BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.
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PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 5

COMMISSIONERS PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, December 6, 2011

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

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P R O C E E D I N G S

CHAIRMAN GRAHAM: That brings us to Item No. 5.

MR. SLEMKEWICZ: I'm John Slemkewicz. Item 5 concerns matters regarding Chesapeake Utilities Corporation's acquisition of Florida Public Utilities Company. This petition specifically addresses the natural gas operations of FPUC.

Staff is recommending approval of the amortization of the $34 million acquisition adjustment over 30 years, and the $2.2 million of transaction and transition costs over a five-year period, using a normal straight line amortization methodology.

The, the level of cost savings that were presented will be reviewed in the next rate case to make sure that they still exist and whether any adjustment is warranted to the amortization of the acquisition adjustment.

Staff is recommending denial of the request to consolidate the earnings surveillance reports. Staff is also recommending denial of the request to establish a combined benchmark for evaluating incremental cost increases in future rate proceedings.

And finally, Staff is recommending that there are no over earnings for 2010 if the amortization is approved. Staff is prepared to answer questions, and representatives of the company are here to answer questions also.

CHAIRMAN GRAHAM: Chesapeake.

MS. KEATING: Good morning, Mr. Chairman, Commissioners. Beth Keating here of the Gunster Law Firm on behalf of FPUC and Chesapeake. We have several folks from the company here today: Mr. Tom Geoffroy, Ms. Cheryl Martin, and Mr. Matt Kim. We'd just like to say that we appreciate Staff's hard work on this recommendation, and we are very supportive of Staff's recommendation and stand ready to address any questions you may have.

CHAIRMAN GRAHAM: Thank you, Ms. Keating.

Commissioners? Commissioner Brown.

COMMISSIONER BROWN: Thank you. I have a few questions for the company regarding assurances that you could provide to us that the projected savings will actually be realized.

MR. GEOFFROY: Thank you. This is Tom Geoffroy. I'm Vice President of Regulatory Affairs for Chesapeake.

All of the savings that we have presented in this case are actual. They, they have already occurred. What we have done, because some of those have occurred recently, is annualized the effect of those, of those savings. But every savings that you see presented in this case has, in fact, occurred: The fuel savings, the cost of capital savings, and all the operating and maintenance savings, and costs. There are some costs, new costs that have been incurred. So those have already happened. And as I said, we simply have annualized the effect of those savings for the ones that have recently occurred.

COMMISSIONER BROWN: Okay. Then I'll go to Staff on this. Staff, is there any additional assurances that the Commission can -- you know, if the, if the savings are not actually realized over that annualized period, over the 30-year amortization schedule, what are our options?

MR. SLEMKEWICZ: Well, in future rate proceedings we can review those cost savings and see if they are, if they in fact are continuing. And if they are not, there could be some adjustment to the acquisition adjustment amortization from some percentage to just totally eliminating it. Because that is -- we have done that in the past where we have granted an acquisition adjustment and subsequently found that there were no savings, and the, the amortization and acquisition adjustment was not allowed for future periods.

COMMISSIONER BROWN: But we always have the right to audit the company and make sure that those savings -- at any time.

MR. SLEMKEWICZ: Yes, at any time.

COMMISSIONER BROWN: Can you address the book value being 30 -- what is it -- much lower than the purchase price?

MR. SLEMKEWICZ: Well, in the, the -- you know, the purchase price is, you know, what's negotiated between the buyer and the seller. And once that, you know, once that's established, then you look at what the net book value is of the assets that were acquired. And the difference between those two amounts is the acquisition adjustment. And in this, and in this case, they pay approximately $34 million more than the net book value of the assets.

COMMISSIONER BROWN: And I'm just going to turn to the company and ask, can you elaborate on why the purchase price is so much higher than the book value?

MR. KIM: Sure. This is Matt Kim. I'm the Assistant Vice President and Controller of Chesapeake Utilities.

