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January 9, 2024

**E-PORTAL FILING**

Mr. Adam Teitzman, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

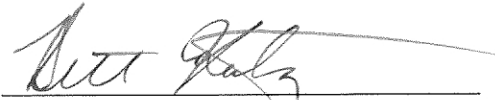
**Re: Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

Dear Mr. Teitzman:

Attached for filing in the referenced docket, please find Florida Public Utilities Company's Responses to Staff's First Data Requests.

Thank you for your assistance with this filing.

Kind regards,



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

Enclosure

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

**Florida Public Utilities Company's Responses to Staff's First Data Requests**

**1. Please provide a detailed breakdown of the costs related to the conversion of mains and services (\$219,900) for the two communities mentioned in Paragraph 10 of the petition.**

Company Response:

- Materials & Supplies : \$36,002
- Contractor Charges : \$18,000
- Direct Labor : \$151,380
- Engineering & Permitting : \$14,525

Total - \$219,900

**2. Please provide a detailed breakdown of the costs related to the behind-the-meter conversions (\$573,548) mentioned in Paragraph 11 of the petition. As part of this response, please identify the internal resources and information from other subsidiaries of Chesapeake Utilities Corporation that FPUC relied upon in calculating these costs.**

Company Response:

In determining the cost of \$573,548, Florida Public Utilities Company utilized internal resources from Chesapeake subsidiaries located in Delaware and Maryland that specialize in the conversion of propane community gas system mains, services, and behind the meter facilities to natural gas. These subsidiaries have converted over 11,000 customers from propane to natural gas. Using these internal resources, Florida Public Utilities Company reached out to 10 households in the communities that are the subject of this Petition, and conducted a survey of the household's fuel consuming appliances.

The survey was helpful in determining that the average cost would be \$1,509.34 per home based on the number and location of existing propane appliances in the home. Based on the active customer count of 380 customers as of August 2023, the total behind the meter conversion cost was determined to \$573,548.

**3. Paragraph 12 of the petition states that a consultant determined that the market value of the Community Gas System's (CGS) is \$629,607. Please provide a copy of the consultant's independent assessment.**

Company Response:

A copy of the report is provided as Exhibit A.

**4. Please explain how the consultant was selected, the cost for their work in preparing the assessment, and how FPUC will recover these costs.**

Company Response:

The consultant was selected due to the firm's experience in the propane industry in providing valuations. For instance, in the Summer of 2023, Cetane Associates provided a valuation for the acquisition of South Florida Gas, a propane provider in Fort Myers, Florida, by Thompson Gas, LLC<sup>1</sup>.

The cost of the Newberry assessment was \$6,000. To be clear, though, the cost of the assessment was not included in the costs of this AEP program.

**5. Please provide staff with an organizational chart showing the relationship between FPUC and Crescent Propane.**

Company Response:

A copy of an organizational chart showing the relationship between FPUC and Crescent Propane is provided as Exhibit B.

To clarify paragraph 9 of the petition, Crescent Propane was acquired by FPU subsidiary Flo-Gas in 2012.

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<sup>1</sup><https://www.cetane.net/acquisition-announcement-south-florida-gas/>

**6. Are there any other propane providers in the City of Newberry? If yes, how many and who are they? Does FPUC currently have plans to acquire any of these propane systems?**

Company Response:

Yes, other propane providers are in the City of Newberry. Due to the unregulated nature of the propane business, customers in the City of Newberry are able of acquiring propane from suppliers both in and outside of the City. As such, FPUC cannot definitively identify all of the possible propane companies that may currently supply, or otherwise would be able to supply, propane fuel to the customers in the City, but is generally aware that Ferrell Gas, Suburban Propane, Davis Gas, and NexAir advertise in the area.

FPUC is aware of one other community gas system in the City of Newberry. FPUC has reached out the owner of the community gas system to begin discussions on possibly acquiring the system, but, to date, the system's owner has not expressed an interest in moving forward. This project would not impact the operations of the other community gas systems.

**7. Please provide the calculations for the fixed \$33.06 AEP charge and the \$2.03 per therm charge as mentioned in Paragraph 15 of the petition.**

Company Response:

The calculation of the AEP is attached at Exhibit C.

**8. Please explain how the utility determined the 11.7 therms per household per month usage estimate in Paragraph 15 of the petition.**

Company Response:

In an effort to ensure that customers would experience savings, and ensure a more accurate AEP charge to recover costs, FPUC calculated the AEP based upon actual gas usage. Based on a 13 month period of Aug 22' – Aug 23' propane gas usage for the active customers was 12.7 gallons per month. To convert this to therms, the following equation was used.

$$12.7 * \frac{91600}{100000} = 11.7$$

The equation is used to convert gallons of propane into an equivalent amount of natural gas therms.

**9. Please explain whether Paragraph 16 of the petition should refer to 11.7 therms and not “/dth”.**

Company Response:

Dth was an incorrect input, 11.7 therms is correct.

**10. Please provide cost support for the \$15,443 of total annual savings for customers with reduced bills in the two communities mentioned in Paragraph 16 of the petition. As part of this response, please also include the calculations supporting the conclusion that 56% of current customers will realize these savings**

Company Response:

The analysis of the customer billing and potential savings is attached as Exhibit D, which is an Excel file not submitted with the filed version.

**11. Please provide cost support for the \$173,941 of total annual projected savings in the two communities at the end of the AEP period mentioned in Paragraph 16 of the petition. As part of this response, please also include the calculations supporting the conclusion that “almost all of the active customers” will realize these savings.**

Company Response:

The analysis of the customer billing and potential savings is attached as Exhibit E.

**12. Please provide a detailed breakdown showing each step of the MACC calculation (\$932,514) mentioned in paragraph 16 of the petition.**

Company Response:

The MACC was calculated using the following steps:

1. 11.7 therms was determined as the actual average monthly gas usage. Annualized, this becomes 140.4 therms per year.
2. The two Communities have a combined 380 active customers as of August 2023.
3. Based on the active customers, and their projected gas usage, the RES-3 Rate Schedule (\$0.61699), GUARD Charge (\$0.01557), and Customer Charge (\$26.50), a full year of revenue once all active customers are converted for these communities are converted would be \$155,419.

4. Six years of this revenue would be \$932,514 which is the MACC used in the AEP calculation.

**13. For any facilities installed behind the meter, please explain the accounting treatment for those facilities in between rate cases and in the next rate case.**

Company Response:

FPUC will keep the costs for the behind the meter facilities in a regulatory asset to be amortized over a 30 year period. FPUC would treat these investments in a similar manner as other AEP capital spend and would include these costs into rate base at such time as the other costs for the AEP project are included in a base rate case.

**14. Please explain in detail the process of converting a propane system to natural gas. What changes need to be made to the system?**

Company Response:

Preliminary Staging & Communications

Letters Sent –

- Letters are sent to residents in the next area to be converted approximately 4 to 6 weeks in advance of the beginning of the conversion process.

System Preparation –

- Valves are installed to “sectionalize” the system to prepare for conversions, for safety & logistical purposes.
- Temporary propane tanks are set and connected in an effort to remove the customer from the underground system. They are removed once the conversion process is complete.
- Gas lines are purged of remaining propane. Purging may require flaring of excess propane, and should occur within one week prior to the beginning of the conversion process.
- Meter Bars and Meter Stops installed.

Appliance Surveys –

- Customer appliance surveys begin 1 to 2 weeks after letters are sent. Date range will be on the letter.
  - Conversion Coordinator goes door-to-door and completes survey; OR
  - Customer can schedule specific time for survey.

Natural Gas Introduced –

- Once lines are fully purged of propane, FPUC will begin flowing natural gas in the mains.
- Occurs approximately 1 week prior to the beginning of the conversion process.

#### Leak Surveys –

- Leak Surveys are performed for all mains and services being converted – typically happens the same day as the introduction of natural gas

#### Conversions Scheduled –

- Once the distribution system is fully transitioned to natural gas, a Conversion Coordinator will call each customer to schedule conversions

#### Day of Conversion

#### Customer Piping –

- Tie in meter to fuel line.
- Pressure test of fuel lines.

#### Appliance Conversions –

- Install Stepdown Regulators for each natural gas appliance.
- Convert or replace appliances as necessary.

#### Final Conversion Stages

- Natural gas is introduced into customer's piping.
- Leak test of customer's piping and appliances is performed
- Appliances are test fired and adjusted as needed.

#### After the Conversion

#### Propane Tank Removal –

- All temporary tanks are removed; the conversion in this area is complete, and FPUC moves to the next area for conversion.
- A one year warranty on all conversion parts and labor will be provided
- A conversion coordinator, a FPUC employee will be made available if there are any concerns with appliances and will come out for an inspection.

### **15. Will the customers have to buy new appliances after the conversion from propane to natural gas?**

#### Company Response:

FPUC does not expect most customers to have to buy new appliances, because the hookups on existing appliances should be convertible to receive natural gas.

If a customer does wish to purchase new appliances, using the “Residential Appliance Replacement Program” conservation program to replace their appliance is an option for the customer. The program is designed to encourage the replacement of inefficient non-natural gas

residential appliances with energy-efficient natural gas appliances. The Company does not have an estimate of how many customers would exercise this option.

**16. Please discuss in detail when and how customers in the two CGS's will be notified of their conversion from propane to natural gas and the AEP charge. What recourse does a customer have if they object to the AEP charge?**

Company Response:

Customers in these Communities will be made aware of the planned conversion 4 to 6 weeks before the mains are converted through a communication in the mail from the Company. A customer that does not want to pay the AEP Charge is free to elect to remain on propane, but will need to select from one of propane suppliers providing service in the area.

**17. What will happen if a customer wants to stay with propane?**

Company Response:

Similar to the situation addressed above, if a customer wishes to stay on propane, they will need contact a local propane company for supply. That company will be able to make arrangements to help supply the customer with propane service.

**18. In paragraph 11 of the petition it states that conversions will include the changing of propane hookups to common household appliances to facilitate the delivery of natural gas. What appliances do customers typically run with propane in the two CGS's subject to the petition?**

Company Response:

Based on the survey conducted in the two communities, the most common appliances run with propane are the following,

- Range
- Fireplace
- Furnace
- Water Heater
- Pool heaters
- Dryer
- Space Heater



**19. In Paragraph 17 of the petition it states that the AEP and the AEP billing period will begin after the new billing system goes live in August of 2024. Please clarify that the AEP and AEP billing period is expected to start in August of 2024.**

Company Response:

FPUC is currently in process of installing a new customer billing system. Upon initial discussions with the Customer Billing team, the Company did not expect that it would be capable of changing its AEP billing process until after the installation of the new billing system had been completed.

Since the filing of the Petition, FPUC has, however, conducted further review and concluded that its will be able to bill a volumetric AEP using its billing current system and will not need to wait for the new billing system to be installed. As such, FPUC now anticipates that it can begin billing the AEP when the first customers are converted, which is estimated to be in the period of March 2024 – May 2024. This would be the start of the AEP and the AEP billing period, rather than August.

**20. Will the AEP charge be shown separately on the bill or rolled into the per therm charge?**

Company Response:

The AEP charge will be shown on the bill as an “AEP Volumetric” line on the customer’s bill.

**21. Please explain how FPUC will ensure that the full AEP amount will be collected within the 6-year AEP period, given its proposal for a volumetric AEP charge.**

Company Response:

Because the proposed AEP will be based upon actual customer usage and is designed based upon existing propane usage, the Company believes that there is a high probability that it will recover the full amount within the 6-year period. The fact that this is an existing community, not a new development, has provided the Company with a high level of confidence in its projections. With that said, there is no way to guarantee that the AEP amount will be fully recovered, because customer usage is outside the Company's control.

**22. How would the volumetric charge be affected if not all customers want to convert?**

Company Response:

It will not be affected, because FPUC is proposing a set charge. However, if more than a few customers don't convert, it could result in the Company under collecting the AEP at the end of the 6-year period.

In order to provide stability to a customer's bill, FPUC nonetheless proposes to proceed with the current calculated charge. The current calculations reflect the closest estimate to the number of customers the Company expects to convert for service and based on actual gas usage. Moreover, recalculating a new AEP on an annual basis because of fewer customers than expected or reduced usage will create variances that could make forecasting energy expenses for members of these Communities difficult.

**23. Please provide all orders approving similar conversions as mentioned in Paragraph 11 of the petition.**

Company Response:

The order approving the Delaware CGS conversion program to convert five Communities is attached as Exhibit F.

In the State of Maryland, Sandpiper received approval from the Maryland PSC to implement the System Improvement Rate "SIR". The SIR allowed the Company to convert 10,000 customers of the 11,000-customer system, including behind the meter conversion costs, and recover all of those conversion costs in the SIR. Attached as Exhibit G is the initial order approving the SIR (found on page 7 of the settlement agreement). Also attached is Sandpiper's tariff page approving the SIR rate.

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

EXHIBIT A

# Chesapeake Utilities Corporation

## Opinion of Value of Selected Assets



500 Energy Lane, Dover, Delaware 19901

Prepared October 23, 2023  
Effective date October 23, 2023

Prepared by

**CETANE**  
ASSOCIATES

Cetane Associates

P.O. Box 1264

New Milford, CT 06776

[info@cetane.com](mailto:info@cetane.com)

## Opinion of Value

Effective Date October 23, 2023

### 1. Scope of Opinion:

We have been asked to form an opinion of value (“Valuation”) related to certain selected assets of Chesapeake Utilities Corporation. The selected asset values are being used by the company and their accountants for the purpose of determining a fair market value of what the assets would sell for in a sale of substantially all of the assets of the company. The Valuation covers the selected assets that make up two Community Gas Systems identified as Newberry and Newtown and customer list. Included in the customer list are intangible assets including but not limited to name, all DBAs, phone numbers, website address and other goodwill of the business. The assets being valued do not include real estate, cash, cash equivalents, accounts receivable, prepaid expenses, inventories, notes receivable, notes payable, accounts payable, leases and other current or long-term assets and liabilities. The Valuation was conducted based on a fair market value for what we believe the assets would sell for, in a cash transaction.

### 2. Summary of Value:

Based on our review of information provided we estimate the fair market cash value of the assets of Chesapeake Utilities Corporation utilized in the Community Gas Systems of Newberry and Newtown as illustrated in the table below.

<b>Valuation Estimate</b>			
Sale multiple	5.00x	5.50x	6.00x
Multiply: x TTM 2023 Adjusted EBITDA	\$ 124,042	\$ 124,042	\$ 124,042
<b>Total estimated FMV</b>	<b>\$ 620,210</b>	<b>\$ 682,231</b>	<b>\$ 744,252</b>
Sale multiple	5.00x	5.50x	6.00x
Multiply: 2 year average (FY 2022, and TTM 2023) Adjusted EBITDA	\$ 125,921	\$ 125,921	\$ 125,921
<b>Total estimated FMV</b>	<b>\$ 629,607</b>	<b>\$ 692,567</b>	<b>\$ 755,528</b>

Note: Adjusted Earnings, Before Interest, Tax, Deprecation, and Amortization (EBITDA) is represented based upon the TTM June 30, 2023, and the two-year average of FY 2022 and TTM 2023. Most prospective buyers will apply a multiple of EBITDA based upon their own operating experience and individual economics associated with an opportunity.

