will benefit its customers by enabling the Company to delay a rate case and place downward pressure on the requested rate increase in its next rate case. (Chesapeake BR 9, 11)

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 294; EXH 18, P 5) OPC argued that the excess tax monies in Chesapeake's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. (OPC BR 6) OPC also noted that Chesapeake witness Cassel admitted he did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax savings were retained by Chesapeake. (OPC BR 9, 10; TR 210) However, in response to a staff interrogatory, Chesapeake indicated that its forecasted ROE for 2018 and 2019 would be 10.86 and 10.90 percent, respectively, if it were to retain all the tax savings resulting from the TCJA. (EXH 12, BSP 00059, BSP 00064) Chesapeake's Commission-authorized range of return on equity is 9.80 percent to 11.80 percent. (EXH 10, BSP 00043)

Chesapeake argued that OPC's reliance upon the Reedy Creek case is misplaced. (Chesapeake BR 13) On cross-examination, OPC witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the range of their Commission-approved ROE range to refund the tax savings arising under the 1978 Tax Reform. (Chesapeake BR 13; TR 311-315) Chesapeake also noted that witness Smith acknowledged that the Reedy Creek utility was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much the utility would be required to refund. (Chesapeake BR 13) The

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Commission had already determined that the utility would have to make a refund because it was over-earning. (Chesapeake BR 13, TR 308) Chesapeake argued in its brief that witness Smith's refusal to consider Chesapeake's earnings posture in rendering his opinion on Chesapeake's proposals to retain some of the TCJA savings is contrary to prior Commission policy, as reflected in Order Nos. 8624 and 8624A, and overstates the applicability of the Court's conclusions in the Reedy Creek case. (Chesapeake BR 13-14) As such, Chesapeake contends OPC's arguments on this point should be rejected. (Chesapeake BR 14)

In the Reedy Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 18)

OPC maintains that Chesapeake witness Cassel's interpretation of Reedy Creek mistakenly links the over-earnings posture of the utility in that case with the Court's use of the term "windfall." (OPC BR 6-7) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above a Commission range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers.

Record evidence demonstrates that Chesapeake is currently earning below its authorized ROE. (Chesapeake BR 11; EXH 16, BSP 000395) The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (EXH 10, BSP 00047) In response to a staff interrogatory, Chesapeake indicated its forecasted ROE for 2019, with tax savings retained by the Company, would be 10.90 percent. (EXH 12, BSP 00064) Staff agrees with Chesapeake that a key factor in the Reedy Creek case pertained to the utility's earning's posture whereby the utility was required to make a refund because it was over-earning.

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put downward pressure on Chesapeake's earnings, and would accelerate the need for a full rate case sooner than it would otherwise. Therefore, staff recommends that Chesapeake be allowed to retain the amortized protected excess deferred tax balance less the unprotected excess deferred tax amortization attributed to the TCJA.

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: Chesapeake should be allowed to amortize the unprotected excess deferred tax amount over 10 years and net this amount against the protected excess deferred tax annualized amount. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Chesapeake should be allowed to amortize the unprotected deferred tax asset over 10 years, netted against the protected excess deferred taxes.

OPC: The Company should not be allowed to retain the benefit of the unprotected excess ADIT. The Unprotected excess ADIT net asset of \$1,195,541 should be amortized over 10 years at \$119,554 per year.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that it is projected to be earning at the bottom of or below its authorized range of ROE. (Chesapeake BR 8; TR 142) In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately \$369,596, less the unprotected excess deferred tax amortization annual amount of \$119,554, for an annual net savings of \$250,042. (Chesapeake BR 9; TR 139, 140) Chesapeake further argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of ROE to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding (Chesapeake BR 9; TR 142-143) Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 10.90 percent. (Chesapeake BR 11; EXH 12, BSP 00064) Chesapeake also argued that if it is required to reduce its base rates by \$250,042 for the net excess deferred tax savings, its projected ROE would be 10.43 percent. (Chesapeake BR 11; EXH 12, BSP 00061)

OPC

OPC agreed with Chesapeake that the annual protected excess accumulated deferred income tax (ADIT) amortization of \$369,596 less the estimated annual unprotected excess ADIT amortization of \$119,554 produces an estimated annual net amount of \$250,042. (OPC BR 6; TR 291) However, OPC argued this net savings amount of \$250,042 should be returned to customers via a base rate reduction and not retained by the Company. (OPC BR 6; TR 291-293) OPC argued that in the recent cases before the Commission that address tax savings, the electric and gas utilities have agreed to refund the monies to their customers or to apply them in a manner that directly benefits their customers (e.g., pay off storm costs in lieu of utilizing a storm surcharge). (OPC BR 7; TR 317-318) OPC contends that Chesapeake is currently earning a positive return, and that Chesapeake will continue to earn within its authorized range without the