In, in a given transaction, mergers and

acquisitions, obviously each deal is unique and specific. But generally speaking, the acquiring entity and acquired entity take a look at what type of growth potential, synergies or savings, efficiencies they can generate as a combined company. Obviously companies decide to buy or merge because they believe that as a combined company they can do things better.

As a result of that, you will typically pay a certain premium over the book value. Also, sometimes the book value tends to be a historic value of the assets and liabilities, which may or may not be reflective or an indication of the fair value, which means what you can sell those assets at a given time.

The purchase price is determined based on a concept of fair value, essentially what other companies will buy or sell at a given time. So there is typically a difference between that book value and a purchase price. And, you know, throughout the acquisition process both the acquiring company and acquired company have their individual financial advisors reviewing the terms, including the purchase price, and make sure that they are within, in line or within the expectation of what each company's shareholders, and stakeholders expect, as well as based on previous, previous dealings or previous transactions, comparable or similar industry type, and it's very typical for them to review that.

And Chesapeake, obviously, is of an opinion that the purchase price that we paid is, falls within, in line or within reason of what the industry transaction had asked for in the past.

COMMISSIONER BROWN: One more question. You talk about synergies. Can you elaborate on the synergies that have already been -- occurred?

MR. GEOFFROY: Certainly. The synergies generally fall into two categories. Corporate costs. In other words, as two separate standalone companies, you had two board of directors, for example, you had two sets of insurance policies covering general liability, et cetera. As a combined company you only have one board of directors, one set of insurance policies. So there are those types of savings.

And then from an operation and maintenance perspective you have similar functions being performed by both companies independently, such as accounting functions, such as human resources, and in some cases overlap in operating territories. So you may have two facilities that you can combine into one. And those are the types of savings and synergies that we have identified and harvested in this, in this acquisition.

COMMISSIONER BROWN: Thank you.

CHAIRMAN GRAHAM: Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. I have a few questions for Staff.

Currently this Commission does not have authority over mergers and acquisitions; is that correct?

MR. SLEMKEWICZ: That's correct.

COMMISSIONER BALBIS: So we are not involved in the negotiations between the utilities as maybe other commissions can be or at least approve the final agreement; is that correct?

MR. SLEMKEWICZ: That's correct.

COMMISSIONER BALBIS: And we certainly want to encourage companies to merge where there is a true benefit to the customers, and I want to congratulate both Chesapeake and Florida Public Utilities in doing this in that there are immediate savings that have already taken place.

My concern is that that premium price that was paid that Commissioner Brown mentioned and discussed, and how do we -- ask Staff, how do you determine whether or not a positive acquisition adjustment is appropriate and move forward with a recommendation to approve it to this Commission?

MR. SLEMKEWICZ: Well, we, we look at the cost savings that are generated by any synergies that may exist. And typically it would be if there's positive cost savings, in other words, the savings outweighed the amortization of the acquisition adjustment, Staff would recommend approval of the acquisition adjustment.

COMMISSIONER BALBIS: So then to put it in simpler terms, the positive acquisition adjustment is spreading out that premium price over a certain time period; right?

MR. SLEMKEWICZ: That's correct.

COMMISSIONER BALBIS: So you look at what that annual cost to the customers is against the benefit to the customers?

MR. SLEMKEWICZ: That's correct.

COMMISSIONER BALBIS: And is there a certain number, if it's $100,000 more, is it 10,000, is it a million?

MR. SLEMKEWICZ: There, there is no specific number that we would use. The, the closer or the smaller the amount of the savings, the closer we would evaluate the savings. And if the savings are still on a projected basis, we would have some reservation about how accurate those projections are. And we may or may not, you know, recommend approval of an acquisition adjustment.

COMMISSIONER BALBIS: Okay. And I want to talk a little bit about Table 2-1, which -- I'm sorry. Let's go to Table 2-4 on page 12 of the recommendation. And you've projected out to 2015 what the savings, the costs and the net savings or costs are. And I understand that the acquisition adjustment is for 30 years, and you prepared a table that lists, projects out these costs and savings for 30 years. And I just want to know, do the other Commissioners have this? In looking at that table -- well, focus on Table 2-4. There really is no net savings until 2012; is that correct?