### 3. Definition of Fair Market Value:

Fair market value is the value at which ownership interest would change hands between a willing buyer and a willing seller, both being adequately informed of the relevant facts and neither being under any obligation to buy or sell. Any offers for selected assets of Chesapeake Utilities Corporation would be the true indication of the fair market value.

#### Disclaimer:

**In an effort to analyze the business, Cetane Associates has been provided with information by Chesapeake Utilities Corporation. While the information is thought to be accurate, Cetane Associates make no such representation or warranty. Cetane Associates and their affiliates disclaim any and all liability for any representations or warranties, contained in, or from omissions from the information contained in this document or any other communication between the parties involved.**

### 4. Credentials:

Cetane Associates is a consulting company focusing on the retail energy industry. Cetane Associates has worked with the downstream energy industry for almost thirty years and has been involved in the acquisition and sale of over 100 retail fuel marketers. These businesses provided various consumer products and services, including propane, fuel oil, gasoline, diesel fuel, and the installation and maintenance of heating and cooling equipment.

Cetane Associates have consulted with and performed financial and operational evaluations on hundreds of retail fuel businesses throughout the United States and has built numerous financial models to evaluate and project future performance, enable benchmarking, and provide frameworks for operational improvement for various size middle market businesses.

**5. Certification:**

The statement of facts, opinions, and conclusions expressed are correct to the best of our knowledge and belief.

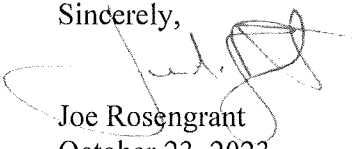
The report analysis, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is our personal, unbiased analysis, opinions and conclusions.

We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.

The compensation paid is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of this valuation report.

We have performed no services, as valuation analyst or in any other capacity, regarding the subject property or businesses within the three-year period immediately preceding accepting of this valuation assignment.

Sincerely,



Joe Rosengrant

October 23, 2023

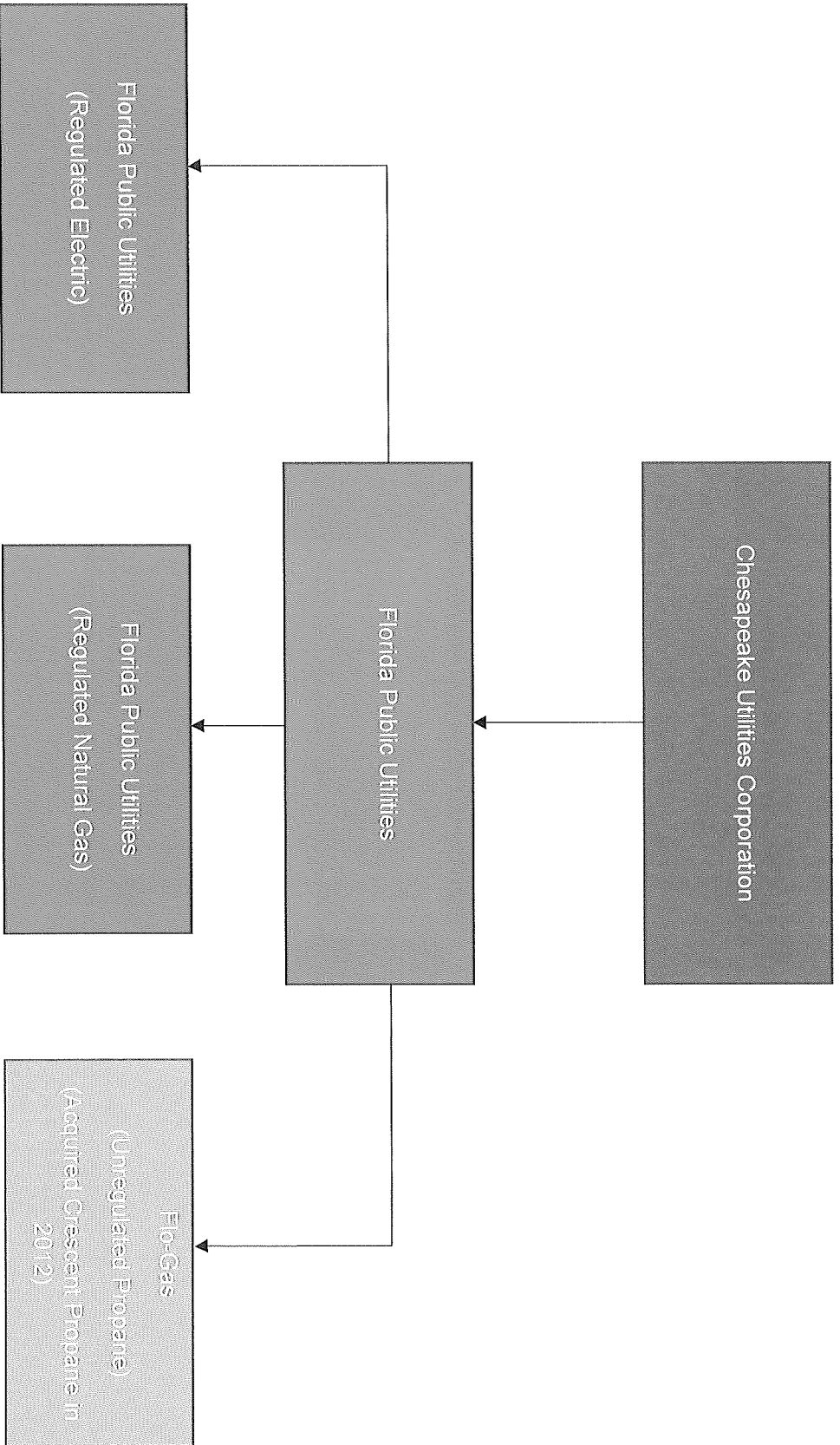
Director of Business Development

Cetane Associates

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

**EXHIBIT B**





**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

**EXHIBIT C**

Exhibit C

Calculation of AEP Charge

1	Additional Construction:	\$	240,000	
2	Acquisition Price of CGS Communities:	\$	629,607	
3	Customer Conversion Costs:	\$	573,548	
4	Main Conversion Costs:	\$	219,900	
5	Total Estimated Costs:	\$	1,663,055	Lines 1,2,3,4
6	Estimated Annual Revenue:	\$	155,419	
7	MACC = 6 Years Revenue:	\$	932,514	Line 6 * 6 years
8	Estimated Allowed Cost of Capital:	\$	174,089	
9	AEP Recovery Amount:	\$	904,630	Lines (5+8) - 7
10	Billing Months:		27,360	(380 * 12) * 6
11	AEP Charge/Month:	\$	33.06	Lines 9/10
12	Average Annual Therms:		11.7	
13	AEP Volumetric:	\$	2.83	Lines 11/12

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

EXHIBIT D/E  
(EXCEL FILE – SUBMITTED SEPARATELY)

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

**EXHIBIT F**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION            )  
OF CHESAPEAKE UTILITIES CORPORATION        )  
REGARDING ITS ACQUISITION AND                )       PSC DOCKET NO. 19-0529  
CONVERSION OF PROPANE COMMUNITY            )  
GAS SYSTEMS                                        )  
(FILED AUGUST 20, 2019)

**ORDER NO. 9594**

**AND NOW**, this 17<sup>th</sup> day of June 2020, the Delaware Public Service Commission (“the Commission”) determines and orders the following:

**WHEREAS**, on August 20, 2019, Chesapeake Utilities Corporation (“Chesapeake” or “Company”) filed an Application with the Commission seeking an Order to establish the regulatory accounting treatment and replacement value methodology for Chesapeake’s acquisition of propane gas systems (“CGSs”) from the Company’s affiliate, Sharp Energy, Inc. (“Sharp”) and the conversion of the Sharp-owned CGSs to natural gas service; and

**WHEREAS**, the Application also requested that the Commission waive the asymmetric pricing rule contained in the Company’s Code of Conduct, which would require the Company to record for ratemaking purposes only its affiliate’s net book value, rather than the actual price paid by Chesapeake for the assets.

**WHEREAS**, the Delaware Division of the Public Advocate (“DPA”) filed a statutory notice of intervention in this docket on September 6, 2019; and

**WHEREAS**, the Board of Directors of Hart’s Landing was permitted to intervene in this docket on October 30, 2019; and

**WHEREAS**, on May 7, 2020, the parties provided the Hearing Examiner with a unanimous Settlement Agreement executed by all four (4) parties, the Company, Staff, the DPA and Harts Landing; and

**WHEREAS**, the Commission has received and considered the Findings and Recommendation of the Hearing Examiner issued in the above-captioned docket on May 18, 2020 which is attached to this Order as Attachment "A";

**WHEREAS**, an Evidentiary Hearing was conducted by the Commission on June 17, 2020.;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the May 18, 2020 Findings and Recommendations of the Hearing Examiner, attached hereto as Attachment "A."
2. That the Commission approves the Proposed Settlement Agreement attached hereto as Attachment "B" as in the public interest according to 26 *Del. C.* § 512(c).
3. That the Commission approves the Settlement Agreement, including: (a) use of the replacement value for ratemaking purposes; (b) the behind-the-meter customer conversion and replacement costs; (c) the 5-year surcharge on CGS customers; (d) the 3-year CGS conversion plan reporting; and (e) the asymmetric pricing waiver.
4. The Commission retains the jurisdiction and authority to enter such further orders in this Docket as may be deemed just and reasonable.

**BY ORDER OF THE COMMISSION:**



\_\_\_\_\_  
Dallas Winslow, Chairman

/s/ Joann T. Conaway

\_\_\_\_\_  
Joanne Conaway, Commissioner

/s/ Harold B. Gray

\_\_\_\_\_  
Harold Gray, Commissioner


/s/ Manubhai C. Karia

\_\_\_\_\_  
Manubhai "Mike" Karia, Commissioner

/s/ K. F. Drexler

\_\_\_\_\_  
K.F. Drexler, Commissioner

ATTEST:

  
\_\_\_\_\_  
Donna Nickerson, Secretary





# ATTACHMENT A

# **ATTACHMENT B**

**ATTACHMENT A**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF CHESAPEAKE UTILITIES CORPORATION )  
REGARDING ITS ACQUISITION AND ) PSC DOCKET NO. 19-0529  
CONVERSION OF PROPANE COMMUNITY )  
GAS SYSTEMS )  
(FILED AUGUST 20, 2019)

**FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER**

DATED: May 18, 2020

MARK LAWRENCE  
SENIOR HEARING EXAMINER

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION            )  
OF CHESAPEAKE UTILITIES CORPORATION        )  
REGARDING ITS ACQUISITION AND                )       PSC DOCKET NO. 19-0529  
CONVERSION OF PROPANE COMMUNITY            )  
GAS SYSTEMS                                        )  
(FILED AUGUST 20, 2019)

**FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER**

**I. APPEARANCES.**

On behalf of Chesapeake Utilities Corporation (“Chesapeake” or “the Company”):  
BRIAN M. QUINN, ESQ., Venable LLP

On behalf of the Delaware Public Service Commission (“Staff” or “Commission Staff”):  
JAMES McC GEDDES, ESQ., RATE COUNSEL

On behalf of the Delaware Division of the Public Advocate (“DPA” or “Public Advocate”):  
REGINA A. IORII, ESQ., DEPUTY ATTORNEY GENERAL

On behalf of the Board of Directors of Hart’s Landing (“Hart’s Landing”), Intervenor  
ROBERT HOPSON, SECRETARY

## II. BACKGROUND.

1. On August 20, 2019, Chesapeake filed an Application (“Application”) with the Delaware Public Service Commission (“PSC” or the “Commission”) seeking an Order to establish the regulatory accounting treatment and valuation methodology for Chesapeake’s acquisition of propane community gas systems (“CGSs”) from the Company’s affiliate, Sharp Energy, Inc. (“Sharp”) and the conversion of the Sharp-owned CGSs to natural gas service.<sup>1</sup>

Chesapeake proposed to acquire the Sharp-owned CGSs, one community at a time, at their replacement cost and to pay for and capitalize the CGS residents’ behind-the-meter conversion costs.<sup>2</sup> “Replacement cost is the cost of constructing a replacement distribution system in the community and is typically below fair market value (mainly because fair market value reflects the value to the CGS owner of the income stream produced by the CGS – but replacement cost does not).”<sup>3</sup> Specifically (for purposes of the Application), Chesapeake defined the term “replacement cost” as “the cost of rebuilding the existing CGS system with a substantially identical new natural gas system (in other words, as if the existing CGS system never existed and the existing customers were being served by individual propane tanks).”<sup>4</sup> The Company seeks the Commission to approve “replacement cost” as a pricing methodology for CGS acquisitions from Sharp, and order that the price paid for a CGS will be subject to review in the Company’s next base rate case.<sup>5</sup> Because Sharp is an affiliate of Chesapeake, the Company also asked the Commission to waive the asymmetric pricing rule contained in the Company’s Code of Conduct, which would require the

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<sup>1</sup> Exh. 1, p.1. Exhibits admitted into evidence at the Evidentiary Hearing will be cited herein as, for example, Exh. 1, p.2, meaning the testimony appears at Exhibit 1, page 2. Testimony from the transcript of the Evidentiary Hearing will be cited herein as “Tr-2,” meaning the testimony appears at page 2 of the transcript.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 6, fn. 19.

<sup>5</sup> *Id.*

Company to record for ratemaking purposes only its affiliate's net book value, rather than the actual price paid by Chesapeake for the assets.

2. According to the Company, "existing customers of Chesapeake will be protected against subsidizing the CGS acquisitions and conversions ("CGS Projects") because Chesapeake will complete only those CGS projects that meet its economic test, meaning that existing tariff rates will cover the entire cost of each project."<sup>6</sup> Chesapeake serves approximately 57,000 natural gas customers in Delaware in portions of New Castle County and throughout Kent and Sussex Counties.<sup>7</sup>

3. On September 6, 2019, the DPA intervened in this Docket on September 6, 2019 pursuant to its statutory right according to 26 *Del. C.* § 8716.

4. The Commission initiated this Docket pursuant to 26 *Del. C.* § 306(a)(1), and by Order No. 9469 dated September 26, 2019, suspended the Application pending the completion of evidentiary hearings into the justness and reasonableness of its proposed regulatory accounting treatment and valuation methodology for the acquisition and conversion of the CGS systems owned by Sharp, and the requested approval of the capitalization and recovery of the CGS residents' behind-the-meter conversion

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

costs. The Commission also designated me as the Hearing Examiner to conduct such hearings and thereafter report to the Commission my proposed Findings and Recommendations concerning this Docket.

