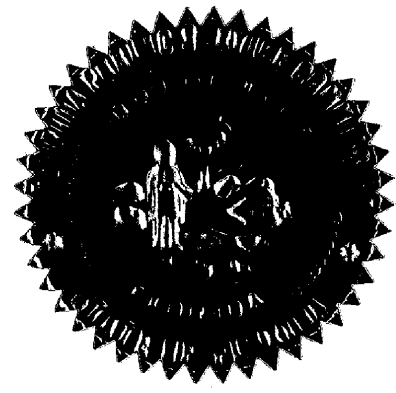


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050835-GU

In the Matter of:

PETITION FOR APPROVAL OF AMENDMENT NO. 2  
TO GAS TRANSPORTATION AGREEMENT  
(SPECIAL CONTRACT), MASTER GAS  
TRANSPORTATION SERVICE TERMINATION  
AGREEMENT, DELIVERY POINT LEASE AGREEMENT  
AND LETTER AGREEMENT: CFG TRANSPORTATION  
AGGREGATION SERVICE BETWEEN FLORIDA  
DIVISION OF CHESAPEAKE UTILITIES  
CORPORATION AND POLK POWER PARTNERS, L.P.



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PROCEEDINGS:           AGENDA CONFERENCE  
                              ITEM NO. 8

BEFORE:                 CHAIRMAN LISA POLAK EDGAR  
                              COMMISSIONER J. TERRY DEASON  
                              COMMISSIONER ISILIO ARRIAGA  
                              COMMISSIONER MATTHEW M. CARTER, II  
                              COMMISSIONER KATRINA J. TEW

DATE:                    Tuesday, February 7, 2006

PLACE:                  Betty Easley Conference Center  
                              Room 148  
                              4075 Esplanade Way  
                              Tallahassee, Florida

REPORTED BY:           LINDA BOLES, RPR, CRR  
                              Official FPSC Reporter  
                              (850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 01302 FEB 15 8

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2                   THOMAS A. GEOFFROY, representing the Florida Division  
3 of Chesapeake Utilities Corporation.

4                   WAYNE SCHIEFELBEIN, ESQUIRE, representing Chesapeake  
5 Utilities Corporation.

6                   CHARLES HILL, DEPUTY, EXECUTIVE DIRECTOR, ROSANNE  
7 GERVASI, ESQUIRE, CATHERINE BEARD and CHERYL BULECZA-BANKS,  
8 representing Commission Staff.

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## P R O C E E D I N G S

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CHAIRMAN EDGAR: That brings us to Item 8.

MS. BEARD: Good morning, Commissioners. Catherine Beard on behalf of staff. Item Number 8 addresses a petition by Chesapeake Utilities Corporation for approval of an amendment to an existing agreement between Chesapeake and Polk Power Partners. Tom Geoffroy and Wayne Schiefelbein are here on behalf of Chesapeake to answer any questions, and staff is available to answer questions as well.

CHAIRMAN EDGAR: Thank you.

Commissioners, questions or discussion?

COMMISSIONER ARRIAGA: Just a question to you, Madam Chair. We have several issues, I think, two issues here. Do you want to take it issue by issue or --

CHAIRMAN EDGAR: Okay. Why don't we do that. Are there questions on Issue 1?

COMMISSIONER DEASON: If there are no questions, I can move staff's recommendation on Issue 1.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor on Item 8, Issue 1, say aye.

(Unanimous affirmative vote.)

CHAIRMAN EDGAR: Okay. That brings us to Issue 2 in Item 8. Are there questions?

COMMISSIONER ARRIAGA: Yes, there are.

1 CHAIRMAN EDGAR: All right. Commissioner Arriaga.

2 COMMISSIONER ARRIAGA: I understand that there was  
3 some kind of violation here. Would you go into the subject  
4 matter, please, and explain it to us.

5 MS. GERVASI: Certainly, Commissioner. This issue  
6 raises a question as to whether the company should be required  
7 to show cause for an apparent violation of both a statute and a  
8 rule that requires the Commission's prior approval before a  
9 company enters into a special contract.