MR. SLEMKEWICZ: That's correct.

COMMISSIONER BALBIS: And going back to Commissioner Brown's comments as to what assurances does this Commission have that they don't rehire the personnel, which is the bulk of the savings, can you go into detail as to, as to what assurances we have?

MR. SLEMKEWICZ: Well, we -- you know, all we can do at this point, you know, is take the company's word. However, in -- and it does not even have to be related to a rate case or anything else. We could audit the company and see if those savings are still in effect and if they actually did materialize.

COMMISSIONER BALBIS: Because based on their last rate case, they can turn around and rehire that personnel and we would have to approve it; correct? Or we would have no involvement in that.

MR. SLEMKEWICZ: Yeah. We would have no involvement. I mean, they can hire -- they could hire everybody back, if they desire to do that. However, in evaluating, you know, the cost savings, that would be very detrimental to their case of the acquisition adjustment amortization continuing in the future.

COMMISSIONER BALBIS: Does Staff have any recommendations as to any additional assurances that we can, we can get from the company to make sure that at least in the first four to five years we can -- the customers can realize the savings?

MR. WILLIS: Commissioners, Marshall Willis with the Division of Economic Regulation. There's, there's no other recommendation you can actually do on your own. In the past there have been companies who have come forward and said, to give you a further assurance, we'll offer up a stay out provision and we'll assure the Commission that we're going to stay out for a certain number of years. That's not something that you could require upon the company. That's something the company would have to give you. Basically it's giving up their right to file a rate case. So it's something they would have to give you. But that's the only other assurance you can have besides the fact that Staff has the ability to go in and audit to make sure the synergies will stay.

COMMISSIONER BALBIS: Because without that stay out provision they could file a rate case and demonstrate that they do need to rehire that personnel, and then we would be in a position, a difficult position of reviewing that and approving it, and then the customers' potential savings goes away; is that correct?

MR. WILLIS: Well, that's correct. But in that rate case, when that rate case came forward, if Staff found that those synergies were no longer there, our recommendation would probably be to discontinue the amortization of the acquisition adjustment, which would take that cost away. And that has happened in the past. There has been one case where a gas company was given a positive acquisition adjustment. In the next rate case, Staff found the synergies never materialized and the Commission removed the amortization of the acquisition adjustment permanently, and it was no longer a cost recovery through rates at that point.

COMMISSIONER BALBIS: Well, I personally would like to have as many assurances as possible to make sure that the customers realize these long-term savings. And if that's one avenue, then, then I would recommend that the company propose that. Because we're in a difficult situation where we're not involved with the negotiations, we do not have merger authority. They could have, they could have paid a premium much higher than what they did and we would be in the same position. As long as there's a net savings to the customers, Staff would recommend it.

So I certainly would like to see as many assurances that we can realize the savings that Staff has projected over the next 30 years for the customers. So I could end with that and turn it over to the other Commissioners. And I have a few more questions depending on how, how we go on this.

CHAIRMAN GRAHAM: Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman. I was just going to say I would like to ask the company to address some of the points that Commissioner Balbis has raised.

MR. GEOFFROY: Yeah. I certainly would like to, to address that. The company that had the acquisition adjustment previously and lost it was us. So we've been in that unenviable position.

CHAIRMAN GRAHAM: Welcome back.

(Laughter.)

MR. GEOFFROY: Pardon?

One of the reasons that we proposed in this case to establish a benchmark to determine, to help determine that these savings are ongoing was just that, to help demonstrate to the Commission that there is a methodology that can be used to determine on an annual basis whether those savings are in place. This recommendation does not recommend approval of that. So you may want to consider that as, as an alternative.