5. The Board of Directors of Hart's Landing filed a Petition to Intervene on October 22, 2019. On October 30, 2019, I issued Order No. 9496, admitting the Board of Directors of Hart's Landing as an Intervenor after not receiving an objection from any party.

6. I held a total of three (3) Public Comment Sessions: a) first in New Castle County on February 4, 2020, at the Gilliam Building, Multipurpose Room, 67 Reads Way, in New Castle; b) second in Kent County on February 5, 2020, at the Cannon Building, PSC Hearing Room, 861 Silver Lake Blvd., Suite 100, in Dover; and c) finally in Sussex County on February 6, 2020, at the Cape Henlopen High School, Auditorium, 1250 Kings Highway, in Lewes. These sessions were publically-noticed in the Delaware State News and The News Journal. No members of the public attended the Public Comment Sessions.

7. One (1) written comment was filed by an Ocean View resident who approves of Chesapeake's Application. According to this resident, after the recent approval of natural gas service in Millville, the adjacent town, the resident's community, Fairway Village, is poised for natural gas service. The resident argues that extending natural gas service would decrease heating costs in his community and other communities in the state.

8. Over the course of two months, Chesapeake, Commission Staff, DPA and Hart's Landing (collectively, the "Parties") engaged in extensive discovery concerning all aspects of the Application. On February 10, 2020, pursuant to the Parties' requests, I temporarily suspended filings required by the Procedural Schedule until March 13, 2020. After being informed by the Parties of their continued settlement negotiations, I temporarily suspended the Procedural Schedule a second time through April 13,



2020. Subsequently, I again suspended the Procedural Schedule until May 16, 2020 to permit the Parties to finalize their settlement negotiations.

9. On May 7, 2020, the Parties provided me with a unanimous and comprehensive Settlement Agreement executed by all four (4) parties: the Company, Staff, the DPA and Harts Landing.

10. In its Application, Chesapeake submitted the pre-filed direct testimony of two (2) witnesses: (1) Shane Breakie, Vice President; and (2) Christopher Redd, Director of Gas Operations, Engineering and Supply.<sup>8</sup> This testimony is described in this Report. As this case has settled, the other parties to this matter have not filed written testimony, but will instead present live testimony at the evidentiary hearing before the Commission as to why the proposed Settlement Agreement is in the public interest. This case is currently scheduled for the Commission's June 17 Meeting.

### **III. SUMMARY OF THE APPLICATION AND PRE-FILED DIRECT TESTIMONY.**

#### **A. Chesapeake's Application.**

11. "Chesapeake filed this Application seeking a Commission order which will establish the regulatory accounting treatment and valuation methodology for Chesapeake's acquisition of [Sharp-owned] CGSs and the conversion of [those] CGSs to natural gas service."<sup>9</sup> In its Application, Chesapeake also seeks approval to pay for and manage the residents' behind-the-meter conversions and capitalize such costs over a 30-year period.<sup>10</sup> "Chesapeake proposes to acquire CGSs, one community at a time, at their replacement cost and to pay for and capitalize the CGS residents' behind-the-meter conversion costs."<sup>11</sup> According to Chesapeake, "existing customers of Chesapeake will be protected against subsidizing the

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<sup>8</sup> Exhs. 3 and 4, *respectively*.

<sup>9</sup> Exh. 1, p.1.

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *Id.* p.1.

CGS acquisitions and conversions ... because Chesapeake will complete only those CGS Projects that meet its economic test, meaning that existing tariff rates will cover the entire cost of each project.”<sup>12</sup>

12. The Company seeks to acquire CGSs owned by Sharp, a non-regulated propane subsidiary of Chesapeake, one at a time and pay the replacement cost for each CGS system.<sup>13</sup> According to Chesapeake, by paying for and performing the behind-the-meter conversions, the Company will increase the number of residents converting to natural gas because the new customers will not face the up-front cost of converting their appliances and equipment to natural gas service, which typically costs approximately \$1,500.<sup>14</sup> By maximizing the number of CGS residents converting to natural gas, Chesapeake will be able to provide natural gas to more residents and will lower or eliminate the number of residents who must seek alternatives to connecting to the natural gas system, such as installing an individual propane tank.<sup>15</sup>

13. “All CGS Projects will be subject to the Company’s economic test and any projects which do not meet the test would require a contribution from the community to move forward.”<sup>16</sup> According to Chesapeake, “[i]n this way, the Company protects existing customers from subsidizing the rates of new customers added to the system from CGS communities.”<sup>17</sup> According to the Application, “Chesapeake is expanding within eastern Sussex County due to new customer growth and projects to have natural gas

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.*

main at or near the entrance of approximately 12 Sharp-owned CGS systems, representing over 5,000 residential units, within the next five (5) years.”<sup>18</sup>

14. As to the cost recovery of the purchase price of the CGS system, the Company maintains that according to “26 Del. C § 102(3), the Commission is authorized to allow the Company to record the entire purchase price of a CGS system at its cost for ratemaking purposes.”<sup>19</sup> The Company submits that it will be “the first person who committed said plant or assets to public use” because propane CGSs are not public utilities and therefore not committed to public use.<sup>20</sup> “The Company, however, is bound by the Asymmetric Pricing Rule contained in the Company’s Code of Conduct approved by the Commission.”<sup>21</sup> “The Asymmetric Pricing Rule requires the Company to record assets purchased from an affiliated company (such as Sharp) at the lower of the affiliate’s cost (*i.e.* its net book value) or the market value of the asset.”<sup>22</sup> “Adherence to the Asymmetric Pricing Rule, therefore, would mean that the Company would record only Sharp’s net book value for ratemaking purposes.”<sup>23</sup> “The Company, therefore, seeks that the

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<sup>18</sup> *Id.* Sharp owns in excess of 40 CGSs. (*Id.* at p.5 fn. 17.)

<sup>19</sup> Exh.1, p.9.

<sup>20</sup> *Id.*, p. 9, fn. 25. Even without such a finding, the Company submits that the second part of § 102(3)(a) provides the Commission the option of using “the first recorded book cost” of the CGS assets as rate base.

<sup>21</sup> *Id.* See PSC Order No. 5828 (Nov. 6, 2001) (Appendix A-Settle Agree., p.3)

<sup>22</sup> Exh. 1, p.9.

<sup>23</sup> *Id.*

Commission waive the Asymmetric Pricing Rule for its acquisition and conversion of Sharp's CGS systems."<sup>24</sup>

15. As noted previously, "replacement cost" is the cost of constructing a replacement distribution system in the community. It is typically below fair market value, mainly because it does not reflect the value of the income stream to the CGS owner.

16. The Delaware Legislature and the Commission have clearly expressed interest in promoting natural gas expansion in Delaware, particularly Kent and Sussex Counties, Chesapeake's territory.<sup>25</sup> In both cases, reduced energy costs, job growth, expanded business opportunities, and environmental concerns have been cited.<sup>26</sup>

**B. Shane Breakie's Testimony.**

17. Shane Breakie, the Company's Vice President, described the application of the Company's economic test to the Company's proposal, the sought after recovery of behind-the-meter conversion costs, and he also provided a summary of the benefits of CGS conversions.<sup>27</sup> "As evidenced by the [confidential] 3rd party appraisals performed on [the now completed] Community Gas Systems, Cinderberry, Breakwater, and Bay Crossing ... the fair market value of the noted systems is substantially higher than replacement cost as it includes the value of intangible assets."<sup>28</sup>

18. "Section 6.2 of Chesapeake's Tariff requires the Company...[to] utilize its Internal Rate of Return Model as the economic evaluation criteria for installing new natural gas service to

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<sup>24</sup> *Id.*

<sup>25</sup> Delaware Senate Joint Resolution No.7; PSC Order No. 8746 (July 2, 2015).

<sup>26</sup> *Id.*

<sup>27</sup> Exh. 3.

<sup>28</sup> *Id.* at 9.

residential developments.”<sup>29</sup> “Consistent with its tariff, Chesapeake will require that the conversion of a Community Gas System, from propane to natural gas, be limited to the extent of new investment (including replacement cost plus conversion costs) warranted by the anticipated revenues.”<sup>30</sup> The book value of a Sharp CGS or another propane provider’s Gas System reflect depreciation rates and valuation from a non-regulated entity for a system which has not been dedicated to public use.<sup>31</sup>

19. “If Chesapeake acquires a propane CGS from a third party owner, the Company would likely need to pay fair market value for the asset, including a valuation of the current revenue stream generated by the system.”<sup>32</sup> If Chesapeake acquires a CGS, “customers benefit directly as Chesapeake Utilities will be able to spread fixed costs (including corporate overhead and fixed pipeline capacity costs) over a broader base and, as Chesapeake Utilities grows larger, the Company will have the capacity to invest in additional customer service projects which will benefit all customers.”<sup>33</sup> If the cost of conversion will be greater than anticipated revenues, the Company will require a financial guarantee from the CGS customers.<sup>34</sup>

20. According to the Company, conversions of CGS systems will aid residents in the communities being converted, residents in the communities surrounding the communities being converted, current and potential businesses, builders/developers, as well as existing Chesapeake customers.<sup>35</sup> “Builders and developers benefit by offering the choice of a fuel which has all of

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<sup>29</sup> *Id.* at 10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* However, three (3) communities not served by Sharp have also expressed interest. *Id.* at 8-9.

<sup>33</sup> *Id.* at 8.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.* at 5,

the benefits mentioned and has shown to increase the value of a home.”<sup>36</sup> “Those within the communities will benefit by having a cleaner fuel that is more reliable than their current fuel and is regulated by the Commission.”<sup>37</sup> “Natural gas emits lower amounts of Carbon Dioxide.”<sup>38</sup>

21. “Additionally, once Chesapeake installs distribution mains to reach these customers it will be easier for Chesapeake to reach and convert other residents and businesses near those lines which are unable to be economically reached today.”<sup>39</sup> “Natural gas is a proven fuel choice for most businesses.”<sup>40</sup> “...[Natural gas] provides added benefits for larger businesses as a fuel for backup generation as well as for Combined Heat and Power (CHP).”<sup>41</sup>

**C. Christopher Redd’s Testimony.**

22. Christopher Redd, the Company’s Director of Gas Operations, Engineering and Gas Supply addressed the CGS conversion process, replacement cost valuation methodology, and a determination of the replacement cost of the not yet completed Harts Landing CGS system.<sup>42</sup> Mr. Redd described the conversion process as, after being allowed access to the community’s homes, the Company prepares a data sheet of all of the communities’ appliances.<sup>43</sup>

23. Also, “[t]he Company’s engineering group creates a sketch of the proposed distribution system including pipe sizes and footages.”<sup>44</sup> Chesapeake then estimates the cost to install the main in the established neighborhood using current material costs and contractor pricing

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<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.* at 7.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* “CHP is an energy efficient technology that generates electricity and captures the heat that would otherwise be wasted to provide useful thermal energy-such as steam or hot water-that can be used for space heating, cooling, domestic hot water and industrial processes.” [www.epa.gov/chp/what-chp](http://www.epa.gov/chp/what-chp)

<sup>42</sup> Exh. 4.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.* at 4.

from similar conversion projects.<sup>45</sup> “Overhead is then added to these cost using the current overhead rate for capital projects.”<sup>46</sup>

24. “Using the three previously mentioned [completed] community gas projects in Delaware, the conversion costs have averaged approximately \$1,500 per home.”<sup>47</sup> “This includes parts, contractor costs and internal conversion management costs.”<sup>48</sup>

25. “The \$1,500 does not include the incremental costs associated when a homeowner decides to upgrade their appliances.”<sup>49</sup> “For instance, if a homeowner wants to replace a tanked water heater with a tankless water heater, that incremental cost is not included.”<sup>50</sup> “Other costs include costs associated with installing and removing temporary propane tanks during the conversion process and removing the existing propane tanks that served the community.”<sup>51</sup>

26. Regarding the Hart’s Landing community, the example described in the Application, “[t]he company’s replacement cost valuation is \$197,589 for the mains, and \$181,512 for the services.”<sup>52</sup> Depending on the size of a particular conversion, the Company determines whether the community system can be converted at one time or in groups of about 125 customers each.<sup>53</sup> “Based on the last propane distribution system conversion, the cost for installing, hooking up and removing the temporary tanks was \$265 per customer.”<sup>54</sup> “This would equate to \$38,160 for Hart’s Landing.”<sup>55</sup> “Removing the existing tanks and restoring the property on a similar project

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 5.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.*

cost approximately \$11,000.”<sup>56</sup> “Other construction costs include \$35,433 for domestic meter sets and \$10,000 for valve and tie-ins.”<sup>57</sup> After installation, the Company performs multiple “integrity safety checks” of each home and of the community gas system itself.<sup>58</sup>

#### **IV. FUTURE EVIDENTIARY HEARING BEFORE THE COMMISSION.**

27. On June 17, 2019, at a publically-noticed Evidentiary Hearing before the Commission, the parties intend to present evidence regarding whether the proposed Settlement Agreement should be approved as in the public interest.

#### **V. DISCUSSION.**

28. I hereby incorporate Sections II, III, IV and V of this Report as my Findings of Fact.

29. The Commission has jurisdiction over this Docket pursuant to Section 26 *Del. C.* § 201(a).

30. 26 *Del. C.* § 307(a) places the Burden of Proof upon the Company to demonstrate that the proposed rates are just and reasonable.

31. 26 *Del. C.* § 512(a) provides that “[i]nsofar as practicable, the Commission shall encourage the resolution of matters brought before it through the use of stipulations and settlements.” 26 *Del. C.* § 512(c) provides that the Commission may approve a settlement if it is in the public interest.

32. According to the United States Supreme Court, a public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 2-3.



public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1923); *Federal Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944)

33. The fact that the Settling Parties represent diverse interests is persuasive to me. Chesapeake's interest must focus upon achieving rates which allow it to recover its costs of providing service and an opportunity to earn a fair rate of return. Staff seeks to balance the utility's and ratepayers' interest.

34. 29 *Del. C.* § 8716 (d)(2) charges the Public Advocate with advocating the lowest reasonable rates for primarily residential and small commercial consumers consistent with the maintenance of adequate utility service and an equitable distribution of rates among all of the utility's customer classes.

