

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for rate increase  
by Florida Division of  
Chesapeake Utilities  
Corporation.

DOCKET NO. 000108-GU  
ORDER NO. PSC-00-1874-PCO-GU  
ISSUED: October 13, 2000

ORDER DENYING MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

**BACKGROUND**

On May 15, 2000, the Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) satisfied the minimum filing requirements (MFRs) in this docket. Chesapeake seeks an annual rate increase of \$1,826,569. As of this date, no person has requested to intervene in the docket. The final hearing is set for October 16, 2000.

On September 8, 2000, Chesapeake filed a Motion for Leave to File Supplemental Direct Testimony. The Company states that it recently became aware of an error in its rate filing. Chesapeake states that it improperly recognized an interest synchronization adjustment of \$217,321, thus increasing the revenue deficiency by \$364,752. The Company does not seek to increase the amount of its requested \$1,826,569 annual increase, but asks that any other adjustment to its proposed revenue increase be offset up to the amount of the revenue requirement associated with the interest synchronization correction.

On September 26, 2000, the Company filed a second Motion for Leave to file Supplemental Direct Testimony. Chesapeake states that it recently became aware that its forecast for therm usage of and revenues associated with certain large volume industrial customers is no longer reasonable because of changed circumstances in such customers' business operations. The Company indicates that it has learned that Agrifos, a phosphate mining and processing operation, will shut down its operations and cease receiving gas from the Company by the end of the year. In addition, the Company states it has been notified that SunPac International, a citrus processor, will bypass the Company's distribution system after the current processing season in May 2001. Further, the Company has identified errors in its projected test year therm sales for two other large volume industrial customers. Finally, the Company seeks the

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opportunity to respond to a recent staff audit analysis of the Company's large volume customers.

In addition, on October 6, 2000, the Company filed a Request for Official Recognition of certain Commission Orders:

1. Order No. 11162, issued September 13, 1982, and Consummating Order No. 11293, issued November 1, 1982, in Docket No. 820364-GU, Petition Of City Gas Company for an Increase in Rates and Charges.

2. Order No. PSC-95-0219-PCO-GU, issued February 16, 1995, and Order No. PSC-95-0301-PCO-GU, issued March 2, 1995, in Docket No. 940620-GU, Application for a Rate Increase by Florida Public Utilities Company.

On October 10, 2000, Chesapeake filed a Second Request for Official Recognition. Chesapeake presents for consideration:

1. Order No. 94-1456-PCO-GU, issued November 29, 1994, and Order No. 94-1570-FOF-GU, issued December 19, 1994, in Docket No. 940276-GU, Application for a Rate Increase by City Gas Company.

2. Order No. PSC-95-0518-FOF-GU, issued April 26, 1995, in Docket No. 940620-GU, Application for a Rate Increase by Florida Public Utilities Company.

3. Document No. 11586-94 and pages 193-94 and 317 of the November 29, 1994, hearing transcript, as filed in Docket No. 940276-GU.

4. Documents Nos. 01475-95 filed February 8, 1995, and 02197-95, filed February 24, 1995, in Docket No. 940620-GU, Application for a Rate Increase by Florida Public Utilities Company.

Each of these documents was considered in rendering this decision.

#### **ANALYSIS and RULINGS**

In addition to the Orders and other materials offered by Chesapeake, the Commission has considered utility-offered revisions to requests for rate relief as filed in at least two other instances.

In Docket No. 870239-WS, Application of General Development Utilities, Inc., Silver Springs Shores Division, for increased water and sewer rates in Marion County, the Commission ultimately continued a hearing after an error in the MFRs which materially increased the requested revenue requirement was discovered by staff and the utility filed testimony correcting the error, rather than amending its MFRs. One Commissioner suggested that the "8 month clock" start over as of the date the direct testimony was filed. By Order No. 18335, issued October 22, 1987, in Docket No. 870239-WS, the Commission held that "we find it appropriate to continue the hearing until the utility has corrected the procedural problems discussed herein and has taken whatever steps are necessary to reconcile its MFRs with its testimony."

