



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

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3       **CHAIRMAN GRAHAM:** Item number 4.

4       **MR. TRUEBLOOD:** Good morning, Commissioners.

5           Item 4 addresses Chesapeake Utilities' request  
6 to extend its environmental surcharge to recover  
7 additional costs related to remediation activities of  
8 the company's former manufactured gas plant site in  
9 Winter Haven, Florida. Approval today will allow the  
10 company to continue to collect the amount approved  
11 initially in the company's last rate case.

12           To support the extension, Chesapeake testified  
13 that projections from an environmental consultant  
14 indicate that the company will incur additional costs  
15 based on a modification to the existing consent order  
16 and remediation action plan. And based on the  
17 projection, staff recommends that the Commission extend  
18 the current surcharge to 20 months to allow the company  
19 to recover the additional costs.

20           Representatives from the company are present,  
21 and staff is available to answer any questions.

22       **CHAIRMAN GRAHAM:** Thank you, staff.

23       Ms. Keating.

24       **MR. KEATING:** Good morning, Commissioners.

25       Beth Keating with the Gunster law firm here for

1 Chesapeake Utilities. With me is Cheryl Martin also  
2 with the company, and we're here and happy to answer any  
3 questions y'all may have.

4 **CHAIRMAN GRAHAM:** Commissioners? Commissioner  
5 Edgar.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

7 I did have a couple of brief questions when I  
8 went over this item, and I would like to address them to  
9 the company. From the information that, that we had, I  
10 was unclear as to the status of the consent order and  
11 the additional remediation requirements, if any, that I  
12 understand the extension of the surcharge would be  
13 intended to address. So if you could maybe speak to the  
14 status and with DEP and any of the other legal  
15 requirements that this money for cost recovery would be  
16 utilized for.

17 **MS. KEATING:** Absolutely, Commissioner.

18 I'll start. The consent order has not yet  
19 been modified. However, the company's environmental  
20 consultant is fairly certain that at a minimum it will  
21 be modified to include the additional cost of 443,000  
22 because there will be some institutional controls that  
23 she anticipates will be included in that modification.  
24 There's a possibility that it may be further modified to  
25 include the additional remediation of the southwest

1 corner. That's not something the company really  
2 anticipates will take place, and therefore those costs  
3 have not been included in the requested additional  
4 recovery but it's a possibility. The company is, is  
5 certainly happy to the extent that the costs end up  
6 being less than are anticipated to terminate the  
7 surcharge and refund any overrecovered amounts to  
8 customers, and that would be what we would anticipate  
9 would take place.

10 **COMMISSIONER EDGAR:** I do recognize under the  
11 CERCLA requirements that the landowner is responsible  
12 generally for the cleanup and remediation, environmental  
13 protections, even though it's due to prior owners  
14 perhaps. But I am a little curious as to the timing of  
15 the request for the extension of cost recovery,  
16 recognizing from my understanding of the information we  
17 have and the additional information that you've added  
18 here today as to the request to continue cost recovery  
19 from the ratepayers prior to there being, my  
20 understanding, an additional legal requirement for costs  
21 to be incurred.

22 **MS. KEATING:** It really ties back to the  
23 timing of the surcharge. The environmental consultant  
24 is a very experienced consultant. She's worked with DEP  
25 for years. She feels a high degree of certainty that

1 these additional costs will be, and requirements will be  
2 imposed on the company. And we're looking at the  
3 concern of whether or not it would be better to  
4 terminate the surcharge and then reinstitute at a later  
5 date or just continue the surcharge through since it has  
6 been something that's been showing up on customers'  
7 bills. And in the event that those additional  
8 requirements are not imposed, then just refund any  
9 overrecovered amounts. And it just seemed like from a  
10 customer perspective, from potential confusion for  
11 customers that would see a surcharge terminate and then  
12 suddenly see it reappear on their bill, we just felt,  
13 particularly in view of the length of time that the  
14 surcharge has been appearing on the bill, that it was  
15 probably more prudent at this time that we have a high  
16 degree of certainty that the additional requirements  
17 will be imposed that we just maintain the surcharge at  
18 least for this -- for now.

19 **COMMISSIONER EDGAR:** And if I may then to  
20 staff, what is the rationale for the recommendation of  
21 cost recovery for customers to be paying prior to the  
22 legal requirement for those costs?

23 **MR. MAUREY:** As you heard the discussion, it  
24 was staff's view that these were costs that were going  
25 to be incurred, that the stability of maintaining a

1 surcharge rather than stopping it and starting it again  
2 in the future, and the protections that are afforded the  
3 customers when we do the true-up of this process when it  
4 is, in fact, complete, any monies are protected and  
5 would be refunded to the customers was the view staff  
6 took in evaluating the situation.