35. After the Evidentiary Hearing is completed, the Commission must decide whether there is substantial evidence in the record to support that the Settlement Agreement be approved because it is in the public interest.<sup>59</sup> (29 *Del. C.* § 10142(d))

36. As noted in the Application, "[t]wo other recent studies also conclude that natural gas expansion in this region will carry significant benefits to customers and the economy. In December 2017, Pace Global Energy Business Advisory completed a report entitled "Delaware Energy Infrastructure Study; Feasibility of a Natural Gas Pipeline Extension" for Delmarva Power & Light Company ("DPL"),

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<sup>59</sup> "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be more than a scintilla, but may be less than a preponderance of the evidence." *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *Price v. State of Delaware Board of Trustees*, 2010 WL 1223792 (Del. Super. Mar. 22, 2010) (unpublished opinion).

in compliance with the Commission's order approving DPL's merger with Exelon Corporation ("Pace Study"). Potential benefits cited by the Pace Study include:

Reduced energy costs for consumers, expanded business and economic development opportunities, reduced environmental emissions and consistency with economic or environmental policy goals. Residents can reasonably expect to pay a third less (or greater) to own and operate a natural gas furnace over 20 years as compared to an electric heating system (savings would be even larger if converting from propane)." (Exh. 1, ¶4)

37. "Importantly, the Pace Study found that in order to strengthen the economics of system expansion, a gas utility can secure commitments from large anchor customers, including a housing development or subdivision, which reduces the required contribution from other new customers and the risk associated with load projections. The Pace Study concluded that natural gas expansion in Kent and Sussex counties will likely be a series of smaller incremental expansion projects over time, similar to what the Company is seeking to accomplish with this application. In addition, a 2016 report developed by Towson University researchers for a group of Maryland natural gas companies (including Chesapeake's Maryland Division) also concluded that natural gas expansion carries substantial economic benefits, especially when natural gas replaces propane as a household heating source." (Exh. 1, ¶5)

38. Moreover, the Application explained that "Delaware's legislature has also recognized the benefits of natural gas and the need for natural gas expansion – particularly in Chesapeake's service territory, as demonstrated by the passage of Delaware Senate Joint Resolution No. 7 ("SJR No. 7"). After extensive meetings by a legislative task force, the Senate and the House of Representatives (with approval of the Governor) found that extending natural gas service into underserved areas of Kent and Sussex

counties “would capitalize on the state’s natural resources, promote reductions in the cost of doing business, increase the general perception of Delaware as encouraging reasonable growth, and provide a strategic infrastructure project that will create local jobs.” *See* SJR No. 7 (signed July 31, 2014). The Commission, in fact, recently cited SJR No. 7 when it directed Exelon Corporation to conduct a natural gas expansion study in Kent and Sussex Counties as a condition to approval of its merger with DPL.” (Exh.1, ¶6)

#### VI. SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

39. On May 6, 2020, the Parties executed the proposed settlement agreement (the “Settlement Agreement”). *See* Settlement Agreement attached hereto as Exhibit 1. The Parties agree that the unanimous Settlement Agreement provides a comprehensive resolution of all matters raised in this proceeding.

40. On May 15, 2020, the Company provided me with a summary of the settlement agreement.

41. The Settlement Agreement speaks for itself. However, in summary, the Parties submit that the Commission should approve the Application subject to the following conditions further described in the Settlement Agreement: (a) Chesapeake may implement its proposed replacement value methodology for mains, service lines, meters, and temporary propane tanks; (b) Chesapeake may capitalize and recover behind-the-meter customer conversion and replacement costs subject to certain limits; (c) Chesapeake may establish a certain surcharge on CGS customers for a 5-year period, calculated using certain adjustments to the Company’s internal rate of return model (the surcharge is intended to further protect existing customers from possible cross-subsidization); (d) Chesapeake must submit periodic plans

describing its CGS conversion activities over a 3-year period; and (e) the Parties will not oppose Chesapeake's request for an asymmetric pricing waiver.

**VII. FINDINGS AND RECOMMENDATIONS.**

42. The Commission must determine whether the proposed Settlement Agreement attached as Exhibit "1" is in the public interest. If the Commission finds that it is in the public interest, a proposed Order is attached hereto as Exhibit "2" for the Commission's consideration.

Respectfully Submitted,

/s/ Mark Lawrence

Mark Lawrence  
Senior Hearing Examiner

# ATTACHMENT B

ATTACHMENT B

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF CHESAPEAKE UTILITIES CORP. )  
REGARDING ITS ACQUISITION AND )  
CONVERSION OF PROPANE ) PSC DOCKET NO. 19-0529  
COMMUNITY GAS SYSTEMS )  
(FILED AUGUST 20, 2019) )

PROPOSED SETTLEMENT

On this 6th day of May, 2020, Chesapeake Utilities Corporation, a Delaware corporation (hereinafter "Chesapeake" or the "Company"), the Delaware Public Service Commission Staff ("Staff"), the Delaware Division of the Public Advocate (the "DPA") and the Board of Directors of Hart's Landing ("Hart's Landing") (all of whom together are the "Settling Parties") hereby propose a settlement that, in the Settling Parties' view, appropriately resolves all issues raised in this proceeding ("Proposed Settlement").

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

1. On August 20, 2019 (and pursuant to 26 *Del. C.* §§102 and 201, Chesapeake's Code of Conduct<sup>1</sup> and other applicable authorities), Chesapeake filed with the Public Service Commission (the "Commission") an application ("Application") seeking an order to establish regulatory accounting treatment and a valuation methodology for its acquisition of propane community gas systems ("CGSs") and the conversion of the CGSs to natural gas service.<sup>2</sup>
2. Chesapeake operates an affiliate company, Sharp Energy, Inc. ("Sharp"), which owns and operates numerous CGSs located throughout Delaware. In the present matter,

<sup>1</sup> See PSC Order No. 5828 dated November 6, 2001, in Docket No. 00-523, approving the Company's Code of Conduct.  
<sup>2</sup> Generally, a CGS is a network of underground pipes and other facilities used to deliver propane to several homes (or businesses) connected to the network.

Chesapeake proposes a plan to acquire Sharp-owned CGSs one at a time (at the time of conversion) and pay the "replacement cost" for each CGS.<sup>3</sup> The Application requested that the Commission accept "replacement cost" as a valuation methodology (including rate base treatment thereof) for future CGS acquisitions, subject to Commission review of the price paid for each CGS in a subsequent rate case filed by Chesapeake.

3. As part of each CGS conversion, Chesapeake also requested approval to manage the residents' behind-the-meter conversions and to capitalize such costs (over a 30-year amortization period). Behind-the-meter costs would only be recoverable to the extent that total capital investment in the CGS project continues to meet the Company's economic test.

4. In the Application, Chesapeake also requested the Commission to allow the recovery of the purchase price for any CGS to be the Company's "replacement cost" for ratemaking purposes. Because Sharp is an affiliate of Chesapeake, the Company asked the Commission to waive the asymmetric pricing rule contained in the Company's Code of Conduct, which would require the Company to record for ratemaking purposes only its affiliate's net book value, rather than the actual price paid by Chesapeake for the assets.

5. On September 26, 2019, in Order No. 9496, the Commission suspended the Application and the requested relief pending further investigation and evidentiary hearings. The Commission also directed the Company to publish notice of the filing, which included a deadline for petitions for intervention of October 25, 2019.

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<sup>3</sup> As explained in the Application, the terms "replacement cost" and "reproduction cost" have been variously defined and sometimes used interchangeably in the public utility ratemaking context. To be clear, the Company used the term "replacement cost" here to indicate the cost of rebuilding the existing CGS system with a substantially identical new natural gas system (in other words, as if the existing CGS system never existed and the existing customers were being served by individual propane tanks).

6. The DPA filed a statutory notice of intervention in this docket on September 6, 2019. On October 16, 2019, Hart's Landing filed a petition to intervene, which the Hearing Examiner granted on October 30, 2019 (Order No. 9496).

7. On October 17, 2019, the Hearing Examiner approved a jointly proposed procedural schedule in this matter.

8. On February 4, 5, and 6, 2019, the Hearing Examiner conducted duly noticed public comment sessions in New Castle, Dover, and Lewes, Delaware.

9. During the course of this proceeding, the Settling Parties have conducted substantial written and informal discovery.

10. The Settling Parties have conferred in an effort to resolve all issues raised in this proceeding. The Settling Parties acknowledge that the parties may differ as to the proper resolution of many of these issues. Notwithstanding these differences, the Settling Parties have agreed to enter into this Proposed Settlement on the terms and conditions contained herein because they believe that this Proposed Settlement will serve the interest of the public and the Company. The Settling Parties agree that subject to the approval of the Hearing Examiner, the terms and conditions of this Proposed Settlement will be presented to the Commission for the Commission's approval.

## II. SETTLEMENT PROVISIONS

11. IT IS HEREBY STIPULATED AND AGREED that the Settling Parties will submit to the Commission for its approval the following terms and conditions for resolution of this proceeding:

### A. Valuation Methodology

12. The Settling Parties agree that Chesapeake may utilize the following valuation methodology to determine the price to be paid for the acquisition of any Sharp-owned CGS:



(a) Mains: will be priced at the average cost per foot of development main plastic pipe capitalized by Chesapeake in its ten (10) most-recent comparable projects in existing communities and developed areas. The average cost per foot will be updated annually.

(b) Service Lines: will be priced in accordance with the Main Extension Policy filed annually with the Commission utilizing an average of short and long side installations, as determined by the Company's annual contractor bidding program.

(c) Meters: will be priced in accordance with the Main Extension Policy filed annually with the Commission. Meter costs are determined by the Company's annual contractor bidding program.

(d) Temporary Propyne Tanks: will be priced at their actual cost, and

(e) Accumulated Deferred Income Tax (ADIT): The Company's rate base will reflect ADIT as if the acquisition was with a third party for ratemaking purposes.

**B. Behind-the-Meter Conversion Costs**

13. The Settling Parties agree that Chesapeake may calculate the behind-the-meter conversion costs as follows:

(a) Capitalization of Conversion Costs: will be based on the actual behind-the-meter cost to convert the home and appliances;

(b) Replacements and Contractors: if a homeowner's appliances require replacement due to mechanical inability to convert, the replacement cost that Chesapeake shall be permitted to capitalize for recovery will be limited to the lower of: (i) the actual cost of the replacement appliance; or (ii) \$1,350. Any additional costs over and above this limitation will be the responsibility of the homeowner. If a homeowner decides to replace an appliance that is convertible, any costs that are above the lower of (i) the actual cost of the replacement appliance

or (ii) \$1,350 will be the homeowner's responsibility. Sharp may be utilized, along with any other licensed contractors, to perform all propane to natural gas conversion related activities at market rates; and

(c) Conversion Cost Estimate Caps: Chesapeake will utilize the conversion cost estimates below as the cap for its economic test analysis in its internal rate of return model ("IRRM").

Appliance	Conversion Cap (CGS Average)
Furnace	\$500
Water Heater	\$400
Range	\$250
Oven	\$250
Fire Logs	\$250

**C. CGS Community 5-Year Surcharge**

14. At the time of each specific CGS acquisition, Chesapeake will establish a surcharge based on the Company's IRRM (as further described in ¶15) and the incorporated levelized surcharge calculation described in Exhibit A attached hereto. The surcharge will be applicable to all premises served by Chesapeake in the particular CGS community during a 5-year period. The IRRM at the time of acquisition will set the surcharge for each CGS community. Chesapeake will file with the Commission an application for Commission approval of an updated tariff sheet including the community-specific CGS surcharge at least 45 days prior to any acquisition. As part of this tariff filing, Chesapeake will also include information describing the commitments obtained from customers to convert to natural gas within the CGS community. One year after all conversions are completed in a CGS community, the Company will adjust the surcharge based on actual conversion costs. After the expiration of the 5-year period, the surcharge will be removed during the Company's annual rate class review period.

**D. Economic Model Applicable to CGS Systems**

15. Chesapeake will adjust the timing of certain of its IRRM inputs so that: (a) the costs for approach, delivery main, and services are included at start of the project (year 0); and (b) fifty percent of the "conversion costs" are included in year 0 and the remaining fifty percent included in year 1. Chesapeake will utilize billing volumes to estimate the average usage per customer, incorporating a standard conversion factor from propane gallons to CCF of natural gas based on a propane BTU content of 91,333 per gallon and a natural gas heating content of 103,600 BTU per MCF.

**E. 3-Year CGS Conversion Plan**

16. After the Commission issues a final order in this matter, Chesapeake will submit a plan describing the Company's anticipated conversion activities over the subsequent three-year period. The plan will include: (a) a list of CGS communities expected to be converted over that period; (b) an approximate date of acquisition; (c) an IRRM for each CGS acquisition, including estimated conversion costs; and (d) the estimated acquisition transfer valuation. After the submission of its initial 3-year CGS conversion plan, Chesapeake must file subsequent plans at least once every 3 years. If, at any time during a particular 3-year plan period, a new CGS acquisition and conversion opportunity arises that was not contemplated in the most recently-submitted plan, Chesapeake will submit an amendment to the most recent plan at least 30 days prior to any new acquisition.

17. The Settling Parties agree that Chesapeake shall file its 3-year CGS conversion plans with the Commission for notification and acknowledgment purposes only. Further, the Settling Parties agree that Commission Staff, DPA, and other stakeholders may file written comments concerning any 3-year CGS conversion plans filed with the Commission. The Settling

Parties agree that if the Commission acknowledges or notes the filing of any 3-year CGS conversion plan, such acknowledgment or notice shall not constitute Commission pre-approval of any proposed capital spending necessary to acquire and convert any CGS included in the plan. Any party may challenge Chesapeake's request to recover CGS acquisition and conversion costs in the base rate case in which the Company seeks recovery of those costs.

18. The Settling Parties agree that the individual residents and homeowner associations within any CGS are entitled to decide for themselves whether to convert to natural gas. Chesapeake agrees to provide all CGS customers with a full disclosure of anticipated conversion costs and charges prior to obtaining any commitment from customers.

**F. Asymmetric Pricing Waiver**

19. For purposes of the Company's acquisition and conversion of Sharp-owned CGSs only, neither the DPA nor Staff will oppose Chesapeake's request that the Commission waive the Company's asymmetric pricing rule for purposes of its acquisition and conversion of Sharp's CGS systems as contemplated herein.

**III. STANDARD PROVISIONS AND RESERVATIONS**

20. The provisions of this Proposed Settlement are not severable except by written agreement of the Settling Parties.

21. This Proposed Settlement represents a compromise for the purposes of settlement and shall not be regarded as precedent with respect to any ratemaking or any other principle in any future case or in any existing proceeding, except that, consistent with and subject to the provisos expressly set forth below, this Proposed Settlement shall preclude any Settling Party from taking a contrary position with respect to issues specifically addressed and resolved herein in proceedings involving the review of this Proposed Settlement and any appeals related to this Proposed

Settlement. No party to this Proposed Settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue addressed in this Proposed Settlement other than as specified herein, except that each Settling Party agrees that the Proposed Settlement may be submitted to the Commission for a determination that it is in the public interest and that no Settling Party will oppose such a determination. Except as expressly set forth below, none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or previously taken.

22. If this Proposed Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each of the Settling Parties reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding,

23. This Proposed Settlement will become effective upon the Commission's issuance of a final order approving this Proposed Settlement and all the settlement terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Proposed Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

24. The obligations under this Proposed Settlement, if any, that apply for a specific term set forth herein shall expire automatically in accordance with the term specified and shall require no further action for their expiration.

25. The Settling Parties may enforce this Proposed Settlement through any appropriate action before the Commission or through any other available remedy. The Settling Parties shall consider any final Commission order related to the enforcement or interpretation of this Proposed Settlement as an appealable order to the Superior Court of the State of Delaware. This shall be in addition to any other available remedy at law or in equity.