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tax savings being retained by the Company. (OPC BR 7) OPC argued that although Chesapeake claims that retaining the tax savings would not put the Company in an over-earning position, Chesapeake witness Cassel could not point to any calculations or evidence that was offered by Chesapeake to demonstrate where Chesapeake's projected earnings level would be if the tax savings was retained. (OPC BR 7, TR 210) OPC contended that the \$250,042 net amount of the protected and unprotected excess ADIT should be applied for the benefit of the customers as a rate reduction. (OPC BR 6-7, TR 293, 300) To do otherwise would be unjust, unfair, and unreasonable to Chesapeake's customers. (OPC BR 8)

ANALYSIS

Both Chesapeake and OPC agree on the amount of the unprotected excess deferred tax of \$1,195,541, amortized over 10 years, resulting in an annual tax detriment of \$119,554. (TR 140; TR 290-292) Where the parties differ is how the disposition of the tax detriment will be resolved.

OPC witness Smith agreed that the net annual amortization of the protected and unprotected excess ADITs is approximately \$250,042, annually. (TR 291) Witness Smith further testified that the balance for the base rate TCJA savings should be applied for the benefit of customers as a permanent base rate reduction rather than being retained by Chesapeake. (TR 300)

Chesapeake witness Cassel testified that the annual unprotected excess deferred tax balance is \$1,195,541 and the Company requests that this amount be amortized annually over 10 years at \$119,554 per year. (Chesapeake BR 9; TR 139, 140) This annual amortization detriment of \$119,554 should be netted against the annual protected savings (\$369,596), and the Company requests that the net of these amounts (\$250,042) be retained by the Company. (TR 139, 140) Staff recommends that this treatment is appropriate because the Company is not earning above its authorized range of ROE.

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Therefore, for the same reasons discussed in Issue 4B, and the aforementioned analysis, staff recommends Chesapeake be allowed to offset the amount associated with the unprotected excess deferred taxes against the protected excess deferred taxes attributed to the TCJA. Because the Company's expected earned return, with the net amount of tax savings retained, is within its Commission-authorized range of return on equity, Chesapeake should be allowed to retain the annual net savings of \$250,042.

Issue 18: Should Chesapeake be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA and if so, how much?

Recommendation: Chesapeake should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the net savings of the protected and unprotected excess deferred taxes. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA in the amount of \$845,652.²

OPC: No, CFG should not be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that even if the Company were allowed to retain the tax savings as it has requested, the Company would not exceed its authorized ROE range for 2019. (Chesapeake BR 8, 14; EXH 12, BSP 00059) In its brief, the Company argued OPC witness Smith's characterization of the tax savings becoming a "windfall" for the utility fails to recognize that the Company's proposal ultimately inures to the benefit of its customers (Chesapeake BR 12). Chesapeake also opined that should it be required to return all of the tax savings, along with the GRIP tax savings it has already proposed to refund, its ROE is projected to be only 8.66 percent. (Chesapeake BR 11; EXH 12, 00063) Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and the record demonstrates that the Company is currently earning below its range of ROE. (TR 142; EXH 10, BSP 00045) Chesapeake argued that any of the results proposed by OPC either drives the Company into a rate case or forces it to deal with an uneconomic result and severe financial duress. (Chesapeake BR 12) The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. (Chesapeake BR 12) Chesapeake argued retention of the tax savings as proposed will not cause the Company to earn above its authorized range, but will allow Chesapeake to earn within its range. (Chesapeake BR 11; TR 143)

OPC

OPC argued that Chesapeake is currently earning within its authorized range, and is projected to be earning within its authorized range - albeit at the lower end of the range for the foreseeable future. (OPC BR 7; TR 138, 143) OPC further argued that Chesapeake did not offer any evidence or provide any calculations indicating where Chesapeake would be earning relative to