10 We are recommending in this case that the company not  
11 be required to show cause because we believe that the company  
12 took certain actions which mitigate the apparent violation of  
13 the statute and the rule; namely, that the special contract  
14 that you just approved in Issue 1 appeared to the staff to be  
15 in the public interest and in the best interest of Chesapeake's  
16 general body of ratepayers, and also the company included an  
17 unwind provision in the special contract in the event that it  
18 wasn't approved. So we recommended that no show cause  
19 proceeding be initiated for those reasons.

20 COMMISSIONER ARRIAGA: Now you say "apparent  
21 violation." I would ask you, was there or was there not a  
22 violation?

23 MS. GERVASI: It appears to us, yes, sir, that there  
24 was.

25 COMMISSIONER ARRIAGA: There was. Could you explain

1 what the violation was?

2 MS. GERVASI: Yes. Section 366.06(1) requires that a  
3 public utility shall not directly or indirectly charge or  
4 receive any rate not on file with the Commission for the  
5 particular class of service involved, and no changes shall be  
6 made in any schedule. All applications for changes in rates  
7 shall be made to the Commission in writing under rules and  
8 regulations prescribed. This special contract includes a rate  
9 change for which they did not get prior approval or file any  
10 rate schedules prior to implementation. And then the rule  
11 provides further guidance on the matter.

12 COMMISSIONER ARRIAGA: So in laymen's terms this  
13 means that the company changed the rates without our  
14 authorization?

15 MS. GERVASI: Yes, sir.

16 COMMISSIONER ARRIAGA: Is that a minor violation?

17 MS. GERVASI: We look at these violations or apparent  
18 violations on a case-by-case basis. It didn't appear to us  
19 that the amount was material in terms of the revenues or the  
20 rate of return that the utility receives. It would be a major  
21 impact if the company had lost Polk Power Partners as a  
22 transportation customer. So that appeared to be more major to  
23 us than the apparent violation.

24 COMMISSIONER ARRIAGA: Under that kind of reasoning I  
25 could justify practically anything; like, for example, robbing

1 a supermarket because my family is hungry and I don't have the  
2 money to pay for it. Wouldn't you say that?

3 MS. GERVASI: Yes, sir. And you do have the  
4 authority to initiate show cause proceedings if you feel that  
5 it's warranted. That's the reason why we brought it to your  
6 attention. We recommended that it wouldn't be necessary in  
7 this case, but you certainly have the ability to show cause  
8 them.

9 COMMISSIONER ARRIAGA: Has this happened before, in  
10 other words, not with this company specifically, with other  
11 companies, the fact that companies may think that this  
12 Commission is lenient in the application of the law or the  
13 rules, therefore, we can go ahead and violate things because  
14 all we're going to get is a slap on the hand?

15 MS. GERVASI: I don't have the sense that there's  
16 that view. The Commission has fined companies in the past when  
17 it felt that, you know, it was warranted for that to happen.  
18 There have been show cause proceedings and fines issued. It's  
19 always a risk if a company doesn't follow the rules and the  
20 requirements of the Commission.

21 CHAIRMAN EDGAR: Would the company like to speak to  
22 us at this time?

23 Commissioner Carter --

24 MR. SCHIEFELBEIN: Pardon me. Did Commissioner  
25 Carter want to --

1 CHAIRMAN EDGAR: No, please. You have the floor.

2 MR. SCHIEFELBEIN: Thank you. My name is Wayne  
3 Schiefelbein, just for the record, Rose, Sundstrom and Bentley,  
4 representing Chesapeake Utilities Corporation. With me is Tom  
5 Geoffroy. And I know you have a time press here with your goal  
6 of 10, 10:05, so we'll --

7 CHAIRMAN EDGAR: We have time.

8 MR. SCHIEFELBEIN: -- we'll be particularly concise.  
9 But I actually would like to then turn over the mike to  
10 Mr. Geoffroy, who's known to be more concise than I am.

11 CHAIRMAN EDGAR: Mr. Geoffroy.

12 MR. GEOFFREY: Thank you. For the record, my name is  
13 Tom Geoffroy. I'm the assistant vice president for the Florida  
14 Division of Chesapeake Utilities. I appreciate the opportunity  
15 to say a few words.