26. If a Court grants a legal challenge to the Commission's approval of this Proposed Settlement and issues a final non-appealable order which prevents or precludes implementation of any material term of this Proposed Settlement, or if some other legal bar has the same effect, then this Proposed Settlement is voidable upon written notice by any of the Settling Parties.

27. This Proposed Settlement resolves all of the issues specifically addressed herein. This Proposed Settlement, however, is made without admission against or prejudice to any factual or legal positions which any of the Settling Parties may assert (a) if the Commission does not issue a final order approving this Proposed Settlement without modifications; or (b) in other proceedings before the Commission or other governmental body. This Proposed Settlement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Settling Parties of all of the issues in this proceeding.

28. This Proposed Settlement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Settlement will terminate and be of no force and effect, unless the Settling Parties agree in writing to waive the application of this provision. The Settling Parties will make their best efforts to support this Proposed Settlement and to secure its approval by the Commission,

29. It is expressly understood and agreed that this Proposed Settlement constitutes a negotiated resolution of the issues in this proceeding and any related court appeals.

30. This Proposed Settlement may be executed in counterparts.

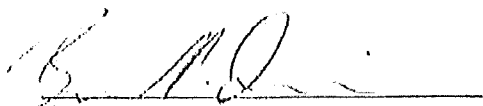
**IV. CONCLUSION**

Intending to legally bind themselves and their successors and assigns, the undersigned parties have caused this Proposed Settlement to be signed by their duly authorized representatives.

*[signature page follows]*

**Chesapeake Utilities Corporation**

Dated: 5/6/20



Name: Brian Quinn  
Title: Counsel, Chesapeake Utilities

**Delaware Division of the Public Advocate**

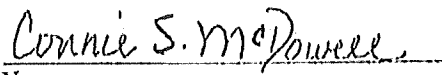
Dated: May 6, 2020



Name: Andrew Slater  
Title: Public Advocate

**Delaware Public Service Commission Staff**

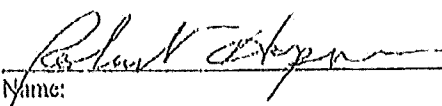
Dated: 5/6/2020



Name:  
Title:

**Board of Directors of Hart's Landing**

Dated: 5-6-2020



Name:  
Title:



**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF CHESAPEAKE UTILITIES CORP. )  
REGARDING ITS ACQUISITION AND )  
CONVERSION OF PROPANE ) PSC DOCKET NO. 19-0529  
COMMUNITY GAS SYSTEMS )  
(FILED AUGUST 20, 2019) )

**EXHIBIT A**

**CGS Community 5-Year Levelized Surcharge Description**

Chesapeake will establish a customer surcharge utilizing the company's Internal Rate of Return Model ("IRRM") applicable to all premises served by Chesapeake in each specific propane community gas system ("CGS") community during a 5-year period.

Chesapeake will include the costs for approach main, distribution main, and service installation into its IRRM at year zero (0) and fifty percent of the conversion costs in year zero (0) and fifty percent in year one (1). Chesapeake will also include estimated customer counts and customer volumes as described in Paragraph 15 to the Settlement Agreement in this matter. These inputs will provide the company's anticipated margin revenue (prior to surcharge) and the necessary incremental ratemaking revenue requirement by year. The incremental annual ratemaking revenue requirement will be a sum of: 1) the equity return on rate base at the company's weighted cost of capital; 2) interest requirements on rate base at the company's weighted long-term debt rate; 3) income taxes on the equity return; 4) O&M expenses; and 5) book depreciation expense on rate base.

The estimated total CGS margin revenue (prior to surcharge) will be netted against the incremental annual ratemaking revenue requirement to calculate the annual total CGS revenue excess/(deficiency). This revenue excess/(deficiency) will then be divided by the annual total CGS CCF to show the annual calculated surcharge. The annual calculated surcharge will then be multiplied by a present value factor (at the cost of capital) to establish the present value surcharge each year.

For the first 10 years of the project, the annual present value surcharges will be summed and a total accumulated present value surcharge established. Finally, the accumulated present value surcharge will be levelized over 5 years utilizing the following formula: " $= -PMT$  (Chesapeake's Required Rate of Return, 5, Accumulated Present Value Surcharge)."

One year after all conversions are completed in a CGS community, the company will adjust the surcharge based on actual conversion costs. After the expiration of the 5-year period, the surcharge will be removed during the company's annual rate class review period.

**Docket No. 20230124-GU - Petition for approval of limited variance from area extension program (AEP) tariff, by Florida Public Utilities Company.**

**EXHIBIT G**

STATE OF MARYLAND  
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IN THE MATTER OF THE JOINT \* BEFORE THE  
APPLICATION OF CHESAPEAKE UTILITIES \* PUBLIC SERVICE COMMISSION  
CORPORATION AND THE EASTERN SHORE \* OF MARYLAND  
GAS COMPANY FOR APPROVAL OF AN \*  
AGREEMENT BY WHICH CHESAPEAKE \*  
UTILITIES CORPORATION WILL ACQUIRE \*  
CERTAIN FRANCHISES, ASSETS, RIGHTS \*  
AND AUTHORITY OF THE EASTERN SHORE \*  
GAS COMPANY. \* CASE NO. 9303

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Issued: April 24, 2013

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

**Appearances**

Brian M. Quinn, Esquire, for Chesapeake Utilities Corporation and The Eastern Shore Gas Company.

Scott H. Strauss, Esquire, Peter J. Hopkins, Esquire, and Katharine M. Mapes, Esquire, for the Utility Workers Union of America, AFL-CIO, and Utility Workers Union of America, System Local 102.

Ronald Herzfeld, Esquire, for the Maryland Office of People's Counsel.

Michael A. Dean, Esquire, and Kenneth Marc Albert, Esquire, for the Technical Staff of the Maryland Public Service Commission.

**Procedural History**

On September 7, 2012, Chesapeake Utilities Corporation ("Company" or "Chesapeake") and The Eastern Shore Gas Company ("ESG") (collectively, with Chesapeake, "Applicants") filed with the Maryland Public Service Commission ("Commission") a joint



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application for approval of the acquisition of certain franchises, assets, rights and authority of ESG associated with its propane distribution system in Worcester County, Maryland ("Joint Application").<sup>1</sup> After consummation of the transaction, Chesapeake proposes to convert the ESG system to be primarily a natural gas distribution system. Additionally, Chesapeake created a new subsidiary, Newco, to which Chesapeake will transfer the ESG franchises and assets upon the consummation of the transaction. A new gas tariff applicable to gas and propane distribution customers in Worcester County issued by Newco also was proposed.

On September 20, 2012, the County Commissioners of Worcester County submitted a letter to the Commission expressing the County Commissioners' strong support in favor of the Joint Application.

At its October 3, 2012 Administrative Meeting ("Meeting"), the Commission considered the Joint Application, the written comments of Commission's Technical Staff ("Staff"), the Utility Workers Union of America, System Local 102 ("UWUA System Local 102"), and the Maryland Office of People's Counsel ("OPC"), and the oral comments of the parties at the Meeting. After hearing from the parties, the Commission initiated a docketed proceeding, Case No. 9303, and delegated the matter to the Public Utility Law Judge Division to conduct the proceedings.

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<sup>1</sup> Applicants' ("Appl.") Exhibit ("Ex.") 3A (Public version) and Ex. 3B (Confidential Attachment 4 to Joint Application).



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On October 23, 2013, the UWUA System Local 102 filed a Petition to Intervene in the matter and, under separate cover, a Motion to Dismiss or Condition the Joint Application ("Union's Motion"). On October 26, 2012, the UWUA System Local 102 amended its Petition to Intervene to add the Utility Workers Union of America, AFL-CIO (the "UWUA") (collectively, with the UWUA System Local 102, the "Union"). On October 30, 2012, the Applicants submitted an Opposition to the Union's Motion ("Opposition"). On October 31, 2012, the Union filed a Response to Applicants' Opposition.

On November 1, 2012, a pre-hearing conference was held at which the representatives of the Applicants, the Union, OPC and Staff (collectively, the "Parties") appeared. Oral argument was heard on the Union's Motion, and it was granted in part and denied in part.<sup>2</sup> A procedural schedule was established.

On November 13, 2012, the Applicants filed an amendment to the Joint Application to comply with the Ruling of the Public Utility Law Judge.<sup>3</sup>

Chesapeake sponsored the testimony of Jeffery R. Tietbohl,<sup>4</sup> a Vice President of Chesapeake, who testified, among other things, on the details of the transaction, benefits to the customers, the planned conversion of the acquired ESG system from

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<sup>2</sup> See *Public Utility Law Judge's Ruling on Motion to Dismiss or Condition Joint Application*, Case No. 9303 (Nov. 2, 2013) ("Ruling of Public Utility Law Judge").

<sup>3</sup> Appl. Ex. 4, Supplement to Joint Application.

<sup>4</sup> Appl. Ex. 5, Direct Testimony of Jeffrey R. Tietbohl dated November 9, 2012; and Appl. Ex. 6, Rebuttal Testimony of Jeffrey R. Tietbohl dated February 22, 2013.



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propane to gas distribution; the terms of the Newco proposed tariff, including the rate schedules; cost recovery of the conversion costs; and the depreciation rates proposed for use by Newco. The Union sponsored the testimony of Robert T. Whalen,<sup>5</sup> the President of UWUA System Local 102, who testified on the Union's concerns with the proposed transaction. OPC sponsored the testimony of David E. Peterson,<sup>6</sup> a Senior Consultant with Chesapeake Regulatory Consultants, Inc., who testified on aspects of the Joint Application which OPC found objectionable. The Staff witnesses are Patricia M. Stinnette,<sup>7</sup> the Director of the Commission's Accounting Investigations Division, who presented Staff's analysis and recommendation regarding Chesapeake's accounting treatment of certain items related to the proposed acquisition; and Jason A. Cross,<sup>8</sup> a Regulatory Economist III in the Commission's Telecommunications, Gas and Water Division, who testified on: (1) whether the proposed transaction is in the public interest, convenience and necessity; (2) the proposed rates and rate structure; and (3) the recovery of conversion cost in distribution rates.

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<sup>5</sup> Union Ex. 1, Direct Testimony of Robert T. Whalen dated February 7, 2013.

<sup>6</sup> OPC Ex. 1, Direct Testimony of David E. Peterson dated February 7, 2013 ("Peterson Direct"); OPC Ex. 2, Rebuttal Testimony of David E. Peterson dated February 22, 2013; and OPC Ex. 3, Supplemental Testimony of David E. Peterson dated March 5, 2013 (Confidential, Ex. 3A; Public, Ex. 3B).

<sup>7</sup> Staff Ex. 1, Direct Testimony of Patricia M. Stinnette dated February 7, 2013.

<sup>8</sup> Staff Ex. 2A and 2B (Public and Confidential Version, respectively) of Direct Testimony of Jason A. Cross dated February 7, 2013; and Staff Ex. 3, Rebuttal Testimony of Jason A. Cross dated February 22, 2013.



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On February 22, 2013, evidentiary hearings in the matter were scheduled for March 13-15, 2013. On March 12, 2013, the evidentiary hearings were cancelled to allow certain of the parties an opportunity to complete pending settlement negotiations. As a result of the negotiations, a settlement agreement was reached between the Applicants, OPC, and Staff (collectively "Signatory Parties").

On April 9, 2013, at the Stephen Decatur High School in Berlin, Maryland, an evidentiary hearing was held and the pre-filed testimony of each party's witnesses were admitted into the record by stipulation of the parties, including the testimony in support of the agreement of Chesapeake witness Tietbohl,<sup>9</sup> OPC witness Peterson,<sup>10</sup> and Staff witness Cross,<sup>11</sup> a statement by the Union,<sup>12</sup> and a copy of the Joint Petition for Approval of Settlement.<sup>13</sup> Immediately after the completion of the evidentiary hearing, a hearing for public comments was held in the same location. Approximately 30 to 40 members of the public attended the hearing for public comment, although only six spoke at the hearing. The comments were supportive of the transaction and the anticipated

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<sup>9</sup> Appl. Ex. 7, Testimony of Jeffrey R. Tietbohl in Support of Settlement Agreement dated April 8, 2013.

<sup>10</sup> OPC Ex. 4, Supplemental Settlement Testimony of David E. Peterson dated April 8, 2013.

<sup>11</sup> Staff Ex. 4, Settlement Testimony of Jason A. Cross dated April 5, 2013.

<sup>12</sup> Union Ex. 2, Statement of Utility Workers Union of America, AFL-CIO and UWUA System Local 102 with Respect to Proposed Settlement Agreement dated April 8, 2013.

<sup>13</sup> Appl. Ex. 8, Joint Petition for Approval of Settlement. A copy of the fully executed Agreement was submitted to the Commission on April 10, 2013.



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availability of natural gas distribution service in Worcester County ("County").

**Discussion**

Currently, natural gas distribution service is not available in Worcester County. As OPC witness Peterson notes in his testimony, "natural gas enjoys a significant cost advantage over propane and other certain energy sources for many residential and commercial uses."<sup>14</sup> Consequently, Chesapeake's proposed acquisition of the assets and franchises associated with ESG's propane distribution service in the County and the subsequent conversion to a natural gas distribution system may provide an economic benefit to ESG's current customers. In pre-filed testimony in the matter, however, witnesses for OPC, the Union, and Staff identified certain aspects of the proposed transaction and conversion plans that did not appear to meet the legal and regulatory standards of Maryland law or the Commission's policies.

OPC identified four deficiencies that caused it to recommend denial of the Joint Application: (1) the failure of the Company to prove that the proposed rates were "just and reasonable"; (2) the inappropriate inclusion of customer-owned appliance conversion costs in the proposed rates; (3) the appropriateness of the proposed depreciation rates; and (4) the inclusion of a Revenue Normalization provision in the proposed tariff. Although Newco's proposed rates reflected a reduction of

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<sup>14</sup> Peterson Direct at 5.





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approximately \$500,000 of the ESG current delivery service revenues, OPC witness Peterson, in his pre-filed testimony, submitted calculations to demonstrate that the revenues generated under Newco's proposed rates would far exceed its cost of service.

The Union's concerns were focused on the continued safety and reliability of the ESG distribution system and quality of service to be provided by Newco and the potential effects on employment in the service area. At the time the Union's pre-filed testimony was submitted, Chesapeake had not indicated whether it intended to offer employment to the experienced field workers and members of non-management administrative staff currently employed by ESG in Worcester County.

Staff also recommended that the proposed depreciation rates be disallowed, and a depreciation study be filed with Newco's first base rate case. Additionally, Staff did not object to the inclusion of conversion costs associated with outside and inside (behind the meter) plant through the distribution rates, but opposed including conversion costs for plant outside of the dwelling unit (e.g. pool heaters, porch heaters, outside grills) through distribution rates. Staff initially recommended the Company recover the allowed inside plant conversion cost in the form of a rider, but withdrew this recommendation in its rebuttal testimony. Staff further recommended that Newco file a rate case within three years from the date of the Commission's order approving the asset purchase and acceptance of the proposed tariffs, and that Newco file a Cost of Service Study with the rate case.



