

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation.

DOCKET NO. 120081-GU  
ORDER NO. PSC-12-0354-PAA-GU  
ISSUED: July 9, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF RULE 25-7.045(8)(a),  
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

The Florida Division of Chesapeake Utilities Corporation (Chesapeake) operates a natural gas utility. Chesapeake filed its last depreciation study on May 17, 2007, with an effective date of January 1, 2008. Rule 25-7.045(8)(a), F.A.C., requires gas utilities to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission. In accordance with this rule, Chesapeake's next depreciation study was due on or before May 17, 2012.

On April 12, 2012, Chesapeake filed a petition for a waiver of the filing deadline imposed by Rule 25-7.045(8)(a), F.A.C., and asked for an extension of its depreciation study filing date until August 17, 2012, with succeeding depreciation studies due by August 17th at least every five years thereafter. Chesapeake asserts in its petition that its ability to marshal its

04532 JUL-9 2

FPSC-COMMISSION CLERK

resources to prepare the depreciation study in accordance with the requirements of Rule 25-7.045(8)(a), F.A.C., has been hindered by the recent relocation of its main offices. In addition, the Company asserts that it is engaged in the preliminary tasks necessary to effectuate the consolidation of Chesapeake's books and tariffs (and depreciation rates) under FPUC.

We note that on October 28, 2009, Chesapeake's parent company, Chesapeake Utilities Corporation (Chesapeake Corporation) and Florida Public Utilities Company (FPUC) announced their corporate merger, whereby the electric and gas operations of FPUC became a wholly owned subsidiary of Chesapeake Corporation. On November 5, 2009, pursuant to Rule 25-9.044(1), F.A.C., Chesapeake Corporation notified us of its acquisition of FPUC. On August 6, 2010, FPUC acquired Indiantown Gas Company.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), the notice of the Company's petition was submitted to the Secretary of State for publication in the May 4, 2012, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, F.A.C. We have jurisdiction pursuant to Sections 120.542, 350.115, and several provisions of Chapter 366, F.S., including Sections 366.04, 366.05, and 366.06.

### DECISION

Section 120.542(2), F.S., provides that waivers and variances from agency rules 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 the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-7.045(8)(a), F.A.C., provides that each company must file a study for each category of depreciable property for our review at least once every five years from the submission date of the previous study unless otherwise required by us. Chesapeake filed its last depreciation study on May 17, 2007; thus, Chesapeake's next study is due to be filed on or before May 17, 2012, in accordance with the Rule. In the instant case, however, the Company has requested a temporary waiver of the rule requirement to provide an additional 90 days to complete the filing, thereby allowing Chesapeake to file its depreciation study on or before August 17, 2012. Thereafter, Chesapeake has requested that subsequent depreciation study filing dates be calculated from the August filing date.

In its petition, Chesapeake asserts that its ability to marshal its resources to prepare the depreciation study in accordance with the requirements of Rule 25-7.045(8)(a), F.A.C., has been

hindered by the recent relocation of its main offices. In addition, the Company asserts that it is engaged in the preliminary tasks necessary to effectuate the consolidation of Chesapeake's books and tariffs (and depreciation rates) under Florida Public Utilities Company. Consequently, the personnel that are responsible for plant accounting have been charged with projects that have increased their workload significantly. As such, Chesapeake argues that filing on or before May 17th will, therefore, impose an undue hardship on the Company, as a result of these recent, increased demands on personnel and resources of the Company.

Chesapeake further asserts that the purpose of the underlying statutes will still be fulfilled if we grant the requested waiver. Specifically, Section 350.115, F.S., authorizes us to "prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges." Section 366.06(1), F.S., authorizes us to:

. . . investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public utility company and such property which value, as determined by the Commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation and shall not include any goodwill or going concern value or franchise value in excess of the payment made therefore.

Moreover, Chesapeake is only seeking an extension of time in which to file its study; therefore, the purpose of both underlying statutes will still be fulfilled when the Company files the study in August, thereby providing us with the required data.

We find that the Company has adequately demonstrated that application of the rule would create a substantial economic hardship. We further find that the constraints on Chesapeake's resources and personnel to complete the study in light of the Company's recent relocation and reorganization, will impose an ongoing substantial hardship within the meaning of Section 120.542(2), F.S.

The extension of time requested by Chesapeake is reasonable and provides no hardship to our staff or other utilities in scheduling future depreciation studies. As Chesapeake noted, this will allow the preparation of future depreciation filings by its limited staff to be in accordance with our rule. We hereby approve Chesapeake's request to submit its depreciation study no later than August 17, 2012, and succeeding depreciation studies by August 17th at least every five years hereafter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Florida Division of Chesapeake Utilities Corporation's request for waiver of Rule 25-7.045(8)(a), Florida Administrative Code, is granted. It is further

ORDERED that the Florida Division of Chesapeake Utilities Corporation shall submit its depreciation study no later than August 17, 2012. It is further

ORDERED that the Florida Division of Chesapeake Utilities Corporation shall submit its succeeding depreciation studies by August 17th at least every five years thereafter. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of July, 2012.



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ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CMK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

ORDER NO. PSC-12-0354-PAA-GU  
DOCKET NO. 120081-GU  
PAGE 5

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 30, 2012.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.