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July 26, 2011

**HAND DELIVERY**

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 110133-GU - **Petition for approval of acquisition adjustment and recovery of regulatory assets, and request for consolidation of regulatory filings and records of Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation.**

Dear Ms. Cole:

Attached for filing, please find the original and five (5) copies of Florida Public Utilities Company's and the Florida Division of Chesapeake Utilities Corporation's Responses to Staff's Second Data Requests in the above-referenced Docket. Also enclosed, please find a CD containing a responsive attachment in native, Excel format.

Thank you for your assistance with this filing. If you have any questions, please do not hesitate to contact me.

Sincerely,

Beth Keating

Beth Keating
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ECR 1+CD containing responses also fwd.
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RAD ____ cc: Patricia Christensen, Esquire (Office of Public Counsel)
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**FLORIDA PUBLIC UTILITIES COMPANY AND**
**FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION**
**RESPONSES TO**
**STAFF'S SECOND DATA REQUEST**
**DOCKET NO. 110133-GU**

1. Please provide the details showing the calculation of the Net Operating Income Multiplier (1.61970) located on Page 2 of 2 of Exhibit TAG-2.

   **Response:** See Attachment 1, which comes from the FPUC Natural Gas Rate Case, Order No. PSC-09-0375-PAA-GU, Page 46. This attachment reflects the calculation of the NOIM as set forth in TAG-2.

2. Should the same Net Operating Income Multiplier be used for both the Calculation of Revenue Requirements On Acquisition Premium And Total as shown on Exhibit TAG-9 and the Florida Public Utilities Natural Gas 13-month Average Capital Structure shown on Page 2 of 2 in Exhibit TAG-2? If not, please explain why not?

   **Response:** The Net Operating Income Multiplier used on Exhibit TAG-9 did not include factors for Regulatory Assessment Fee and Bad Debt Rate. Exhibit TAG-9 only used the income tax factor of 37.63% (see factors shown on Attachment 1) because the Company is not seeking new revenues in this filing. The costs of the acquisition premium and Regulatory Assets are offset by the savings achieved by the Company.

3. In the Petition, page 10, Item E, the company states that FPUC - Indiantown Division was excluded from the request to establish a benchmark analogy for the Company's combined natural gas operation. Please explain the exclusion of FPUC - Indiantown Division from the benchmark analogy.

   **Response:** The Company excluded the Indiantown Division from the methodology because the Company believes that including the FPUC – Indiantown Division is premature. As noted in the Company's response to Data Request No. 22 in Staff's First Set of Data Requests, due to the timing of the Indiantown acquisition (July 31, 2010) and the complexity of the required "Come Back" filing, the Company determined that deferring its request for approval of the Indiantown acquisition adjustment to a subsequent filing would be prudent, because the circumstances of each transaction, as well as the resulting benefits, differ.

   As it pertains to the Company's proposed benchmark methodology for the 2012 savings, the Company's benchmark proposal would: (1) Trend the Projected Test Year O&M costs approved in the company's last rate case to 2012 using actual customer growth and inflation rates; and then (2) subtract the approved savings achieved from the acquisition to arrive at the new benchmark. Since the Company has not sought recovery of the Indiantown Division acquisition premium in the instant case, and therefore has not demonstrated the savings for approval by the Commission, it cannot yet be included in the benchmark methodology that the Company has proposed.

As noted previously, the Company intends to seek approval of the Indiantown Division acquisition premium in a subsequent filing with the Commission and intends to seek inclusion of the Indiantown Division into the proposed methodology, if approved in the instant case.

4. Witness Kim's testimony, page 13, lines 20-23, states that accounting principles prescribe the matching of the acquisition costs with the operating savings. Also, the company states that matching is required to justify and support the recovery of these costs in the revenue requirements. Please state the accounting principles that specifically prescribe the matching of costs and revenues which the company used to determine the revenue requirement and to justified the recovery of these costs with the operational savings.

**Response:** Accounting principles generally accepted in the United States of America ("US GAAP") prescribe the method of amortization of intangible assets in FASB Codification Topic 350, "Intangibles – Goodwill and Other." According to FASB Codification Topic 350-30-35-6, an intangible asset should be amortized over its useful life based on the method of amortization that "reflect[s] the pattern in which the economic benefits of the intangible asset are consumed or otherwise used up."