16 The company takes very seriously its obligations with  
17 this Commission to make sure that it does not implement rates  
18 prior to the Commission's approval. This particular  
19 circumstance was very unique in that we had a special  
20 arrangement, special contract with this customer that's been in  
21 effect for many years. It had an escalator clause in it that  
22 had made it over time become uneconomical for the customer to  
23 continue in that relationship. And unfortunately during the  
24 midst of negotiations which began about 20 months ago, the  
25 major partners of the partnership for Polk Power changed. They

1 sold, the two existing partners sold, both of them sold their  
2 interests to new partners. And all of that put the timing for  
3 this into a little bit of a state of flux.

4           We recognize that, although the Polk Partner Group  
5 negotiated very hard and insisted that they get this rate  
6 effective January 1, 2005; otherwise, they would bypass us.  
7 They have a direct connection with the interstate pipeline,  
8 Florida Gas Transmission, and could easily do so at any time.  
9 And we had no provision in the contract to, to give us any kind  
10 of notice. So one of the provisions that we did negotiate is  
11 now we have an 18-month notice provision before they could  
12 terminate this agreement. That's certainly a benefit not to us  
13 but to all ratepayers of Florida on our system.

14           In addition to that, we put in an unwind clause  
15 because we recognized that we were going to -- by the time  
16 negotiations concluded, that it would be a retroactive  
17 application of this rate. We, therefore, put an unwind clause  
18 in there recognizing that if this Commission chose not to  
19 approve the contract, that we would have the ability to go back  
20 and unwind that and charge this customer the rates that  
21 otherwise would have been applicable to them. And those two  
22 things gave us at least some comfort that, that we had done all  
23 that we could or thought that we could in satisfying the needs  
24 of our largest customer in terms of revenue production.  
25 Certainly they generate well above the cost of service for them



1 and, therefore, they're providing significant benefits to all  
2 ratepayers in our system. And as such we wanted to do  
3 everything possible to make sure that they remained a customer  
4 in our system to continue to provide those benefits to the  
5 other customers.

6 So we understood that, to some degree that we might  
7 be in apparent violation of this, but we tried to balance that  
8 with the, the needs of the customer and the system as a whole.

9 MR. SCHIEFELBEIN: If I might add to that very  
10 quickly, mindful of the time also. As a mitigating  
11 circumstance I would also point out that the company very, very  
12 promptly filed this contract with the Commission after its  
13 execution. I think it was in the neighborhood of seven days.  
14 And so both with the unwind clause, the acknowledgment by all  
15 parties that whatever transaction was being entered into was  
16 ultimately subject to this Commission's authority and the fact  
17 that we promptly filed it, we would respectfully ask that the  
18 Commission refrain from initiating show cause proceedings  
19 against us.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: Madam Chair, in the context of  
22 our time constraints, I just wanted to ask -- my -- the  
23 question I had was because of the statement that you had made  
24 from staff that by our action on Issue 1 that showed that  
25 mitigated the cause. I don't accept that, so that's what I was

1 listening for. What are the mitigating circumstances over and  
2 above that? Because that would be misguided logic, you know.

3 MS. GERVASI: Over and above the --

4 COMMISSIONER CARTER: Do you follow where I'm coming  
5 from?

6 MS. GERVASI: Yes, sir, I think so. Over and above  
7 the fact that we viewed the contract to be in the public  
8 interest, which is why we recommended approval in Issue 1. The  
9 company -- the unwind provision to us was a very significant  
10 factor in our decision not to recommend initiating a show cause  
11 proceeding. The company is, is prepared to issue a credit to  
12 Polk Power Partners for the difference in the rates if you do  
13 not approve the special contract. So that would bring  
14 everything back to the way it was and the way the rates were  
15 prior to the special contract.

16 COMMISSIONER CARTER: Okay. Madam Chair.

17 CHAIRMAN EDGAR: Commissioner Carter.

18 COMMISSIONER CARTER: My only concern was I just  
19 didn't want anyone to have the mistaken impression that because  
20 of our items, our issue -- because of our actions on Issue 1  
21 that was the grounds for mitigation, because, I mean, the  
22 mitigation circumstances have to stand upon themselves.

