

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: June 7, 2012

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Ollila)
Office of the General Counsel (Klancke)

Handwritten initials and signatures: "So.", "JC", "CKB", and a blue checkmark.

RE: Docket No. 120081-GU – Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation.

AGENDA: 06/19/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 07/11/12 (Petition Deemed Approved If Not Granted or Denied Within 90 Days of Receipt)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\120081.RCM.DOC

Case Background

The Florida Division of Chesapeake Utilities Corporation (Chesapeake) operates a natural gas utility. Chesapeake filed its last depreciation study on May 17, 2007, with an effective date of January 1, 2008. Rule 25-7.045(8)(a), Florida Administrative Code (F.A.C.), requires gas utilities to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission. In accordance with this rule, Chesapeake's next depreciation study was due on or before May 17, 2012.

DOCUMENT NUMBER-DATE

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On April 12, 2012, Chesapeake filed a petition for a waiver of the filing deadline imposed by Rule 25-7.045(8)(a), F.A.C., and asked for an extension of its depreciation study filing date until August 17, 2012, with succeeding depreciation studies due by August 17th at least every five years thereafter. Chesapeake asserts in its petition that its ability to marshal its resources to prepare the depreciation study in accordance with the requirements of Rule 25-7.045(8)(a), F.A.C., has been hindered by the recent relocation of its main offices. In addition, the Company asserts that it is engaged in the preliminary tasks necessary to effectuate the consolidation of Chesapeake's books and tariffs (and depreciation rates) under FPUC.

Staff notes that on October 28, 2009, Chesapeake's parent company, Chesapeake Utilities Corporation (Chesapeake Corporation) and Florida Public Utilities Company (FPUC) announced their corporate merger, whereby the electric and gas operations of FPUC became a wholly owned subsidiary of Chesapeake Corporation. On November 5, 2009, pursuant to Rule 25-9.044(1), F.A.C., Chesapeake Corporation notified the Commission of its acquisition of FPUC. On August 6, 2010, FPUC acquired Indiantown Gas Company.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), the notice of the Company's petition was submitted to the Secretary of State for publication in the May 4, 2012, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, F.A.C. In accordance with Section 120.542(8), F.S., the petition is deemed approved if the Commission does not grant it or deny it by July 11, 2012.

The Commission has jurisdiction pursuant to Sections 120.542, 350.115, and several provisions of Chapter 366, F.S., including Sections 366.04, 366.05, and 366.06.

Discussion of Issues

Issue 1: Should the Florida Division of Chesapeake Utilities Corporation's request for a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, be granted?

Recommendation: Yes. The Commission should grant the Florida Division of Chesapeake Utilities Corporation's waiver request for an extension of time to file its depreciation study no later than August 17, 2012. The petition satisfies the statutory criteria for a rule waiver. (Klancke, Ollila)

Staff Analysis: Section 120.542(2), F.S., provides that waivers and variances from agency rules shall be granted:

. . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-7.045(8)(a), F.A.C., provides that each company must file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission. Chesapeake filed its last depreciation study on May 17, 2007; thus, Chesapeake's next study is due to be filed on or before May 17, 2012, in accordance with the Rule. In the instant case, however, the Company has requested a temporary waiver of the rule requirement to provide an additional 90 days to complete the filing, thereby allowing Chesapeake to file its depreciation study on or before August 17, 2012. Thereafter, Chesapeake has requested that subsequent depreciation study filing dates be calculated from the August filing date.

In its petition, Chesapeake asserts that its ability to marshal its resources to prepare the depreciation study in accordance with the requirements of Rule 25-7.045(8)(a), F.A.C., has been hindered by the recent relocation of its main offices. In addition, the Company asserts that it is engaged in the preliminary tasks necessary to effectuate the consolidation of Chesapeake's books and tariffs (and depreciation rates) under Florida Public Utilities Company. Consequently, the personnel that are responsible for plant accounting have been charged with projects that have increased their workload significantly. As such, Chesapeake argues that filing on or before May 17th will, therefore, impose an undue hardship on the Company, as a result of these recent, increased demands on personnel and resources of the Company.

Chesapeake further asserts that the purpose of the underlying statutes will still be fulfilled if the Commission grants the requested waiver. Specifically, Section 350.115, F.S., authorizes the Commission to "prescribe by rule uniform systems and classifications of accounts for each

type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges.” Section 366.06(1), F.S., authorizes the Commission to:

. . . investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public utility company and such property which value, as determined by the Commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation and shall not include any goodwill or going concern value or franchise value in excess of the payment made therefore.

Moreover, Chesapeake is only seeking an extension of time in which to file its study; therefore, staff believes that the purpose of both underlying statutes will still be fulfilled when the Company files the study in August, thereby providing the Commission with the required data.

Staff believes that the Company has adequately demonstrated that application of the rule would create a substantial economic hardship. Staff believes that the constraints on Chesapeake’s resources and personnel to complete the study in light of the Company’s recent relocation and reorganization, will impose an ongoing substantial hardship within the meaning of Section 120.542(2), F.S.

The extension of time requested by Chesapeake should be considered reasonable and provides no hardship to staff or other utilities in scheduling future depreciation studies. As Chesapeake noted, this will allow the preparation of future depreciation filings by its limited staff to be in accordance with the Commission’s rule. Staff recommends that Chesapeake’s request to submit its depreciation study no later than August 17, 2012, and succeeding depreciation studies by August 17th at least every five years hereafter should be approved.

Docket No. 120081-GU

Date: June 7, 2012

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Klancke)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.