7 **COMMISSIONER EDGAR:** What is the legal basis  
8 for us to approve cost recovery for a surcharge to  
9 continue being paid by customers prior to there being  
10 the legal requirement for those costs?

11 **MS. KLANCKE:** If I may.

12 **COMMISSIONER EDGAR:** Please.

13 **MS. KLANCKE:** The -- as the recommendation  
14 specifies, the surcharge was initially approved in the  
15 2010 January 24th -- January 14th order. It was based  
16 on analogous assertions by the utility and testimony  
17 specifying that there is a high degree of certainty that  
18 these remedial actions will be ongoing, and thus the  
19 62-cent surcharge is calculated to ensure that there is  
20 enough funds to ameliorate those concerns going forward.  
21 Coupled with the refund possibilities and the true-up  
22 that was also approved in the initial approval in 2010,  
23 we believe that there's sufficient security on behalf of  
24 the ratepayers to justify the approval of it and the  
25 extension today.

1                   **COMMISSIONER EDGAR:** So the continuing payment  
2 of the surcharge by the customers if this extension is  
3 granted is based upon what?

4                   **MS. KLANCKE:** It is based upon both the  
5 initial filings in conjunction with the rate case in  
6 which the 62-cent surcharge was initially approved. In  
7 addition, in the instant case with regard to the  
8 extension there has been both the application  
9 information as well as witness testimony that was also  
10 filed in this docket substantiating what Ms. Keating had  
11 discussed previously, that these are very likely based  
12 on the environmental remediation activities that will be  
13 forthcoming and are ongoing, certain to occur, be  
14 incurred financially by the utility.

15                   **COMMISSIONER EDGAR:** So it is testimony that  
16 has been filed with this Commission by the company and  
17 their consultants, experts that a legal requirement for  
18 additional costs will occur?

19                   **MS. KLANCKE:** Correct. That is correct.

20                   **COMMISSIONER EDGAR:** Has staff consulted with  
21 the environmental agency as to the status of these  
22 potential additional costs?

23                   **MR. MAUREY:** Staff has not had any direct  
24 contact with DEP.

25                   **COMMISSIONER EDGAR:** Okay. Thank you, Mr.

1 Chairman.

2 **CHAIRMAN GRAHAM:** Commissioner Brown.

3 **COMMISSIONER BROWN:** Follow-up to Chesapeake.

4 Witness Napier, did, did she estimate a time for  
5 modification to the consent order?

6 **MS. KEATING:** She did not. She didn't include  
7 that in her testimony. And we're not really sure when  
8 the DEP will issue a consent order. Often times what  
9 takes place in these situations is that the company and  
10 the DEP staff work together to do additional testing and  
11 to also try to develop the best remediation plan  
12 possible, and that's currently what's taking place right  
13 now. The DEP is, staff is already working with our  
14 environmental consultant to develop a more finalized  
15 plan that would ultimately be reflected in the consent  
16 order. So it's -- there's no definitive time frame at  
17 this point.

18 **COMMISSIONER BROWN:** But your estimate is that  
19 it would happen within 2014, the remedial action would  
20 happen within the year?

21 **MS. KEATING:** Yes. That's, that's what we  
22 anticipate.

23 **COMMISSIONER BROWN:** With regard to the  
24 corrective measurement -- measures for the sediments  
25 that Chesapeake is opposing at Lake Shipp, what's the



1 ballpark amount? That's not included in the additional  
2 338 -- the net 338,000.

3 **MS. KEATING:** Correct.

4 **COMMISSIONER BROWN:** Do, do you have a  
5 ballpark estimate of what the corrective measures would  
6 be to -- for -- if, if you lose that battle?

7 **MS. KEATING:** It's fairly wide ranged  
8 depending upon the extent of the remediation that could  
9 be required in that area. It could range from 400,000  
10 up to about a million.

11 **COMMISSIONER BROWN:** Do you anticipate -- with  
12 the modification from DEP of the consent order, will  
13 that be included?

14 **MS. KEATING:** It is our hope and expectation  
15 that it will not be included, which is why those amounts  
16 are not reflected in the requested additional recovery  
17 here. If those amounts are included, then we would  
18 likely have to come back.

19 **COMMISSIONER BROWN:** For an additional  
20 surcharge. And what would that amount -- even with a  
21 range.

22 **MS. KEATING:** We're not -- we have not made  
23 those calculations just because of the wide range that's  
24 associated with that additional potential remediation.  
25 But it would be, as you could anticipate, probably

1 double or a longer time frame.

2 **COMMISSIONER BROWN:** Thank you.

3 **CHAIRMAN GRAHAM:** Commissioner Balbis.