23 MS. GERVASI: Yes, sir.

24 COMMISSIONER CARTER: So that's what, therefore, gave  
25 me heartburn. And so you're saying because of the immediacy of

1 the contract notification, it was in the best interest of the  
2 public and the fact that it's consistent with our authority  
3 here.

4 MS. GERVASI: Yes, sir.

5 COMMISSIONER CARTER: Okay. That sounds better than  
6 actions on Issue 1 to me.

7 MS. GERVASI: I agree with you. Thank you.

8 COMMISSIONER CARTER: Thank you.

9 CHAIRMAN EDGAR: Commissioner Carter, additional  
10 comfort? Okay.

11 COMMISSIONER CARTER: Thank you.

12 CHAIRMAN EDGAR: Uh-huh.

13 COMMISSIONER ARRIAGA: I have another question.

14 CHAIRMAN EDGAR: Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: I'm going to address you. You  
16 say there were mitigating circumstances, you explained them.  
17 Now you have the opportunity to at least write a letter to this  
18 Commission, to our staff indicating that you were going to do  
19 that due to the emergency circumstances and the benefit of the  
20 public good. Did you do that?

21 MR. SCHIEFELBEIN: No, Commissioner. Go ahead, Tom.

22 MR. GEOFFROY: Yeah. No, we did not do that, and  
23 that was an error on our part. And we certainly recognize that  
24 that would have been the more appropriate thing for us to do.  
25 We did have conversations with the staff during this time,

1 preparing them for the fact that we were negotiating with them.  
2 But we should clearly have done a better job of keeping the  
3 staff informed of the progress that we were making.

4 COMMISSIONER ARRIAGA: And I understand the whole  
5 situation, Madam Chair. And I'm not about, you know, just  
6 prosecuting for the sake of prosecuting. It's just sending out  
7 a very strong message that this Commission has rules and  
8 regulations that need to be followed, and that whatever  
9 circumstances are out there, we need to know about it, our  
10 staff needs to investigate and our authority should not be  
11 questioned. Having said that, I have no, no other comment.

12 CHAIRMAN EDGAR: Staff, am I to understand that there  
13 was what in my mind from what I'm hearing could be considered,  
14 you know, informal notice between the company and this  
15 Commission due to conversations between the company and our  
16 staff?

17 MS. GERVASI: Informal -- I'm not sure I understand.  
18 I'm sorry.

19 CHAIRMAN EDGAR: Well, I think I understood  
20 Mr. Geoffroy to say that there was no formal written  
21 notification given to this agency about the circumstances that  
22 they were in and their actions that they were taking, but there  
23 were some discussions with staff. And I guess that's what I  
24 was thinking in my mind, a kind of informal versus formal.

25 MS. GERVASI: I see. We became aware of the special

1 contract when they filed the petition for it, and then we  
2 entered into our informal discussions and data requests with  
3 the company after the docket was filed. We were not aware of  
4 it before the docket was filed or before they filed the  
5 petition.

6 MR. SCHIEFELBEIN: If I might briefly interject.  
7 Thank you.

8 CHAIRMAN EDGAR: Yes, sir.

9 MR. SCHIEFELBEIN: Mr. Geoffrey's contact would have  
10 been with technical staff in advance of the -- and I think  
11 there's been a retirement in that, that division unfortunately.  
12 But -- and we're certainly not trying to tout that as being the  
13 ideal course of conduct for us to have taken. But that --  
14 there was that informal -- I don't know if I'd call it a  
15 notice, but the information sharing going on with technical  
16 staff and --

17 MS. GERVASI: In which case, if I may rephrase, the  
18 current -- the technical staff that was on the docket is not,  
19 was not aware of any of those conversations. They may have  
20 taken place. We did have a retirement.

21 CHAIRMAN EDGAR: We had some staff changes and that  
22 may have been a, may have been a contributing factor to some of  
23 the confusion perhaps.