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Prior to the evidentiary hearing, the Signatory Parties reached a settlement agreement ("Agreement" or "Settlement"). According to the Agreement, the Signatory Parties intend the Agreement to settle the instant case and resolves with prejudice all issues raised by the Signatory Parties.<sup>15</sup> The Signatory Parties agreed to, among other things, the following:

- The Joint Application should be approved as amended and the relief requested therein granted, subject to the terms and conditions set forth in the Agreement. The terms and conditions of the Agreement are provided in lieu of and irrespective of the Applicants' prior proposed commitments and any conditions previously proposed by the other Signatory Parties and supersede any such prior commitments and conditions;
- The proposed gas service tariff and rates for Newco attached to the Agreement are just and reasonable. The base rates or delivery service rates contained in the attached gas service tariff and as part of the Settlement reflect a total reduction of \$350,00 for residential customers from the delivery service revenues proposed by the Company in its originally filed application;
- The recovery of costs associated with the conversion of propane customers to natural gas shall be as proposed in the Joint Application subject to the following conditions:

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<sup>15</sup> The Union submitted a Statement with Respect to Proposed Settlement Agreement and noted that UWUA was particularly interested in Section 9 of the Agreement related to the offers, and acceptances, of employment of the 14 hourly employees of ESG, contingent on the consummation of the transaction. Given this provision, the UWUA stated that it had no opposition to approval of the Settlement. It explained it did not execute the Agreement because it had taken no positions on other issues in the proceeding which constitute the bulk of the Settlement terms.



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- o Conversion costs (along with costs incurred by Newco to comply with a March 5, 2003 Consent Order executed by Staff and ESG) shall be recovered through a usage-based (per Ccf) rate under a new Rate Schedule, entitled "System Improvement Rate ("SIR"), that is separate from the base or delivery service rates. Filings by Newco at the Commission to recover costs via the SIR must include proposed tariff sheets that separately identify each of the cost components of the proposed SIR, including (i) inside-plant conversion costs; (ii) distribution system conversion costs; and (iii) costs incurred by Newco to comply with the March 5, 2003 Consent Order;
- o Newco will provide each homeowner with a conversion assessment, which includes the cost of each conversion or replacement planned for appliances and other similar equipment owned by the homeowner; if a homeowner chooses to replace an appliance that is planned for conversion, then the homeowner must pay the difference between the cost of the conversion and the cost of the replacement;
- o Newco shall exclude from the SIR the recovery of costs related to the conversion of any customer-owned equipment/facilities located outside customers' homes;
- o The annual adjustment described in the Joint Application will aggregate residential and commercial conversion customer costs and include a reconciliation to account for cost and number of customer differences from the prior year on a prospective basis, without carrying costs on the prior year cost reconciliation; and



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- o The costs associated with inside-plant conversion costs referenced in paragraph 6(a) will be amortized at a rate of 3.33% or over a 30-year period including a rate of return consistent with the Company's original application until the time of the base rate case referenced under paragraph 8 of the Agreement;
- Upon the effective date of the base or delivery service rates in the proposed tariff attached to the Agreement, Newco shall utilize the approved depreciation rates currently in use by Chesapeake-Maryland Division for a period no longer than one year. Newco shall file in this docket a depreciation study concerning its facilities in order to determine: (a) the appropriate level of the ESG accumulated depreciation reserve at the time of the Commission's final order in this matter, and (b) the appropriate depreciation rates to be used prospectively by Newco.
- Newco shall file a base rate case with the Commission two years and six months from the effective date of the closing of the transaction described in the APA;
- On February 12, 2013, Chesapeake extended offers of full-time employment to all 14 hourly employees of ESG, contingent on the close of the acquisition. Each of the 14 employees has accepted their offer of full-time employment;
- Newco shall defer consideration of any revenue normalization mechanism until it files its base rate case as reflected in this agreement; and
- The recovery of gas costs associated with the proposed blended Gas Sales Service Rate ("GSR") mechanism will be as set forth in the Joint Application and as contained in the gas service tariff rate



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schedule, including the recovery of gas capacity and supply costs associated with the Capacity Supply & Operating Agreement between Newco and Eastern Gas & Water Investment Company and as requested in the Joint Application. At least once every 12 months, the Commission will conduct an evidentiary hearing on Newco's purchase gas costs, pursuant to Public Utilities Article, § 4-402.

The Agreement states that it is expressly conditioned upon the Commission's acceptance of all its items without change or conditions and that it constitutes a full settlement and compromise of the Joint Application, as amended, in Case No. 9303. The Signatory Parties expressly waived their rights to appeal a Proposed Order of the Public Utility Law Judge accepting this Settlement in its entirety, as provided in the Public Utilities Article, § 3-104(d).

**Findings/Decision**

Chesapeake's acquisition of the franchises, assets, rights and authority (collectively "Assets") of ESG associated with ESG's propane distribution system in Worcester County (and subsequent transfer of the Assets from Chesapeake to Newco) will provide, for the first time, an option for residents and businesses of Worcester County to elect to use natural gas distribution service as a fuel source.

Chesapeake has significant experience in operating a public service company offering natural gas distribution services in Maryland. Additionally, it has experience in operating an under-



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ground propane distribution system similar to ESG's in Maryland through its wholly owned subsidiary, Sharp Energy. Chesapeake intends to pay cash for the ESG Assets and will not issue any stocks, bonds, securities or other evidence of indebtedness to fund the purchase of ESG Assets. Consequently, I find that Chesapeake, which will control its wholly owned subsidiary, Newco, has the financial managerial experience and technical resources to acquire the Assets of ESG and manage the conversion of the propane distribution system to a natural gas distribution system.

The Settlement Agreement has resolved the legal and regulatory issues disputed among the parties and results in the parties supporting approval of the transaction (subject to the terms and conditions in the Settlement). The Signatory Parties agree that the resolutions of the issues in the Settlement, taken as a whole, results in just and reasonable rates, and is consistent with the public convenience and necessity,

Currently, the rates charged by ESG for the customers' propane usage are not regulated. The Commission has allowed the competitive propane gas market to determine "just and reasonable" rates rather than the Commission setting the rates by its traditional regulatory oversight.<sup>16</sup> Upon consummation of the transaction, the rates that will be charged by Newco will be regulated by the Commission and set forth in a tariff subject to the Commission's traditional regulatory oversight. Because ESG has not

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<sup>16</sup> See *Re Eastern Shore Gas*, Case No. 8120, Order No. 68373, 79 MD PSC 526, 538 (Dec. 1988).



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been required for a number of years to file base rate cases, I conclude that requiring rates to be set initially in a manner equivalent to a base rate case for natural gas distribution services would result in a significant delay in the offering of natural gas distribution service in Worcester County. Newco, however, will be required to file a base rate case within two years and six months after the consummation of the transaction, which should provide it sufficient time to have all the necessary information required to prosecute a base rate case.

Under Newco's proposed tariff accompanying the Settlement, the customer charge will remain at the same amount previously charged, and the GSR will recover the overall cost of purchased propane and natural gas supply using a blended formula and will adjust each quarter.<sup>17</sup> The proposed delivery service rates reflect the reduction of the current ESG operational revenues by \$500,000 apportioned between the residential and commercial customer classes, and an additional \$350,000 reduction for the residential class. Moreover, equivalent natural gas Ccf and propane Ccf volumetric rates have been calculated, so there is no discrimination in rates based on the type of fuel source used by a customer during the conversion period.

Additionally, customers will not have to pay the full up-front conversion costs for equipment/appliances inside their premises. The costs associated with customer conversions from pro-

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<sup>17</sup> An annual review of the GSR will be conducted pursuant to Public Utilities Article, § 4-204.



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pane to natural gas along with the cost of bare steel replacement and the cost of distribution service conversion will be recovered through a volumetric charge per Ccf that applies to the residential and commercial class. The SIR will be based on a 12-month period, June 1 to May 1, and an updated SIR will be filed with the Commission on an annual basis at least 30 days prior to the June 1 effective date. ESG customers that elect not to convert to natural gas will not bear the costs of the system-wide conversion as they will no longer be a customer of Newco.

Accordingly, I find that, subject to the terms of the Settlement and taken as a whole, the proposed rates set forth in the Newco tariff incorporated into the Settlement are just and reasonable and are in the public convenience and necessity.

Both OPC and Staff objected to the depreciation rates proposed to be applied by Newco upon the consummation of the acquisition. The Settlement allows Newco to implement its proposed depreciation rates but requires that it file a depreciation study within one year of the consummation of the transaction. I find that this is reasonable compromise under the circumstances and is in the public interest and the public convenience and necessity.

According to Chesapeake, one of the benefits of the acquisition is that, as Chesapeake conducts the conversion process, it will have an opportunity to review and assess the condition of ESG's facilities and IT will allow Chesapeake to take proactive measures to improve or repair the infrastructure, as needed. The Union raised an issue as to whether Chesapeake would be able to





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operate the propane distribution system safely and reliably if Chesapeake did not employ certain of the current employees of ESG, as these employees have years of knowledge about the ESG system. The Settlement reflects that Chesapeake has offered employment to 14 hourly employees of ESG, subject to the consummation of the transaction, and all these employees have accepted the employment offer. Consequently, I find that Chesapeake, with its experience in operating natural gas distribution systems and propane distribution systems and its offer of employment to ESG current employees (and their acceptance of employment), will be able to operate the propane distribution system safely and reliably as the ESG distribution system is converted to a natural gas distribution system. Additionally, Chesapeake's decision to offer the employment to the ESG employees also eliminates any potential adverse impact on employment in the service territory.

Subject to the terms and conditions of the Settlement, I find that the terms of the Asset Purchase Agreement are in the public interest and the public convenience and necessity. Further, subject to the terms and conditions of the Settlement, I find that the transfer of the Assets to Chesapeake and the exercise by Chesapeake of the Assets are not inconsistent with the law or Chesapeake's gas service tariffs and are in the public interest and public convenience and necessity. Similarly, subject to the terms and conditions of the Settlement, I determine that the subsequent transfer of the Assets by Chesapeake to Newco is consistent with the public interest and the public convenience and necessity.



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Overall, the Settlement Agreement represents the resolution of the issues raised by the Signatory Parties, each with positions adversarial to each other on the issues in dispute. It also addresses the Union's disputed issues. Acceptance of the Settlement Agreement will eliminate the need for lengthy evidentiary hearings and thus reduce the costs and resources of the parties which would be required to fully litigate the matter. Consequently, I find the terms and conditions of the Settlement Agreement to be just and reasonable and its acceptance in the public interest and public convenience and necessity.

IT IS, THEREFORE, this 24th day of April, in the year Two Thousand Thirteen,

ORDERED: (1) That the Joint Petition for Approval of Settlement executed by the Signatory Parties on April 9, 2013, is hereby accepted in its entirety and made a part of the Proposed Order as Appendix I.

(2) That, subject to the terms and conditions of the Settlement, the Joint Application, as amended, is hereby approved.

(3) That, subject to the terms and conditions of the Settlement, the Asset Purchase Agreement between The Eastern Shore Gas Company, Eastern Shore Propane Company, LLC, Eastern Gas & Water Investment Company, LLC, Energy Equity Partners, L.P. and Chesapeake Utilities Corporation is hereby approved.

(4) That the transfer by The Eastern Shore Propane Company, LLC of all of its franchises, assets, rights and



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authority to provide gas service in Maryland to Chesapeake Utilities Corporation is hereby authorized. The transfer by Chesapeake Utilities Corporation of those of its franchises, assets, rights and authority to provide gas service in Maryland to Newco also is hereby authorized.

(5) That Newco is authorized to file the proposed tariff attached to the Settlement with the Commission to become effective for service rendered on and after the date accepted by the Commission and the subsequent date of the consummation or closing of the transaction.

(6) That, subject to the terms and conditions of the Settlement and upon consummation of the transaction, Newco is authorized to enter into a Capacity Supply & Operating Agreement with Eastern Gas & Water Investment Company, LLC, and Newco is authorized to recover the costs associated with this Agreement for the capacity, supply, and operating services to be provided by Eastern Gas & Water Investment Company, LLC.

(7) That Newco shall file a base rate case with the Commission two (2) years and six (6) months from the effective date of the closing of the transaction contemplated by the Joint Application.

(8) That, upon the effective date of the base or delivery service rates in the Newco tariff accepted by the Commission, Newco shall utilize the approved depreciation rates currently in use by Chesapeake Utilities Corporation-Maryland Division for a period of no longer than one year. Newco shall file




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in the docket for Case No. 9303 a depreciation study as set forth in the Settlement.

(9) That recovery of costs associated with the conversion of propane customers to natural gas as proposed in the Joint Application, subject to the applicable conditions in the Settlement, are hereby approved.

(10) That all regulatory approvals necessary to authorize the transaction proposed in the Asset Purchase Agreement, subject to the terms and conditions in the Settlement, are hereby granted.

