

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for authorization to maintain accounting records outside of the State of Florida, pursuant to Rule 25-7.015(1), F.A.C., and Rule 25-7.015(2), F.A.C., by Florida Division of Chesapeake Utilities Corporation.

DOCKET NO. 050926-GU  
ORDER NO. PSC-06-0335-PAA-GU  
ISSUED: April 24, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING REQUEST TO KEEP RECORDS OUT OF STATE  
AND FINAL ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action regarding the records being kept out of state is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Chesapeake's Request

On December 21, 2005, pursuant to Rule 25-7.015, Florida Administrative Code, Chesapeake Utilities Corporation (Chesapeake or company) filed a request for authorization to maintain various accounting records at its corporate office located in Dover, Delaware, rather than at the company's Florida Division office in the State of Florida. We have jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes.

Rule 25-7.015(1), Florida Administrative Code, states "all records that a utility is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the utility within the state, unless otherwise authorized by the Commission." In its request, Chesapeake states that:

The Company is centralizing its accounting functions to reduce the cost of complying with the Sarbanes-Oxley Act. Centralization of accounting records

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reduces accounting and auditing costs and will also decrease the cost of the external audit by outside auditors.

Chesapeake estimated that the annual cost savings of moving its records to Dover, Delaware is \$71,770. This cost represents a portion of the external audit fees incurred by Chesapeake for the 2004 audit by PricewaterhouseCoopers. While our staff has not verified this estimate, we agree that, in principle, centralization of records should result in reduced audit fees by reducing the need for the company's external auditors to visit the Winter Haven office to review invoices and other accounting records.

Section 366.05(11), Florida Statutes, states that the "commission has the authority to assess a public utility for reasonable travel costs associated with reviewing the records of the public utility and its affiliates when such records are kept out of state." Rule 25-7.015(2), Florida Administrative Code, further defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business." Subsection 366.05(11)(a), Florida Statutes, also states that the "utility shall remit reimbursement for out-of-state travel expenses within 30 days from the date the Commission mails the invoice." Chesapeake's request confirms its awareness of this statute and rule by stating that the company will provide reimbursement for all travel expenses incurred to inspect records or perform out of state audits.

Therefore, we authorize Chesapeake to keep its records out-of-state. We believe that the centralization of the records will result in improved efficiency and cost savings. Because our rule requires the utility to reimburse the Commission for reasonable travel costs associated with reviewing the records kept out of state, we will not be substantially affected by this change.

#### No Show Cause Proceeding Initiated

On December 21, 2005, Chesapeake filed a request to maintain its accounting records out of state. In response to a Staff Data Request on the matter, our staff was informed that Chesapeake moved relevant records regarding accounts payable and other accounting records to its Delaware office without first seeking permission as required by Rule 25-7.015(1), Florida Administrative Code.

Chesapeake's failure to obtain our approval prior to moving its records out of state is in apparent violation of Rule 25-7.015(1), Florida Administrative Code. Rule 25-7.015(1), Florida Administrative Code, provides that:

[a]ll records that a utility is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the utility within the state, unless otherwise authorized by the Commission. Such records shall be open for inspection by the Commission or its authorized representatives at any and all reasonable times.

Section 366.095, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes. Each day that such refusal or violation continues shall constitute a separate offense. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although regulated utilities are charged with knowledge of Chapter 366, Florida Statutes, and of Commission rules, we find that in this circumstance, the apparent violation of Rule 25-7.015(1), Florida Administrative Code, does not rise to the level of warranting the initiation of a show cause proceeding. Rule 25-7.015(1), Florida Administrative Code, was enacted to ensure that accounting records would be available to Commission audit staff in carrying out required audits of regulated companies. In this instance, our staff did not have difficulty accessing any records.

Upon inquiry as to why Chesapeake failed to seek Commission approval prior to moving its accounting records out of state, Chesapeake responded that it was centralizing its accounting functions to reduce the cost of complying with the Sarbanes-Oxley Act. Chesapeake asserts that centralization of its accounting records will reduce accounting and auditing costs and will also decrease the cost of the external audit by outside auditors.

According to Chesapeake, Section 404 of the Sarbanes-Oxley Act requires all financial reports to include an internal control report. This section has added additional audit functions at all publicly traded companies. Chesapeake began a series of "404 audits" last spring. In an effort to offset some of the additional audit costs, Chesapeake moved certain accounting records from Florida to Delaware to consolidate its accounting records. This action simplified the audit process in that the auditors did not need to audit the internal controls in Delaware as well as in Florida. At the time that Chesapeake moved the records to facilitate the "404 audits," it did not consider Commission rules regarding the location of the records. Once Chesapeake recognized the error in moving its records to Delaware prior to obtaining Commission approval, it sought to comply with the requirements of Rule 25-7.015(1), Florida Administrative Code, by filing this petition.

In its petition, Chesapeake assures the Commission that it will comply with the requirements of Rule 25-7.015(2), Florida Administrative Code. Rule 25-7.015(2), Florida Administrative Code, states in pertinent part:

[a]ny utility that keeps its records outside of the state shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the utility or its affiliates.

Chesapeake must be mindful of its legal responsibilities under Chapter 366, Florida Statutes, and of the rules of this Commission. Rule 25-7.015(1), Florida Administrative Code, expressly required Chesapeake to obtain Commission approval prior to moving its records out of state, not promptly thereafter. However, when Chesapeake recognized the error it filed this petition. Chesapeake was attempting to minimize the cost of the accounting requirements for the Sarbanes-Oxley Act. This action is beneficial to the company as well as the rate payers. There has been no denial of access to records or difficulty in obtaining records. Moreover, Chesapeake has moved the records back to Florida pending our decision regarding a permanent move of the records to Delaware. Therefore, we find that a show cause proceeding against Chesapeake for failure to obtain approval prior to taking its records out of state is not warranted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Chesapeake Utilities Corporation's request to keep its records out of state is granted. It is further

ORDERED that Chesapeake Utilities Corporation shall abide by all provisions of Rule 25-7.015, Florida Administrative Code, in conducting its business from Delaware. It is further


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

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

By ORDER of the Florida Public Service Commission this 24th day of April, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
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Kay Flynn, Chief  
Bureau of Records

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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.

As identified in the body of this order, our action approving that the records be kept out of state is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 15, 2006. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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

Any party adversely affected by the Commission's final action not to initiate show cause proceedings may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.