24 MS. GERVASI: Yes, ma'am.

25 MR. HILL: Madam Chairman, if I may. Just to sort of

1 --

2 CHAIRMAN EDGAR: Mr. Hill.

3 MR. HILL: Thank you. Just to sort of broaden it,  
4 not in this specific industry, but the reason that I was  
5 comfortable with it was the unwind clause -- well, I know it  
6 differently in a different industry. In water and wastewater,  
7 for years a sale would take place of a small utility contingent  
8 upon Commission approval. Now the statute says you can't sell  
9 anything without prior approval, and the sale was always worded  
10 such that it was contingent upon Commission approval. And so  
11 when I read it, I found this to be very similar to that, given  
12 that it had the unwind clause. That's what gave me comfort was  
13 that it was very similar to what this agency has done for many  
14 years in another industry.

15 COMMISSIONER DEASON: Madam Chairman, if there are no  
16 further questions, I'm prepared to make a motion.

17 CHAIRMAN EDGAR: Commissioner Deason, please.

18 COMMISSIONER DEASON: I would move that the  
19 Commission recognize the unique circumstances in this  
20 particular case, and the fact that this change was motivated by  
21 protecting the general body of ratepayers, and that sometimes  
22 these negotiations find themselves in a time sensitive manner.  
23 So I would move that we approve staff's recommendation in this  
24 particular case.

25 CHAIRMAN EDGAR: We have a motion. Do we have a

1 second?

2 COMMISSIONER TEW: May I just ask one more question  
3 of staff?

4 CHAIRMAN EDGAR: Commissioner Tew.

5 COMMISSIONER TEW: I may be speaking out of turn, but  
6 I just wanted to ask, is this the first time this utility has  
7 ever had an apparent violation of this provision or any other  
8 statutory provision in 366?

9 MS. BANKS: Yes, ma'am. As far as I'm aware, this is  
10 the first.

11 COMMISSIONER TEW: Then I can second the motion.

12 CHAIRMAN EDGAR: Okay. We have a motion and a second  
13 for the staff recommendation in light of recognition of  
14 extenuating circumstances. All in favor, say aye.

15 COMMISSIONER DEASON: Aye.

16 COMMISSIONER TEW: Aye.

17 CHAIRMAN EDGAR:.. Aye.

18 Opposed?

19 COMMISSIONER CARTER: Nay.

20 COMMISSIONER ARRIAGA: Nay.

21 CHAIRMAN EDGAR: Show Item 8, Issue 2, approved 3 to  
22 2.

23 And that brings us to Item 3 on Issue 8. Do I have a  
24 motion?

25 COMMISSIONER DEASON: Move staff.

1 MS. GERVASI: Madam Chairman, if I may.

2 CHAIRMAN EDGAR: Oh, staff.

3 MS. GERVASI: If we could just get a ruling on Issue  
4 3, the close docket issue for Chesapeake.

5 CHAIRMAN EDGAR: Yes. Yes. I believe we have a --

6 COMMISSIONER DEASON: Move staff on Issue 3.

7 CHAIRMAN EDGAR: Okay. Do we have a second?

8 COMMISSIONER TEW: Second.

9 CHAIRMAN EDGAR: Motion and a second. All in favor,  
10 say aye.

11 (Unanimous affirmative vote.)

12 Opposed? Show Item 3 approved unanimously.

13 (Agenda Item 8 concluded.)

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1 STATE OF FLORIDA        )  
                                  :  
2 COUNTY OF LEON         )                    CERTIFICATE OF REPORTER

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4                    I, LINDA BOLES, RPR, CRR, Official Commission  
Reporter, do hereby certify that the foregoing proceeding was  
5 heard at the time and place herein stated.


6                    IT IS FURTHER CERTIFIED that I stenographically  
reported the said proceedings; that the same has been  
7 transcribed under my direct supervision; and that this  
transcript constitutes a true transcription of my notes of said  
8 proceedings.

9                    I FURTHER CERTIFY that I am not a relative, employee,  
attorney or counsel of any of the parties, nor am I a relative  
10 or employee of any of the parties' attorneys or counsel  
connected with the action, nor am I financially interested in  
11 the action.

12                    DATED THIS 15<sup>th</sup> DAY OF FEBRUARY, 2006.

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\_\_\_\_\_  
LINDA BOLES, RPR, CRR  
15 FPSC Official Commission Reporter  
16 (850) 413-6734

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