The underlying principle of regulated accounting in US GAAP, as prescribed in FASB Codification Topic 980, "Regulated Operations," is that regulators can determine the timing of recovery of costs in rates, which may be different than when those costs are incurred. In the rate making process, rates are typically based on a regulated entity's allowable costs that are intended to produce revenue, which approximately equals to those allowable costs. FASB Codification Topic 980 states that "[i]f the regulator permits all or a portion of goodwill to be amortized over a specific time period as an allowable cost for rate-making purposes.... [t]hat regulatory asset would then be amortized for financial reporting purposes over the period ending which it will be allowed for rate-making purposes."

Using the accounting principle of intangible amortization as prescribed in FASB Codification Topic 350 and considering the concepts of regulatory accounting under FASB Codification Topic 980, which allows acquisition premium and merger-related costs to be deferred and amortized pursuant to the approval of the regulators, we believe that it is appropriate to amortize the acquisition premium and merger-related costs in a manner that reflects the way the cost savings from the merger ramps up over the first three years following the completion of the merger. We believe that such ramp-up amortization method follows the economic benefits of the merger, for which the premium and merger costs were paid ("matching" of the costs and savings), as prescribed in FASB Codification Topic 350. Such amortization method is also consistent with the underlying principle of regulated accounting under FASB Codification 980, which is based on the concept of allowing costs intended to produce revenue, which in this case, would be derived from cost savings.

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5. Witness Kim's testimony, page 9, lines 10-14, states that $908,512 in transaction and transition costs were deductible for income purposes. Please provide a breakdown of the $908,512 in transaction and transition costs by type and amount that were deductible for income tax purposes.

**Response:** See Attachment 2, which is an Excel spreadsheet reflecting the requested information.

SCHEDULE 4

FLORIDA PUBLIC UTILITIES COMPANY
DOCKET NO. 080366-GU
DECEMBER 2009 PROJECTED TEST YEAR
NET OPERATING INCOME MULTIPLIER

| Line No. | | (%) As Filed | (%) Commission Adjusted |
|---|---|---|---|
| 1 | Revenue Requirement | 100.0000 | 100.0000 |
| 2 | Gross Receipts Tax | 0.0000 | 0.0000 |
| 3 | Regulatory Assessment Fee | (0.5000) | (0.5000) |
| 4 | Bad Debt Rate | (0.7300) | (0.5100) |
| 5 | Net Before Income Taxes | 98.7700 | 98.9900 |
| 6 | Income Taxes (Line 5 x 37.63%) | (37.1672) | (37.2499) |
| 7 | Revenue Expansion Factor | 61.6028 | 61.7400 |
| 8 | Net Operating Income Multiplier (100%/Line 7) | 1.6233 | 1.6197 |

# ATTACHMENT 2

**Florida Public Utilities Company**
**Response to Staff's Second Data Request**
**Data Request No. 5**


Brief Explanation of Tax Deductibility of Premium and Transaction/Transition Costs
For Discussion Purpose Only

The merger between Chesapeake and FPU was treated as a tax-free reorganization within the meaning of the Internal Revenue Code Section 368(a). Under a tax-free reorganization, the tax basis of FPU stock acquired by Chesapeake was considered to be the same as the tax basis of the consideration transferred in the merger. No gain or loss was recognized for tax purposes on a tax-free reorganization. Any premium paid in a tax-free organization was added to the basis of the stock obtained (i.e., capitalized rather than currently deducted or amortized in the future for tax purposes). There is a small tax-deductible portion of the FPU premium, which resulted from the change of control payments. Since those payments were considered ordinary expenses for tax

The tax treatment of transaction costs from the FPU merger was determined based on the tax treatment of the merger and the nature and timing of those costs. In general, certain transaction costs paid to "facilitate" the merger must be added to the basis of the stock obtained, similar to the premium paid in the merger. Other transaction costs considered to be "investigatory" are deductible as incurred. The Internal Revenue Code Section 263(a)-5 provides specific guidance on the tax treatment of transaction costs. Generally speaking, any transaction costs incurred after the Board of Directors approval of the merger (April 17, 2009) are considered non-deductible. Certain costs incurred prior to that date, such as preparation of the merger document and fairness opinion from the financial advisor required for the merger, are considered closely related to the deal that they are considered non-deductible. Chesapeake examined each type of transaction costs based on the guidance provided in the Internal Revenue Code Section 263(a)-5 to determine the tax deductible portion.