The other part of this that, that -- you know, the company is very amenable to a stay out. We have no issue with that. We would, you know, if that's the direction you would like to go, we would propose a 3-year stay out. However, there are a lot of exceptions that would need to be dealt with. We have annual cost recovery dockets like the purchased gas adjustment, et cetera. There's a lot of regulatory requirements coming up that, that we would certainly need to be aware of and try to deal with.

But in addition to that, again, in this recommendation, you know, one of the things that we want to do is to consolidate the tariffs, consolidate the accounting, and consolidate the earnings surveillance reports. And Staff's recommendation here is that we should do that through a rate proceeding. So if we have a long stay out provision, that prohibits us from really continuing to harvest these savings because there's more to, more to do there.

We're not in a position, and it's not our intention to stop at the $6.2 million worth of savings that you see here. We think there's more that can be done, that should be done. We're willing to undertake those efforts to do it, but we need some flexibility from the Commission in order to be able to make sure that we can comply with the requirements of this recommendation as far as consolidating tariffs, et cetera.

So while we're not opposed to a stay out provision, we don't think that that's required or necessary here, if we establish a benchmark process that we proposed or some other similar benchmark process, if that's not the correct one, and allow us to continue to, you know, consolidate these entities into one entity.

CHAIRMAN GRAHAM: Commissioner Edgar, you still have the floor.

COMMISSIONER EDGAR: Thank you. I appreciate the comments that they've shared with us, and I know it does give me some additional information and some additional comfort.

CHAIRMAN GRAHAM: Commissioner Balbis.

COMMISSIONER BALBIS: Thank you. And thank you, Commissioner Edgar, for posing that question to the utilities.

Another question for the utilities, the projected net savings in 2012, 2013, 2014, would that put the company -- maybe I should ask this for Staff. Would that put the company within the range, the approved ROE range, or would it be in a position of over earnings again?

MR. WILLIS: I'm sorry. I'm sorry. Could you repeat the question?

COMMISSIONER BALBIS: It -- according to Table 2-4, in 2012, 2013, and 2014 there's a projected net savings of 378,000, 551,000, and 820,000. Would that still result in an ROE within the range, or would they be in a position of over earnings again?

MR. SLEMKEWICZ: I believe with, you know, in those first few years, at least up through maybe 2013, there, they would probably still be within their range. But when you start getting into 2014 and '15, when you start getting, you know, savings of, you know, a million dollars plus, that may affect their return. I have not calculated that, so I cannot say with certainty where they would be in their range or if they would actually be above the range at that point.

MR. WILLIS: Commissioner Balbis, if I could add to that. We have a continual earnings surveillance program. If the company does exceed its range, that's when we would come to the Commission at that point with a recommendation.

COMMISSIONER BALBIS: Well, my concern is that Staff is recommending a positive acquisition adjustment that is projected that at some point they may be in an over earnings situation, which would result in a rate case possibly. And is that the right position to be in?

MR. WILLIS: Well, if there were to be a rate case, it would be a reverse make whole proceeding where the company would be seeking a lower rate to its customers. There's a benefit directly at that point that flows to the customers if the rates are reduced because of over earnings at that point.

I'm not sure if it's the right place to be or not. It would be a result. It's something that is so far out in the future with 2014 coming up that I couldn't sit here and tell you whether that's going to happen or not. I've heard the company say that there, there are further cost savings to harvest. If that's true, they could be closer to over earning in the future.

COMMISSIONER BALBIS: Okay. And I just have to go back to my original concern is that they paid a premium of almost $35 million for this, for Florida Public Utilities. And although it was mainly an exchange of shares, still they paid a premium. And one of my concerns is that if we approve this, are we setting a precedent since there is no rule in place that says, okay, we will approve anything as long as there's a savings of X amount, a 20% premium, 30%, whatever it may be, that we're opening the door for other mergers to come in that may not realize as much of a cost savings to the customers, but then we're in a difficult position of having set a precedence of approving a large premium, although in this case there's a major savings to the customers, but we're put in an awkward position.