By Order No. 23123, issued June 26, 1990, in Docket No. 891114-WS (Application of Sailfish Point Utility Corporation for rate increase in Martin County), the Commission dismissed the application for a rate increase and required a refund of the interim increase. In that case as in this docket, the testimony offered by the utility was inconsistent with the MFRs filed by the utility. As the Commission stated in that Order: "In other words, Sailfish Point basically filed a new rate case when it filed its testimony." Order No. 23123 at page 6.

The MFRs are required to be publicly available at its official headquarters and notice of their availability provided to the utility's customers by Rule 25-22.0406, Florida Administrative Code. Based on the availability of that information, persons whose substantial interests are affected may decide to question the utilities filing. While Chesapeake does not seek to directly increase the amount of its requested rate increase, its request to "offset" any other adjustments with the adjustments reflected in its supplemental testimony does indirectly what it cannot do directly. That is, it cannot amend the MFRs without restarting the time periods prescribed by Section 366.06, Florida Statutes. I find that permitting this supplemental testimony would not provide adequate notice to the utility's customers. This is particularly true given the potential impact of the recalculation of the rates charged to other rate classes given the anticipated loss of the large industrial customers.

The documents which are listed in Chesapeake's Requests for Official Recognition are addressed in the following three paragraphs.

As to the materials offered concerning Docket No. 940620-GU, Application for a Rate Increase by Florida Public Utilities Company (FPUC), both Orders Granting Leave to file Supplemental Testimony found "that permitting FPUC to file supplemental testimony on the **limited subject areas described above would be fair** and will permit an orderly examination of FPUC's rate case" (emphasis added). Based on the information provided, I do not find that to be the case in this docket.

The Commission's action in Order No. 11162, issued September 13, 1982, in Docket No. 820364-GU, Petition Of City Gas Company for an Increase in Rates and Charges is fundamentally distinguishable from the instant case. The Commission's decision was issued as proposed agency action, with the opportunity for persons whose substantial interests are affected to request a hearing. No meaningful opportunity to do the same is present in the instant docket.

As to the decision to allow supplemental testimony in Docket No. 940276-GU, Application for a Rate Increase by City Gas Company, I note that according to the supplemental testimony of Rand Smith at page 18, the net effect of the company's proposed revisions "(t)aking into account the impact on rate base, revenues, and operating expenses, and holding all other considerations constant, the impact is to reduce the Company's revenue requirement by \$1.097 million." That is very different from the instant proposal, where other Chesapeake customers could see significant increases as a result of the proposed changes.

For the foregoing reasons, I find that Chesapeake's Motions for Leave to file Supplemental Testimony should be denied.

It should be noted that the Company may have other options to address the possible changes in its business. First, it may seek a continuance of the hearing, request leave to amend its MFRs (which will restart the "8 month clock"), and provide appropriate notice to its customers. Second, it could request a limited proceeding, pursuant to Section 366.075, Florida Statutes to present these possible changes for subsequent consideration.

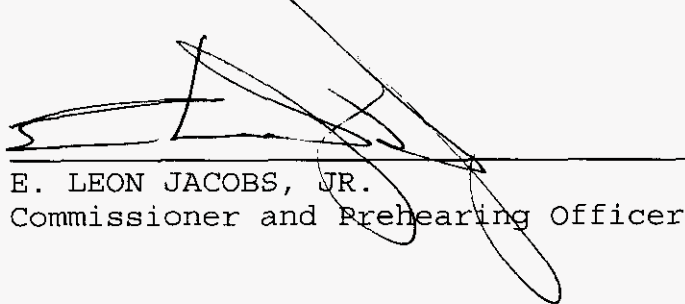
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Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the Motion for Leave to File Supplemental Direct Testimony filed September 8, 2000, by the Florida Division of Chesapeake Utilities Corporation is denied. It is further

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the Motion for Leave to File Supplemental Direct Testimony filed September 26, 2000, by the Florida Division of Chesapeake Utilities Corporation is denied.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 13th day of October, 2000.



E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.