²The amount of \$845,652 is not mentioned in the record. Witness Cassel testified that the annual tax savings excluding the amount related to the GRIP is \$630,137, and the net excess deferred tax amount is \$250,042. (TR 138-140)

its authorized earnings range if the Commission were to allow the Company to keep the tax savings. (OPC BR 7; TR 210) OPC contended that even though the Company asserts that it could avoid a potential rate case, an examination of witness Cassel's testimony demonstrates no rate case will be avoided. (OPC BR 4, 9) OPC argued that witness Cassel testified that Chesapeake is earning within its range without the tax savings being retained. (TR 138) Finally, OPC argued that the tax savings resulting from the TCJA is money that belongs to the Company's customers and should be returned to them as a permanent base rate reduction. (TR 291)

ANALYSIS

Chesapeake witness Cassel testified that the estimated impact of the federal income tax rate change from 35 percent to 21 percent for Chesapeake is approximately \$954,499. (Chesapeake BR 8; TR 138) Excluding \$324,362 of tax savings related to the Company's 2018 GRIP savings, the incremental amount of tax savings is \$630,137. (TR 138) In Issue 21, Chesapeake and OPC stipulated to return the tax savings related to GRIP back to the customers. Further, Chesapeake proposed to retain the annual net tax savings amount of \$250,042 related to the protected and unprotected excess deferred tax saving (\$369,596 for the protected excess ADIT less \$119,554 for the unprotected excess ADIT). (TR 138) Staff concurs that the record evidence demonstrates that Chesapeake is earning below its authorized range of ROE. (Chesapeake BR 8, 12; TR 142; EXH 16, BSP 000395) The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (Chesapeake BR 8; EXH 12, BSP 00059)

CONCLUSION

For the aforementioned reasons, and the analysis in Issue 4B regarding the Reedy Creek case that is also applicable to this issue, staff recommends Chesapeake be permitted to retain the tax amount associated with the tax rate reduction as well as the net tax savings amount of the protected and unprotected excess ADITs attributed to the TCJA, excluding the 2018 GRIP over-recovery.

Issue 19: Should Chesapeake be allowed to retain the total net benefit associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset, and should Chesapeake be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years?

Recommendation: Yes, Chesapeake should be allowed to retain the total net savings associated with the protected excess deferred tax liability and the unprotected excess deferred tax amount, and should be allowed to amortize the protected excess deferred tax amount over 26 years and the unprotected deferred tax amount over 10 years. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be allowed to retain the total net amount associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset, and should be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years.

OPC: No, CFG should not be allowed to retain the total net benefit associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset. Yes, CFG should be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake contended that there is no debate between the Parties regarding the tax savings amounts that need to be addressed, nor is there any debate regarding Chesapeake's earnings posture. (Chesapeake BR 8; TR 290- 292) The Company contends this issue is a policy question as to whether, given its earnings posture, Chesapeake should be allowed to retain the identified tax savings or return those tax savings to its customers. (Chesapeake BR 8)

The Company contended that it has an unprotected deferred tax asset balance of \$1,195,541 and requested it be amortized over 10 years at \$119,554 per year. (TR 139) For protected deferred taxes, the grossed-up balance for Chesapeake is approximately \$9,609,491, which is recorded as a deferred regulatory tax liability and should be amortized over 26 years using the Average Rate Assumption Method (ARAM), as prescribed by the Internal Revenue Service (IRS), which is approximately \$369,569 annually. (TR 140; EXH 2)

OPC

OPC argued that similar to Issues 4B and 5B, the net grossed up tax savings of \$250,042 arising from the excess ADIT amortization should be returned to Chesapeake's customers through a base rate reduction. (OPC BR 8) OPC agreed with the Company's proposal that \$9,609,491, for the protected deferred tax savings should be amortized using the ARAM or the IRS prescribed methodology that complies with IRS normalization requirements, and flowed back over 26 years

at approximately \$369,596 per year. (OPC BR 8; TR 291-292; EXH 2) Chesapeake witness Cassel also testified that the unprotected excess deferred tax asset has an estimated balance of \$1,195,541, and that this amount should be amortized over 10 years at \$119,554 per year. (TR 139)

ANALYSIS

Both Parties agree regarding the excess deferred tax amounts that need to be addressed, the amortization period of the protected excess deferred tax balance and the unprotected excess deferred tax balance, and the Company's earnings posture. (Cassel TR 140; Smith TR 290-292) What remains is a policy question as to whether, given its earnings posture, the Company should be allowed to retain the identified tax savings or return those tax savings to its customers (Chesapeake BR 8). As discussed in Issues 4B and 5B, staff believes the record supports Chesapeake's retention of the net protected and unprotected excess deferred tax savings arising from the TCJA. The record shows that if all of the tax savings are returned to customers as proposed by OPC, the Company's earned return would drop to 8.66 percent, which is below the bottom of its Commission-authorized range of 9.80 percent to 11.80 percent. (Chesapeake BR 11; EXH 10, BSP 00043; EXH 12, BSP 00063) The record also shows that if Chesapeake were to retain these savings, the Company would not be in an over earnings position. (Chesapeake BR 8; EXH 12) Chesapeake's proposal to retain the amortized amounts will allow the Company an opportunity to earn a return within its authorized range of ROE so that it can continue to provide safe and reliable service to its customers. (Cassel TR 143)