And I guess my question to you, Mr. Willis, is is there something that you would recommend, additional assistance to Staff or mechanism for Staff rather than just looking at as long as there's a savings, some sort of rule or guidance document that the Commission could move forward with, or are you comfortable with what you have to make your decision as a recommendation to us?

MR. WILLIS: Commissioner Balbis, I personally am comfortable with it. We've dealt with these positive acquisition adjustments over many years, and the gas industry seems to be the one industry that can actually come up with synergies that actually prove to, to go forward in fruition.

I personally don't have a problem. I mean, I will tell you this has been off the agenda for a while because I personally wanted to look at this one because of the magnitude of the acquisition adjustment. I'm thoroughly satisfied. The one difference here in this case is that these cost savings are pretty much known right now. They're happening. And a lot of the acquisition adjustments that the Commission will see, you'll be looking at projected cost savings. We don't know at that point whether they will, whether they will actually occur in the future or not. It's a best guess. And it's up to Staff to go out and actually look at the records and find out whether those synergies actually occurred.

In this case I don't think there's much doubt that they're actually now. These savings are happening. We see that because of the over earnings with FPUC. That's probably a fair chunk of the over earnings with FPUC, which would be taken away right now if you grant the amortization and acquisition adjustment. But those savings grow -- if you look at the chart that Mr. Slemkewicz produced, those savings are going to grow where it's anticipated it'll be over $70 million worth of savings to the customers in the long run over 30 years. So this is one of those unique circumstances where the cost savings are known at this point. They're happening, they're not really projected. These are happening. I'm happy to know that there may be more that can actually in the future be harvested from, from the acquisition. That just makes the acquisition adjustment better at this point.

But in direct answer to you, Commissioner Balbis, I really don't think there are any other tools that we really need of Staff. I think we've had past Commission orders that kind of outlined how the Commission looks at these costs. Mr. Slemkewicz talked earlier that if we're dealing with a lot of projected savings, it makes Staff look a lot harder at projections. As to whether or not we believe those will actually come to fruition in this case, these are already here. It's not something we have to look at to see whether they're going to come to fruition. They've happened. So I hope that answers your question.

COMMISSIONER BALBIS: No, it does. Thank you.

CHAIRMAN GRAHAM: Is that a motion?

COMMISSIONER BALBIS: No.

(Laughter.)

CHAIRMAN GRAHAM: Commissioner Brown.

COMMISSIONER BROWN: And I would be remiss if I didn't ask you, Mr. Willis, a question about how the Commission has treated transaction and transition costs in the past for the benefit of my fellow Commissioners.

MR. WILLIS: We have treated them exactly the same way you see in the recommendation today. They're normally amortized over a five-year period.

COMMISSIONER BROWN: And have we ever not allowed for the transition or disallowed the transition and transaction costs?

MR. WILLIS: We have disallowed transaction and transition costs when the cost savings were not there to cover those costs. In this case, they are.

COMMISSIONER BROWN: Okay.

CHAIRMAN GRAHAM: Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. A few more questions or comments for Mr. Willis. This in no way will affect their rate base because the rate base is set on book value, not on purchase price; is that correct?

MR. WILLIS: It won't affect their net book value. It will affect rate base because rate base is a function of your net plant, which is plant less accumulated depreciation. It would also include the positive acquisition adjustment in rate base. It would be a line item that you'd see in rate base. But as far as net plant, it doesn't affect that. We're an original cost state and that would not change.

COMMISSIONER BALBIS: Other than the acquisition judgment, the majority -- my concern is that because they purchased it for a premium, now suddenly the value of their plant and asset is increased. And I want to make sure that we are not, if we approve this, that would not happen.

MR. WILLIS: That's correct. The value of their assets don't actually increase. There is a positive acquisition adjustment that's booked over and above net plant.

COMMISSIONER BALBIS: Other than the stay out provision, is there any other assurance that we can get that at least for the short-term, for the next five years, for example, that those savings will continue. And that if those savings do not continue, they hire additional staff, which again is the bulk of the savings, that we would not allow those costs to be passed on?