(11) That this Proposed Order will become a final order of the Commission on May 29, 2013, unless before that date an appeal is noted with the Commission by any party to this proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

  
\_\_\_\_\_  
Terry J. Romine  
Chief Public Utility Law Judge  
Public Service Commission of Maryland



BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

**In the Matter of the Joint Application  
of Chesapeake Utilities Corporation and the  
Eastern Shore Gas Company for Approval of  
an Agreement by which Chesapeake Utilities  
Corporation will Acquire Certain Franchises,  
Assets, Rights and Authority of the Eastern  
Shore Gas Company**

Case No. 9303

\* \* \* \* \*

**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

The Chesapeake Utilities Corporation ("Chesapeake") and the Eastern Shore Gas Company ("ESG"), (together the "Applicants"), the Staff of the Public Service Commission of Maryland ("Staff"), and the Maryland Office of People's Counsel ("OPC") (collectively, the "Signatory Parties"), agree that the Joint Application filed in the above-captioned matter should be approved as amended, subject to the terms and conditions set forth below in this Joint Petition for Approval of Settlement ("Settlement"), each of which would only become operative after the consummation of the transaction described in the Joint Application. Other than the Signatory Parties, the only other party to the case is the Utility Workers Union of America, System Local 102 (the "Union") and the Union is not opposed to the Settlement (the Signatory Parties understand that the Union intends to file with the Commission a statement of non-opposition). The Signatory Parties further agree as follows:

WHEREAS, Chesapeake's Maryland Division is a "gas company" within the

meaning of § 1-101(k) of the Public Utilities Article (“PUA”) of the Annotated Maryland, and currently serves approximately 12,400 residential and commercial/industrial customers in Wicomico, Caroline, Dorchester, and Cecil Counties on Maryland’s Eastern Shore; and

WHEREAS, ESG currently provides propane distribution service to a total of approximately 11,000 residential, commercial and industrial customers in Ocean City and several other localities in Worcester County, Maryland, including West Ocean City, Berlin, Snow Hill and Pocomoke City. ESG is regulated by the Commission as a “public service company” because it falls within the literal meaning of the term “gas company” in PUA § 1-101(k); and

WHEREAS, in Commission Order No. 68373, the Commission cited the significant level of competition ESG faced from alternative bottled propane gas suppliers, and approved a regulatory framework for ESG which allows the Company to implement new tariff rates, without suspension or formal evidentiary proceedings, unless the Commission determines otherwise. *See Re Eastern Shore Gas Company*, 79 Md. P.S.C. 526 (1988). In 2000, the Commission granted ESG’s request to formally withdraw its service tariff. *See*, Commission Letter Order dated, April 26, 2000 (ML# 71195). Currently, the price ESG charges for propane service is not regulated by the Commission; and

WHEREAS, on June 22, 2012 Chesapeake and ESG executed an Asset Purchase Agreement (“APA”) pursuant to which Chesapeake would acquire a majority of the assets, properties, franchises and rights used by ESG for its Maryland operations. Consequently,

on September 7, 2012, the Applicants filed their Joint Application requesting that the Commission approve: (1) the APA; (2) the transfer of control to Chesapeake of substantially all of ESG's franchises, assets, rights, and authority to provide gas service in Worcester County, MD, (3) a proposed gas service tariff and rates with supporting schedules applicable to natural gas and propane distribution customers being served in Worcester County; (4) the recovery of costs associated with a capacity, supply, and operating agreement for the supply and storage of propane; and (5) the proposed accounting treatment for certain related items contained in the application, and (6) any and all other regulatory approvals necessary to authorize the actions proposed in the application. The Applicant sought Commission approval of the Joint Application pursuant to PUA §§ 4-202, 4-203, 4-402, and 5-202, and sections 20.07.04.04 and 20.07.04.09 of the Code of Maryland Regulations ("COMAR"). The Joint Application further explained that Chesapeake intends to create a newly formed subsidiary ("Newco") to hold the assets acquired from ESG; and

WHEREAS, on October 23, 2012, the Union filed a Motion to Dismiss or Condition the Joint Application. The Union requested that the Joint Application be dismissed or, alternatively, be conditioned to require the Applicants to submit additional requests for approval for: (1) failure to request Commission approval required under PUA §5-202 for Chesapeake to transfer the ESG franchises to its newly created subsidiary ("Newco"), and (2) failure to request Commission approval under PUA §6-105 as Chesapeake would acquire the power to exercise substantial influence over the policies and actions of Newco, which upon transfer of the assets acquired by Chesapeake from ESG,

would become a newly formed gas company controlled by Chesapeake. On October 30, 2012, the Applicants filed an Opposition to the Union's Motion to Dismiss and the Union filed a response thereto on October 31, 2012; and

WHEREAS, on November 1, 2012, the Public Utility Law Judge ("Judge") held the pre-hearing conference in this matter at which time the Union and the Applicants provided oral argument in support of their respective positions concerning the Union's Motion to Dismiss. After hearing argument and proffering questions to the Union and the Applicants, the Judge reserved ruling on the Motion to Dismiss. On November 2, 2012, the Judge issued a ruling that granted in part and denied in part the Union's Motion to Dismiss. Specifically, the Judge granted the Union's request and ordered the Applicants to request approval under PUA §5-202 to transfer the ESG assets from Chesapeake to Newco. However, the Judge denied the Union's request concerning PUA §6-105 and specifically ruled that PUA §6-105 was not triggered by the Joint Application. In addition, the Judge granted the petition to intervene filed by the Union and entered the appearances of Staff and OPC. On November 13, 2012, the Applicants filed an amendment to the Joint Application that specifically requested Commission approval under PUA §5-202 to transfer the former ESG franchises and assets from Chesapeake to Newco; and

WHEREAS, on November 8, 2012, the Applicants submitted written testimony and exhibits in support of the Joint Application. Among other things, the Applicants' written testimony further described the Applicants' plans for converting propane customers of ESG to natural gas service; the terms of a separate Newco service tariff; a description of the proposed Newco rate schedules to be applicable to former ESG



customers while Chesapeake transitions these customers from propane service to natural gas; and a description and summary of the costs related to converting the existing propane distribution system to natural gas; and

WHEREAS, on February 7, 2013, Staff, OPC and the Union each filed direct testimony and exhibits responding to the Joint Application and the testimony filed by the Applicants. On February 22, 2013, Applicants, Staff and OPC filed rebuttal testimony responding to testimony filed by other parties, and on March 5, 2013, OPC filed supplemental testimony further responding to testimony filed by other parties; and

WHEREAS, Staff, OPC and the Union conducted extensive discovery of the Joint Application, including serving 130 separate, formal, data requests; and

WHEREAS, the Signatory Parties have engaged in extensive and comprehensive negotiations, including several telephone conferences and three meetings.

NOW THEREFORE, the Signatory Parties have entered into the following comprehensive settlement:

(1) As part of a comprehensive settlement, the Signatory Parties agree that the Joint Application should be approved as amended and the relief requested therein granted, subject to the terms and conditions as set forth herein. The Signatory Parties further agree that the terms and conditions set forth herein are a complete set of terms and conditions and are provided in lieu of and irrespective of the Applicants prior proposed commitments and any conditions previously proposed by the other Signatory Parties, and supersede any such prior commitments and conditions. This Settlement, pursuant to these terms and conditions, resolves all concerns of the Signatory Parties related to the

transaction described in the Joint Application, and the Signatory Parties jointly recommend that the Joint Application, as modified by this Settlement, should be approved without further modification. The Signatory Parties agree that the resolution of the issues herein, taken as a whole, results in just and reasonable rates, and is consistent with the public convenience and necessity. By signing this Settlement, each Signatory Party warrants that it is legally bound by the terms and conditions of the Settlement, effective on the date of execution by all Signatory Parties and effective upon consummation of the transaction described in the Joint Application.

(2) As part of the comprehensive settlement, the Signatory Parties agree the terms of the APA are consistent with the public interest and the public convenience and necessity, and the Applicants have the requisite corporate authorization to consummate the transaction described therein.

(3) As part of the comprehensive settlement, the Signatory Parties agree the transfer of control to Chesapeake of substantially all of ESG's franchises, assets, rights and authority to provide gas service in Worcester County, Maryland is consistent with the public interest and the public convenience and necessity.

(4) As part of the comprehensive settlement, the Signatory Parties agree the subsequent transfer of control of the former ESG franchises, assets, rights and authority from Chesapeake to its newly-created, wholly-owned operating subsidiary (which is tentatively named "Newco") is consistent with the public interest and the public convenience and necessity.

(5) As part of the comprehensive settlement, the Signatory Parties agree the

proposed gas service tariff and rates for Newco attached hereto as Exhibit 1 are just and reasonable. The Newco service tariff and rates attached hereto shall be effective for service rendered on and after the date approved by the Commission and subsequent date of the consummation or closing of the transaction. The rates will be apportioned among the rate classes as provided herein, and shall remain in effect until new service tariff and rates become effective pursuant to the base rate case which is required to be filed under paragraph 8, except as further noted in paragraph 7. The base rates or delivery service rates contained in the attached gas service tariff and as a part of this settlement reflect a total reduction of \$350,000 for residential customers from the delivery service revenues proposed by the Company in its originally filed application.

(6) The recovery of costs associated with the conversion of propane customers to natural gas shall be as proposed in the Joint Application subject to the following conditions:

(a) conversion costs (along with the costs incurred by Newco to comply with a March 5, 2003 Consent Order executed by Staff and ESG) shall be recovered through a usage-based (per ccf) rate under a new Rate Schedule, entitled "System Improvement Rate" ("SIR") that is separate from the base or delivery service rates. Filings by Newco at the Commission to recover costs via the SIR must include proposed tariff sheets that separately identify each of the cost components of the proposed SIR, including (i) inside-plant conversion costs, (ii) distribution system conversion costs, and (iii) costs incurred by Newco to comply with the

March 5, 2003 Consent Order;

(b) Newco will provide each homeowner with a conversion assessment, which includes the cost of each conversion or replacement planned for appliances and other similar equipment owned by the homeowner; if a homeowner chooses to replace an appliance that is planned for conversion, then the homeowner must pay the difference between the cost of the conversion and the cost of the replacement;

(c) Newco shall exclude from the SIR the recovery of costs related to the conversion of any customer-owned equipment/facilities located outside customers' homes;

(d) the annual adjustment described in the Joint Application will aggregate residential and commercial conversion customer costs and include a reconciliation to account for cost and number of customer differences from the prior year on a prospective basis, without carrying costs on the prior year cost reconciliation; and

(e) the costs associated with the inside-plant conversion costs referenced in paragraph 6(a) will be amortized at a rate of 3.33% or over a thirty (30) year time period, including a rate of return consistent with the Company's original application until the timing of the base rate case referenced under paragraph 8.

(7) Upon the effective date of the base or delivery service rates described in Exhibit 1, Newco shall utilize the approved depreciation rates currently in use by

Chesapeake-Maryland Division for a period of no longer than one year. Newco shall file in this docket a depreciation study concerning its facilities in order to determine: (a) the appropriate level of the ESG accumulated depreciation reserve at the time of the Commission final order in this case, and (b) the appropriate depreciation rates to be used prospectively by Newco.

(8) Newco shall file a base rate case with the Commission 2 years and 6 months from the effective date of the closing of the transaction described in the APA.

(9) On February 12, 2013, Chesapeake Utilities Corporation extended offers of full-time employment to all 14 hourly employees of ESG, contingent on the close of the acquisition. Each of the 14 employees has accepted their offer of full-time employment.

(10) Newco shall defer consideration of any revenue normalization mechanism until it files its base rate case as referenced in paragraph 8.

(11) The recovery of gas costs associated with the proposed blended Gas Sales Service Rate ("GSR") mechanism will be as set forth in the Joint Application and as contained in the gas service tariff rate schedule, including the recovery of gas capacity and supply costs associated with the Capacity, Supply & Operating Agreement ("CSOA") attached to and as requested in the Joint Application. At least once every twelve months, the Commission will conduct an evidentiary hearing on Newco's purchased gas costs, pursuant to PUA §4-402(d).

(12) This Settlement is proposed by the Signatory Parties to settle the instant case and is made without any admission against, or prejudice to, any position, including but not limited to any ratemaking principle or procedural principle, which any Signatory Party

might adopt during subsequent litigation in this case, should this Settlement not be approved, or in any other case.

(13) The Signatory Parties agree to the admission of all pre-filed testimony, exhibits and any attachments or work papers thereto as competent and substantial evidence supporting Commission approval of this Settlement.

(14) The acceptance by the Commission of this Settlement shall not be deemed, nor shall it constitute in any respect, a determination by the Commission as to the merits of any of the contentions or allegations which might be made by any of the Signatory Parties in the absence of the Settlement.

(15) If the Commission does not approve this Settlement, and notwithstanding its provision that it shall become void, neither this Settlement, nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any signatory have for a decision in this matter. The Signatory Parties shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval.

(16) Each Signatory Party waives its right to appeal to the Commission a Proposed Order of the Public Utility Law Judge accepting this Settlement in its entirety.

(17) The Signatory Parties agree that the Joint Application, as amended and supplemented by this Settlement, is consistent with the public interest, convenience and necessity. This Settlement resolves with prejudice all issues raised by the Signatory Parties and precludes the Signatory Parties from asserting contrary positions in derogation of this Settlement with respect to any issue addressed herein during this proceeding or any

subsequent litigation which may result from this proceeding. The Signatory Parties shall support this Settlement and make reasonable and good faith efforts to obtain approval of the Settlement by the Commission or any courts.

(18) This Settlement is expressly conditioned upon the Commission's acceptance of all of its terms, without change or condition. If the Commission does not approve the settlement in its entirety, without change or condition, each Signatory Party shall have the option to withdraw from the Settlement within 30 days of the Commission decision, by providing written notice to the other Signatory Parties.

(19) The consummation and closing of the transaction described in the APA constitutes a condition precedent to the Settlement. Once the transaction has been consummated and closed, this Settlement and its terms as approved by the Commission shall be implemented and enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission approval of this Settlement unless such implementation and enforcement is stayed or enjoined by any regulatory agency or court having competent jurisdiction over the matter.

(20) The Signatory Parties acknowledge that the Settlement reflects a compromise of competing positions in order to resolve outstanding issues in a fair, just and reasonable manner, and does not necessarily reflect any Signatory Party's position with respect to any issue raised in this proceeding.

(21) The discussions which produced this Settlement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential and are not to be used in any manner in connection

with this proceeding or otherwise.

(22) The Signatory Parties agree that this Settlement resolves all of the issues and concerns raised by the Signatory Parties hereto related to the Joint Application. The Signatory Parties respectfully urge the Commission to approve the Joint Application as amended and pursuant to the conditions described herein.

(23) The Signatory Parties agree that this Settlement shall be without prejudice to any position any Signatory Party make take, in any other proceeding, except to the extent required to implement the explicit terms of this Settlement.

(24) The Signatory Parties may execute this Settlement in separate counterparts, each of which, when so executed and delivered, shall constitute an original, but all of which together shall constitute one and the same instrument.

WHEREFORE, in consideration of the above, the Signatory Parties have executed this Settlement and respectfully request that the Commission: (1) approve this Settlement, including all terms and conditions contained herein without modification; (2) find that the Joint Application as amended and modified herein is consistent with the public interest, convenience and necessity; and (3) approve the proposed gas service tariff and resulting rates for Newco attached hereto as Exhibit 1.

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Dated as of April 9, 2013

Respectfully submitted,

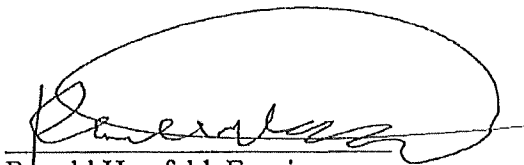


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Commission



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**NEWCO**

**RULES AND REGULATIONS**

**GOVERNING THE DISTRIBUTION**

**AND SALE OF GAS**

**OF**

**NEWCO**

**IN**

**WORCESTER COUNTY, MARYLAND**

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Issue Date:  
Effective Date: For Service Rendered on and after  
Authorization:

NEWCO

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## RULES AND REGULATIONS

### SECTION I – GENERAL

#### 1.1 FILING AND POSTING

A copy of this Tariff, which is the rates, rules and regulations under which gas service will be supplied by NEWCO to its Customers, is on file with the Public Service Commission of Maryland, and is posted and open for inspection at the offices of the Company. The Tariff is supplementary to the "Regulations Governing Service Supplied by Gas Corporations" of this Commission.

#### 1.2 REVISIONS

This Tariff may be revised, amended, supplemented and otherwise changed from time to time in accordance with the Public Service Commission Law of Maryland, and such changes, when effective, shall have the same force and effect as the present Tariff.

#### 1.3 APPLICATION OF TARIFF

The Tariff provisions apply to any party or parties lawfully receiving gas service from the Company or to its successors and assigns, under the rates set forth therein, and the receipt of gas shall constitute the receiver a Customer of the Company as the term is used herein.