CONCLUSION

For the reasons discussed in Issues 4B, 5B, and the analysis above, staff recommends Chesapeake be allowed to retain the net amount associated with the protected excess deferred tax balance and the unprotected excess deferred tax balance, and should be allowed to amortize the protected excess deferred tax balance over 26 years and the unprotected excess deferred tax asset over 10 years.

Issue 20: Should the tax benefit arising from the TCJA rate reduction, excluding the 2018 GRIP savings, be retained by Chesapeake?

Recommendation: Yes, Chesapeake should be allowed to retain the net tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be able to retain the tax benefit arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

OPC: No, the tax benefits arising from the TCJA rate reduction should not be retained by CFG.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

As the Company argued in Issues 4B, 5B, and 18, Chesapeake contended that it should be allowed to retain the tax savings arising from the TCJA. Chesapeake argued that the record clearly reflects that Chesapeake is currently earning below its authorized ROE range, and that retention of both the net protected excess ADIT amount and the annual tax rate reduction savings, less the portion associated with GRIP, will not cause the Company to earn above its authorized range of ROE. (Chesapeake BR 14, EXH 12) If Chesapeake is not allowed to retain any of the tax savings, Chesapeake argued that its 2019 ROE would be 8.66 percent. (Chesapeake BR 11, EXH 12) Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and that OPC's proposed treatment would result in an earned return below this range. (Chesapeake BR 12; TR 142) Chesapeake argued that any of the results proposed by OPC either drives the Company into a rate case or forces it to deal with an uneconomic result and severe financial duress. (Chesapeake BR 12) The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. (Chesapeake BR 13) The Company's recommended treatment will ensure that the Company remains well-positioned financially pending its next rate case so it can continue to provide safe reliable service to its customers. (TR 143)

OPC

OPC argued that for the reasons argued in Issues 4B, 5B, and 18, the 2018 income tax savings arising from the TCJA rate reduction should not be retained by Chesapeake. (OPC BR 9) OPC argued Chesapeake will be earning a "positive" return for the foreseeable future, as demonstrated by witness Cassel's testimony that Chesapeake is earning within its range without the tax savings being retained. (OPC BR 9; TR 138) OPC opined that under cross-examination, witness Cassel could not point to any evidence or calculations provided by Chesapeake in this docket that demonstrates what the Company's projected earnings would be if these tax savings were retained by Chesapeake, even though he contended that OPC argued that keeping the tax savings would

not put Chesapeake in an over-earnings position. (OPC BR 9-10; TR 143, 210) In contrast to the Company's proposal to keep the tax savings, OPC argued the tax savings should be flowed back to Chesapeake's customers. (OPC BR 10; TR 300) OPC argued that consistent with the Florida Supreme Court decision in the Reedy Creek case, and this Commission's recent decisions to return tax savings to utility customers when it approved settlements with other electric and gas utilities regarding the TCJA, the 2018 tax savings should be applied for the benefit of Chesapeake's customers as a base rate reduction. (OPC BR 10; TR 138, 300, 318-319)

ANALYSIS

As previously discussed in Issues 4B, 5B, and 18, staff recommends that Chesapeake be allowed to retain the annual net savings amount of tax savings attributable to the TCJA rate reduction, excluding the 2018 GRIP savings. Staff disagrees with OPC that there is not any record evidence provided by Chesapeake to demonstrate what the Company's earning would be if the tax savings were retained. In response to a staff interrogatory Chesapeake indicated its ROE would be 10.90 percent if forecasted for 2019 if all the tax savings are retained. (EXH 12. BSP 00064) Staff agrees with Chesapeake that requiring the Company to reduce base rates while the Company is not over-earning is contrary to past Commission decisions.

CONCLUSION

Based on the aforementioned and the analysis in 4B regarding the Reedy Creek case, staff recommends Chesapeake be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

Issue 23: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

CHESAPEAKE: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

None Provided.

OPC

None Provided.

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation, this docket should be closed after the time for filing an appeal has run.