MR. WILLIS: I don't believe there are any other, any other incentives we could put out there at this point. The main incentive is there in that the amortization would be taken away permanently by the

Commission if these cost savings don't stay in place. And that could happen at another time.

The one thing I guess the Commission needs to realize is that rates will not change for these customers until the next rate case of the company. And if the cost savings materialize as they have and they stay there, then the rates will not change unless the company over earns in the future or the company experiences heavy growth and costs actually go up because of growth. I mean, that's where you'll see costs for this company rise is if the company does experience growth and cost increases, so.

COMMISSIONER BALBIS: And over the 30-year projection, the net savings listed in this document is over $71 million to the customers; is that correct?

MR. WILLIS: That's correct.

COMMISSIONER BALBIS: Well, I think as a Commission we're in a somewhat challenging position in that, you know, we certainly want to encourage companies to merge and, or acquire other companies so that there are savings to the customers. And certainly a $71 million savings is impressive and we need to encourage that.

And just to confirm one more time with Mr. Willis, that if we approve this recommendation without a stay out provision or with a stay out provision, that if the cost savings do not materialize, that we can revoke the positive acquisition adjustment.

MR. WILLIS: That's correct. You can.

COMMISSIONER BALBIS: And there was an audit performed, or evaluation performed of Florida Public Utilities by Ernst & Young. And did that, the value of the company, did that closely match the purchase price?

MR. SLEMKEWICZ: Yes, it did. It was very, it was very close to the value of the asset -- I mean, of the purchase price.

COMMISSIONER BALBIS: Okay. And I think on page 3 it indicates that Ernst & Young, the Ernst & Young valuation was, let's see, it determined the fair value to be $127.6 million, and the total acquisition amount was 127,760. So it's very close to --

MR. WILLIS: Yes.

COMMISSIONER BALBIS: -- what the purchase price was. So that gives me some level of comfort that at least the value matches the purchase price.

And I'm fairly comfortable that if we can remove the positive acquisition adjustment in this case, I'm comfortable with it. I'm still struggling with, with the premium that is paid because we do not have merger authority. But in this case, I'm feeling more comfortable, and I'd like to hear the other Commissioners' opinions on this, especially the ones that have been quiet in the middle.

(Laughter.)

CHAIRMAN GRAHAM: Commissioner Brisé.

COMMISSIONER BRISÉ: Thank you. I have a question for Staff.

With respect to the stay out provision, what impact would that have, as the company stated, with respect to having to come back for rate cases if, if a need arose, particularly in dealing with Issues 5 and 6, as those issues will probably have to be dealt with in the future? What impact would the stay out provision have on that if we went with a three-year or even a five-year provision?

MR. WILLIS: Well, Commissioner, normally a stay out provision is volunteered by the company, and that in essence keeps the company from filing for a rate increase within that three-year, if it was a three-year stay out provision. It does not stop the Commission from looking at over earnings and saying during that three years the company over earns. It does not take away the Commission's right to bring the company in for over earnings during that three-year period. It's just a stay out for a rate case itself.

COMMISSIONER BRISÉ: But with the -- the company brought up two points with respect to establishing the benchmarks and so forth. Is there any nexus or impact between the stay out and, and them being able to do that?

MR. SLEMKEWICZ: I don't believe there is. The only reason you would have any, have the, the benchmark would be for a rate case. That's the only place where it really has any impact. And under their scenario, they're not -- those companies are not combined. They operate totally separately. And to, you know, merge them for this kind of purpose without a rate case, without, you know, their -- to, you know, have uniform rates and everything else, it's just not -- Staff does not believe that is practical.

And I would like to say in this, in this case they have never asked to combine their tariffs. They've asked a lot of other things, but they've never asked about consolidating. And that would be a totally different proceeding than what we're dealing with right now.