#### 1.4 RULES AND REGULATIONS

The Rules and Regulations, filed as a part of this Tariff, are a part of every contract or agreement for service, whether written, oral or implied, made by the Company, and governs all classes of service where applicable. Subject to the approval of the Commission, the Company shall have the right to interpret and determine the applicability of such rules and regulations.

#### 1.5 STATEMENT OF AGENTS

No agent or employee of the Company has authority to make any promise, agreement or representation inconsistent with the provisions of this Tariff.

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**RULES AND REGULATIONS**  
**SECTION II - CURTAILMENT**

2.1 GENERAL

In the event that the Company determines that there is insufficient gas supply to meet the demands of Customers on its distribution system, the Company may, at its sole discretion, curtail service to Customers. Curtailments will be made to maintain supply to its firm sales customers in the priorities set forth below. When curtailment is necessary, sufficient gas will be available to maintain a temperature which will keep the building pipes from freezing and other plant protection use, if possible. Prior to, or in conjunction with curtailment the Company may call for voluntary usage reductions on the part of all customers.

2.2 DEFINITIONS

*Essential Human Needs:* Includes residences, apartments, hotels, motels, dormitories, hospitals, nursing homes, police and other institutions essential to the public welfare.

*Plant protection use:* Minimum volumes of natural gas required to prevent physical harm to the plant facilities' processes or danger to plant personnel when such protection cannot be afforded through the use of an alternative fuel. Plant protection requirements include volumes necessary for the protection of such material in process as would otherwise be destroyed, but does not include deliveries required to maintain production.

2.3 CURTAILMENT PRIORITIES

Curtailment to the extent necessary as determined by the Company, up to and including complete curtailment shall be done in accordance with the following list of priorities, starting with the lowest priority, Priority 5.

Priority 1: Essential human needs customers.

Priority 2: All other customers other than priority 1 customers will be curtailed to the extent necessary as determined by the Company.

Priority 3: Commercial customers using above 4,000 Ccf per year.

Priority 4: Commercial customers using above 15,000 Ccf per year.

Priority 5: Commercial customers using above 100,000 Ccf per year.

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**RULES AND REGULATIONS**

**SECTION II**

(Continued)

**2.4 CURTAILMENT OF CUSTOMER-OWNED GAS**

If adequate supply to priority essential human needs customers is threatened in the Company's judgment, Customer-owned gas may be curtailed in addition to system supply and in the same order of priorities. In the event that Customer-owned gas is diverted for use by essential human needs customers, the Company will reimburse the Customer by paying an amount equal to the purchase price paid by Customer for the Customer-owned gas plus the positive difference, if any, between the purchase price paid by Customer for such Customer-owned gas and the purchase price paid by Customer for Customer's alternative fuel on an equivalent basis. In the event Customer has no alternative fuel, the Company's payment to Customer is limited to the purchase price paid by Customer for the quantity of Customer-owned gas so diverted. In lieu of this provision, the Company may enter into contractual or informal arrangements with Transportation Customers or any other parties to obtain supplies to avoid such curtailments.

**2.5 LIABILITY**

The Company shall not be liable for any damages, loss of product, or other business losses suffered by Customers as a result of curtailed gas service. The Company shall not be liable for curtailment as a result of any action by any governmental agency with jurisdiction to regulate, allocate, or control gas supplies or the rendition of service and regardless of any defect in such law, regulation, or order.

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**RULES AND REGULATIONS**

**SECTION II**

(Continued)

**2.6 ADDITIONAL LOADS**

In the event that additional gas supply becomes limited for any reason, the Company reserves the right to defer supplying gas for new loads in such manner as to cause the least hardship to present or prospective customers, taking into consideration the volume of gas available and the capacities of local mains and facilities. In each of the listed classes, present customers will be allowed to increase loads before new customers will be allowed to begin service.

During any period when gas supply is expected to be limited the Company will maintain a Register of New Loads applied for, but not already being served by the Company, in order to assist the Company in forecasting peak demands for its service, and to afford a basis of priority in supplying additional loads to existing as well as to new or prospective customers.

During any period of restricted gas supply the Company will not supply gas for any equipment unless application for such load was registered with the Company prior to the connection of such equipment, and approval thereof was given by the Company.

The priority in which additional loads will be accepted is:

	<u>DESCRIPTION</u>	<u>TYPE</u>
(1)	Non-space heating load Peak day less than 1,000 cu. ft.	Residential
(2)	Non-space heating load Peak day less than 1,000 cu. ft.	Commercial
(3)	Space heating load Peak day less than 2,000 cu. ft.	Residential Commercial
(4)	Dwelling Units - Home or Apartments Individually Billed Not to exceed 25 units at one location.	Residential
(5)	Dwelling Units - Home or Apartments Master Metered Not to exceed 25 units at one location	Commercial

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**RULES AND REGULATIONS**

**SECTION II**

(Continued)

2.6 ADDITIONAL LOADS (continued)

	<u>DESCRIPTION</u>	<u>TYPE</u>
(6)	Non-space heating load Peak day not to exceed 10,000 cu ft	Commercial
(7)	Space Heating Load Peak day less than 10,000 cu. ft.	Commercial
(8)	Same as (4) above except in increments of 26 to 100 units at one location.	
(9)	Same as (5) above except in increments of 26 to 100 units at one location.	
(10)	Same as (4) above except in increments of over 100 units at one location.	
(11)	Same as (5) above except in increments of over 100 units at one location.	
(12)	All other commercial loads.	

Company reserves the right to establish priority of loads in accordance with volume within each category above.

Company reserves the right to allocate gas to various priority categories listed above based on estimated gas sales and gas supply and to make adjustments as actual figures vary from the estimate.

When anticipated gas supplies are not sufficient to service all new loads applied for in one of the above categories, priority will be given in the order in which application was registered with the Company, provided the new load is connected within a reasonable time after notice from the Company that it may be served.

When the evidence available to the Company reasonably indicates that a customer has connected additional load without registering same or in violation of the Company's notice that it may not be connected, the Company will discontinue all service to such customer, upon ten days written notice, until such additional load has been disconnected.

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Issue Date:

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**RULES AND REGULATIONS**  
**SECTION III - APPLICATION FOR SERVICE**

**3.1 APPLICATION**

Application for gas service may be made through the local office of the Company or authorized agent with positive picture identification. At the option of the Office Manager and in unusual circumstances a written letter of application may be accepted.

**3.2 RIGHT TO REJECT**

The Company may place limitations on the amount or character of service it will supply, or may reject applications for any of the following reasons:

- a) Until the Customer complied with the state and municipal regulations governing gas service.
- b) If the Company does not have adequate facilities to render the service desired.
- c) If such service is of a character that it is likely to affect unfavorably service to other Customers.
- d) If in the judgment of the Company, the applicant's installation of piping or gas equipment is hazardous, or of such a character that satisfactory service cannot be rendered.
- e) If an extension of street main, except as set forth under Section VIII - Extensions, is required to furnish such service.
- f) When it is necessary to conserve the supply of gas (See Section II - 2.3 Curtailment Priorities and 2.6 Additional Loads.)
- g) Customer's failure to provide a deposit to insure payment of bills, where requested by the Company under the provisions of Section 6.2.
- h) Customer's failure to make such payment as may be required under Section VIII as a condition of extension of supply facilities.

**3.3 ACCEPTANCE**

Acceptance of service by the Customer shall constitute an agreement to accept service under these Rules and Regulations, as amended from time to time, the Orders or Rules of the Public Service Commission of Maryland, the Laws of the State of Maryland, and the Laws of the United States of America.

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Issue Date:

Effective Date: For Service Rendered on and after

Authorization:

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**RULES AND REGULATIONS**

**SECTION III**  
(Continued)

**3.4 UNAUTHORIZED USE**

The use of service obtained from the Company without authority may be terminated by the Company without notice. The use of service without notifying the Company and enabling it to read its meter, will render the user liable for any amount due for service supplied to the premises from the time of the last reading of the meter, immediately preceding his occupancy, as shown by the books of the Company.

**3.5 CHARACTER OF GAS**

The natural gas to be served will be natural gas with a specific gravity of approximately .6, and a minimum BTU value per cubic feet of 1,000 or such other gas as may be approved by the Public Service Commission. The Company shall have the right to supply stand-by or peak shave gas of similar characteristics when necessary.

The propane gas to be served will be propane with a specific gravity of approximately 1.52, and a minimum BTU value per cubic feet of 2,500 or such other gas as may be approved by the Public Service Commission.

**3.6 RETURNED CHECKS**

Checks given in payment for gas service, Customer deposits, or reconnection charges which are returned unpaid by the Customer's bank will result in an additional charge of twenty dollars (\$20) per check, per occurrence, and will be charged against the Customer's account. Proper notice of the returned check and the charge will be mailed by first class mail or hand delivered to the Customer by the Company. The Company will make contact with the Customer for full payment or discontinuance of service. After the second returned check the Company reserves the right to notify the Customer that it will no longer accept a personal check from this Customer.

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Issue Date:

Effective Date: For Service Rendered on and after

Authorization:

**RULES AND REGULATIONS**  
**SECTION IV – CUSTOMER'S INSTALLATIONS**

**4.1 INFORMATION FROM CUSTOMER**

Anyone desiring to equip his premises for the use of gas shall communicate with the Company personally, or through his contractor or agent, giving the exact location of the premises and details of all gas consuming equipment to be installed.

**4.2 POINT OF CONNECTION**

The Company will designate the point where the Customer would be required to terminate his piping for connection to the lines of the Company. The furnishing of such information does not constitute an agreement, or obligation, on the part of the Company to render service.

**4.3 METER SPACE**

The Customer shall provide, free of expense to the Company, a space satisfactory to the Company for meters, regulators or other equipment of the Company which may be necessary for the rendering of adequate service, the Company reserving the right to establish standards as to the location of such space in accordance with pressure conditions, volumes and other pertinent factors.

**4.4 METER LOCATION**

The Company shall have the right to determine the location of its meters, which must be placed where they will be easily accessible, and the Customer or Owner of building shall provide and at all times maintain free of expense to the Company proper space for the Company's meters. Likewise, the Customer is warned not to permit materials of any character to be piled up or heaped around the meter location. The Customer shall reimburse the Company for the loss of, or any damage to its meters and meter connections, or other property of the Company while located on the Customer's premises, arising out of or caused by Customer's negligence, carelessness, or that of his servants, agents, employees, members of his household, or any person upon his premises under or by authority of his consent or sufferance.

**4.5 METER CONNECTIONS**

The Company will own, furnish and maintain the meter, regulator and meter connection required to measure the gas supplied to Customer, and will supply gas only through a meter furnished and owned by it. The Company must be notified when Customer desires to have meter installed, changed or removed.

**4.6 TEMPORARY SERVICE**

The Customer shall pay the cost for all material, labor and all other necessary expense incurred by the Company in supplying gas service to the Customer for any temporary purpose or use, and shall pay the cost of removing material after service is discontinued, in addition to the regular payments for gas used. The Company will credit the Customer with the reasonable salvage value of any material recovered.

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Issue Date:

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Authorization:

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## RULES AND REGULATIONS

### SECTION IV (Continued)

#### 4.7 SERVICE LINES

The Company will install and maintain at its expense, the service line to the point of connection designated by the Company. (See 8.1 Service Connections).

#### 4.8 ADDITIONAL SERVICE LINES

No additional tap or service lines shall be made or meter set for gas service to a garage, or other building on any lot where there already exists a service line to the residence or main building of the Customer.

#### 4.9 HOUSE PIPING

Prior to the installation of house piping by the Customer in new or altered premises, inquiry should be made of the Company to determine the requirements, sizes of pipe, quality and other specifications.

#### 4.10 INTERFERENCE WITH FACILITIES

The Customer shall not open, tamper or interfere with, in any manner, his service line or house piping, or with any regulators or safety appliances installed in connection with service to him, irrespective of ownership thereof.

#### 4.11 RESPONSIBILITY OF CUSTOMER

The Company's ownership and responsibility terminates at the meter outlet. Customer is warned of the risk of damage to property and the possibility of fire or personal injury resulting from improper house piping and manner of attachment or use and maintenance of gas appliances, fixtures, and apparatus, and is advised to permit no one except experienced and capable fitters to install or to make any change, alteration, addition or repair to any part of Customer's installation. The Company will not be liable for any injury or damage caused by reason of defects in any portion thereof.

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Issue Date:  
Effective Date: For Service Rendered on and after  
Authorization:

**RATE SCHEDULE "SIR"  
SYSTEM IMPROVEMENT RATE**

The System Improvement Rate ("SIR") is a volumetric charge per Ccf (100 cubic feet) and applies to the Residential and Commercial rate schedules for the purpose of recovering the cost of bare steel replacement and the cost of distribution system conversion and customer conversions from propane to natural gas. The SIR will be calculated to the nearest tenth of a cent (.1¢) per Ccf. The propane rates are applicable to those customers with meters reading in propane Ccf and the natural gas rates are applicable to those customers with meters reading in natural gas Ccf on an equivalent basis.

Natural Gas Ccf Rates		Propane Ccf Rates	
All Consumption	\$0.452	All Consumption	\$1.084

The SIR cost recovery mechanism will be based on a projected twelve (12) month recovery period of December 1 to November 30. The Company will file the SIR with the Maryland Public Service Commission on an annual basis at least thirty (30) days prior to the December 1 effective date.

**OVERALL METHODOLOGY:**

The costs used in the determination of the SIR shall include the costs associated with: (1) the replacement of bare steel pipeline, as required under a Public Service Commission Consent Order, dated March 5, 2003; (2) the conversion of propane distribution facilities to natural gas distribution facilities; and (3) the conversion of customer-owned behind-the-meter piping and equipment. Conversion costs do not include the cost of converting customer-owned equipment located outside the home. Projected SIR costs will be divided by projected sales for the recovery period to determine an annualized cost per unit. The SIR will include a reconciliation of prior year projected costs with prior year actual costs, and the prior year projected revenues with the prior year actual revenues, to account for the difference between prior year projected customer conversions and prior year actual customer conversions and the difference between the prior year projected average cost of customer conversions and the prior year actual average cost of customer conversions.

For those customers located within the corporate limits of the Town of Ocean City, Maryland, the SIR will include, in addition to the three components listed above, a portion of the cost of line extensions completed in conjunction with the Town's roadway reconstruction efforts and for reasons relating to protection from storm surges. The amount to be included in the SIR shall be that portion of the cost that exceeds the level of new investment warranted by the anticipated revenues from the line extension project, pursuant to the line extension requirements provided in this tariff at Section VIII of the Rules and Regulations. The Ocean City SIR is as follows:

Natural Gas Ccf Rates		Propane Ccf Rates	
All Consumption	\$0.516	All Consumption	\$1.239

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Issue Date: December 1, 2022

Effective Date: For Bills Rendered on and after December 1, 2022

Authorization: Letter Order Dated April 25, 2018 for Case No 9473