

State of Florida



# Public Service Commission

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

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**DATE:** April 21, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bay6)

**FROM:** Division of Economic Regulation (Lester) *PL*  
Office of the General Counsel (K. Fleming) *KEF* *NAH* *JDJ*

**RE:** Docket No. 041263-GU – Application for authorization to issue common stock, preferred stock and secured and/or unsecured debt, and to enter into agreements for interest rate swap products, and to exceed limitation placed on short-term borrowings in 2005, by Florida Division of Chesapeake Utilities Corporation.

**AGENDA:** 05/03/05 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** The Company requests that this item not be deferred.

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\041263A.RCM.DOC

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### Case Background

On October 29, 2004, Chesapeake Utilities Corporation (Chesapeake or Company) filed an application with the Commission for authority to issue common stock, preferred stock, secured and/or unsecured debt, to enter into agreements for interest rate swap products, and to exceed the limitation placed on short-term borrowings during 2005. The Commission approved Chesapeake's 2005 application by Order No. PSC-04-1184-FOF-GU, issued December 1, 2004. On March 30, 2005, Chesapeake filed an application to modify its existing authority for 2005 to include authorization to issue up to 100,000 shares of common stock for its Directors Stock Compensation Plan and its Employee Stock Award Plan.

DOCUMENT NUMBER-DATE

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### **Discussion of Issues**

**Issue 1:** Should the Commission grant Chesapeake Utilities Corporation's application to modify Order No. PSC-04-1184-FOF-GU, issued December 1, 2004, in order to include authority to issue up to 100,000 shares of common stock for purposes of administering its Directors Stock Compensation Plan and its Employees Stock Award Plan during the twelve months ending December 31, 2005?

**Recommendation:** Yes. The Commission should allow the modification to Order No. PSC-04-1184-FOF-GU, in order to grant Chesapeake the authority to issue up to 100,000 shares of common stock for purposes of administering its Directors Stock Compensation Plan and its Employees Stock Award Plan. This will increase the number of shares of common stock Chesapeake is authorized to issue during 2005 from 6,000,000 to 6,100,000. (Lester, K. Fleming)

**Staff Analysis:** In its petition, Chesapeake is seeking a modification in its authority to issue common stock during the twelve months ending December 31, 2005. Specifically, Chesapeake seeks authority to issue up to 75,000 shares of common stock pursuant to its new Directors Stock Compensation Plan and 25,000 shares of common stock pursuant to its Employee Stock Award Plan. Chesapeake's board of directors approved both plans on December 10, 2004 and the plans will be submitted to shareholders for approval at the Company's annual meeting on May 5, 2005. This will increase the number of shares of common stock Chesapeake is authorized to issue during 2005 from 6,000,000 to 6,100,000.

Chesapeake has completed a review of its existing and proposed equity compensation plans (i) to ensure the Company's adherence to the American Jobs Creation Act of 2004; (ii) to ensure compliance with the Securities and Exchange Commission's new reporting requirements relating to compensation plans; and (iii) to present all equity compensation plans that provide for the issuance of new Chesapeake shares and require shareholder approval, in the Company's 2005 Proxy Statement and Notice Annual Meeting. Staff recommends that the Commission grant Chesapeake's application.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. For monitoring purposes, this docket should remain open until April 28, 2006 to allow the Company to file the required Consummation Report. (K. Fleming)

**Staff Analysis:** For monitoring purposes, this docket should remain open until April 28, 2006 to allow the Company to file the required Consummation Report.