All of transition costs are tax-deductible as they are considered ordinary expenses for tax purposes.

Chesapeake Utilities Corporation
For the Merger of Chesapeake and FPU
Transaction Costs (all transaction costs were incurred in 2009)

| | | Total Expense |
|---|---|---|
| **Non-Deductible:** | | |
| Legal expenses | | |
| Baker & Hostetler | $ | 809,342 |
| Total legal-Deal structuring | $ | 809,342 |
| Financial Advisor | | |
| Baird | $ | 225,000 |
| Total financial advisor | $ | 225,000 |
| Regulatory Counsel & Approval | | |
| Akerman Senterfit | $ | 2,595 |
| DLA Piper | | 45,378 |
| B Williams | | 6,000 |
| Parkowski Guerke & Swayze | | 3,025 |
| Schiff Hardin | | 4,450 |
| Delaware Public Service Commission | | 858 |
| Total regulatory counsel | $ | 62,306 |
| Shareholder approval | | |
| Georgeson proxy solicitor accrual | $ | 36,879 |
| BMC | | 54,637 |
| PWC | | 49,300 |
| Bowne | | 86,519 |
| Prudential | | 5,000 |
| Pacific Lite | | 5,000 |
| American United Life | | 5,000 |
| CM life | | 5,000 |
| General American Life | | 5,000 |
| Pacific Life | | 5,000 |
| Thrivent | | 5,000 |
| Broadridge investor | | 23,939 |
| Computershare ap | | 29,758 |
| Dover Litho ap | | 2,000 |
| ice systems | | 130 |

| | | |
|---|---|---|
| sugarfood | | 425 |
| Corporate Election services | | 2,750 |
| HSR-Bank of New York | | 45,000 |
| Total Shareholder approval costs | $ | 366,338 |
| Consulting expenses | | |
| Kathy McVay | $ | 3,540 |
| Total non-deductible consulting | $ | 3,540 |
| Total non-deductible transaction costs | $ | 1,466,525 |
| **Deductible expenses:** | | |
| Deductible portion of financial advisor fee | | |
| Baird | $ | 584,132 |
| Total financial advisor | $ | 584,132 |
| Accountants | | |
| BMC | $ | 23,437 |
| PWC | | 35,500 |
| E&Y | | 90,000 |
| Total Accountants | $ | 148,937 |
| Due Diligence & Other | | |
| Ruth & Associates | $ | 10,080 |
| Bolton Partners | | 5,655 |
| Bowne of NY | | 25,584 |
| Parkowski Guerke & Swayze | | 450 |
| Baker & Hostetler | | 117,492 |
| Mcmanus AP | | 4,000 |
| Kathy McVay | | 5,370 |
| Total Due Diligence & Other | $ | 168,631 |
| Other fees | | |
| Windswept | $ | 564 |
| Delaware.net | | 110 |
| PR Newswire | | 6,138 |
| Total other fees | $ | 6,812 |
| Total deductible | $ | 908,512 |
| Total | **$** | **2,375,037** |

# ATTACHMENT 2

**Florida Public Utilities Company**
**Response to Staff's Second Data Request**
**Data Request No. 5**


Chesapeake Utilities Corporation
For the Merger of Chesapeake and FPU
Transition Costs

| | | Total | |
|---|---|---|---|
| Transition costs - subject to recovery | | | |
| Severance related | $ | 451,572 | |
| D&O insurance (run off for FPU) | | 252,832 | |
| Legal - mostly HR related matters | | 58,880 | |
| Consulting | | 40,833 | |
| System conversion | | (3,882) | A |
| Shareholder litigation related to the merger | | 154,229 | |
| Propane customer transfer - mostly marketing | | 2,695 | |
| Total transition costs | $ | 957,159 | |

A Correction for a negative amount not made due to lack of materiality