MR. WILLIS: And, Commissioners, if I can add to that. There, there are some differences between the two companies. One company, Chesapeake, has marketers; whereas, FPUC purchases its own gas and goes through the

PGA. So there's some differences that have to be worked out between the two companies when they merge, I imagine, and I don't know how quickly they're going to mingle the two companies.

I do understand the company's position saying that if we have a stay out provision, it kind of hampers our ability to merge those two, those two companies together. I do understand that at that point they probably would need to have, if they want to combine tariffs, if they want to combine that, they will have to file for either a rate increase or decrease at some point to have that ability to do that. And a stay out provision would prohibit that if it would be an actual increase. I would imagine if it's a decrease, it wouldn't prohibit that, or you could make that an option of the stay out provision.

COMMISSIONER BRISÉ: Okay. So if I understand you properly, if we asked the company or took their offer for the three-year stay out provision as one of the options that could be exercised this morning, that we could put it in such a way that obviously we wouldn't look at a rate increase, but there would be, there would be the flexibility for them to come back if there were a rate decrease due to the result of some of the things that they're doing.

(Simultaneous conversation.)

MR. WILLIS: Yes, you could.

COMMISSIONER BRISÉ: Okay. That's all I have for right now.

CHAIRMAN GRAHAM: But if the direction was for a rate decrease, we can just as simply do that with an over earnings case.

MR. WILLIS: That's correct. The difference would be we would probably ask the company to file minimum filing requirements for that purpose just so we could get a good look at the combination that they're looking at if there is going to be a rate decrease.

CHAIRMAN GRAHAM: Well, I don't see anybody's light on. I don't have a problem with Staff's recommendation, if I can get someone to make a motion one way or the other. Commissioner Edgar.

COMMISSIONER EDGAR: Commissioner Balbis has pointed out that we do not have statutory authority to approve or review mergers, acquisitions in the same way that many other state commissions do. But we do obviously, and this is a good example, have other aspects of those types of things that do come before us.

I appreciate the questions and highlighting the review work that this Commission does do, and the acquisition adjustment is a perfect example of that.

I am just a little bit concerned that if we were to add a stay out provision, that that might inadvertently or unpurposely tie our hands or the hands of our Staff or the company a little bit in a way that could potentially be detrimental to the customers that they serve. So -- and I'm also -- I am comfortable that the Staff recommendation and the close work that our Staff has done with the company on this recommendation is consistent with the way the Commission has reviewed these types of issues in the past.

And so with all of the tools that we do have available to us, as has been discussed, on a forward-going basis, I am comfortable with the Staff recommendation, Mr. Chairman. I would move all issues.

CHAIRMAN GRAHAM: It's been moved and seconded, Staff recommendation on Item No. 5.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

And, again, we have a unique situation here that, with this, with this issue with Chesapeake and Florida Public Utilities. I'm glad to see that through your own volition move forward with, with this merger, and that recognizing that without a positive acquisition adjustment, there really is no incentive for the companies to merge. So I want to thank Chesapeake and

Florida Public Utilities for moving forward and in good faith that although it is at risk, that without an incentive, that they move forward anyways.

We have a situation where over $71 million in savings will be realized by the customers. And looking at the chart, the net savings really begins in 2012, which is right around the corner. So even if these projections the further you go out are difficult to make, I'm comfortable that there's going to be a net savings immediately coming up in 2012, in the next month. And I want to thank Staff for their thorough review. And, Mr. Willis, I'm glad that before it comes to us, that you utilized what I now know is 35 years of experience in this matter. So I want to appreciate that. And, again, with the ability that we have to remove this acquisition adjustment and the fact that there was an audit performed or a value performed that matches the purchase price, I'm comfortable with supporting Staff's recommendation.

CHAIRMAN GRAHAM: All in favor of Staff recommendation on Item No. 5, signify by saying aye.

(Affirmative response.)

Any opposed?

(No response.)

By your action, you've approved Staff

recommendation on Item No. 5.

(Agenda item concluded.)

* * * * *

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

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

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

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

DATED THIS 22nd day of December, 2011.

Linda Boles

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734