4 **COMMISSIONER BALBIS:** Thank you, Ms. Keating.

5 Some follow-up. The original consent order that was  
6 executed in 1990, has the remedial actions associated  
7 with that been completed, and is that consent order  
8 closed or is it still open?

9 **MS. KEATING:** I believe the consent order is  
10 still open. The remediation actions though that were  
11 required by that order are in the final completion  
12 phases, which is reflected by the, as you would see in  
13 our petition, the overrecovery amount associated with  
14 those actions.

15 **COMMISSIONER BALBIS:** Okay. So that consent  
16 order is still open. And I'm just trying to put  
17 together a time frame here. So if it's still open, the  
18 company is required to perform those remediation  
19 activities; correct?

20 **MS. KEATING:** Yes.

21 **COMMISSIONER BALBIS:** And so do you  
22 anticipate -- because you mentioned a new consent order  
23 and then you also mentioned a modification. Is this --

24 **MS. KEATING:** We anticipate a modification  
25 actually.

1                   **COMMISSIONER BALBIS:** Okay. So it would be  
2 that same 1990 consent order with some additions or  
3 addendums to it.

4                   **MS. KEATING:** Correct.

5                   **COMMISSIONER BALBIS:** Okay. I guess I'm just  
6 trying to frame around I think Commissioner Edgar's  
7 concerns of us allowing recovery of what may not be a  
8 legal requirement, and I'm wondering if that might  
9 provide some legal basis for it.

10                   Has there been a remedial action plan prepared  
11 for the company's proposal for the \$443,000?

12                   **MS. KEATING:** The environmental consultant has  
13 already commenced work with the DEP staff on developing  
14 a remedial action plan. It's not been finalized.

15                   **COMMISSIONER BALBIS:** Okay. Because I only  
16 saw in the docket Witness Napier's assertions about the  
17 costs. Are there -- if the remedial action plan hasn't  
18 been prepared, how comfortable are you -- or how can you  
19 be comfortable with the \$443,000.

20                   **MS. KEATING:** The environmental consultant,  
21 who is actually, her name is Michelle Ruth, she is the  
22 environmental, outside environmental consultant who has  
23 been working on behalf of the company directly with DEP  
24 staff. They are far enough along in the assessment  
25 process to have a fairly high degree of certainty that

1 that is the correct amount associated with the  
2 remediation actions that we anticipate.

3 **COMMISSIONER BALBIS:** But it still excludes  
4 the other issues that, that you're fighting.

5 **MS. KEATING:** Correct. The additional  
6 remediation on the southwest corner of Lake Shipp.

7 **COMMISSIONER BALBIS:** Okay. Thank you.

8 **CHAIRMAN GRAHAM:** I have a question for staff.  
9 By approving this, are we in essence giving Chesapeake  
10 the blessings for these expenditures, or this stuff just  
11 stays on hold until we get a DEP consent order that  
12 comes through?

13 **MR. MAUREY:** It does not constitute a blessing  
14 of the costs. There will be a prudence review later on  
15 the appropriateness of the preparer's remediation  
16 efforts, I should say.

17 **CHAIRMAN GRAHAM:** So none of the funds that  
18 are being collected -- well, the 62,000 that's in  
19 surplus now and anything more that's being collected --  
20 are just all, they're all subject to our true-up. And,  
21 once again, because we're doing this, we're not saying  
22 that, you know, go ahead and start making more repairs.  
23 You know, basically you've got to wait until DEP comes  
24 through with a consent order. Or regardless if the  
25 consent order comes or not, we look at it later on and

1 make the determination if they were reasonable fixes or  
2 changes or not.

3 **MR. MAUREY:** That, that's correct. There is  
4 the existing consent order. It may be modified in the  
5 future. Staff is operating under the, based on the  
6 testimony of the company's witness that the remediation  
7 efforts are ongoing and it will be -- require additional  
8 remediation in the future. How extensive that is, we do  
9 not know. But their best estimate now is the 440 figure  
10 net of the 60,000 overrecovery. It's another 380,000  
11 to, to recover. They hope to limit it to that, but they  
12 can't guarantee that.

13 **CHAIRMAN GRAHAM:** So walk me through what  
14 happens August 31st of 2015 if a consent order hasn't  
15 come through yet. Then we just basically walk through  
16 all of their expenditures and all the money they've  
17 collected and determine what we're going to do with, if  
18 any, surplus that's there?

19 **MR. MAUREY:** Well, it will be looked at -- if  
20 there's a rate case before then, we will look at it  
21 and -- as part of the rate case. But at that point  
22 if -- DEP will either communicate to them that they have  
23 completed the remediation efforts or that additional  
24 efforts are required, and we will work with that  
25 knowledge when we have it. It's -- there will be a

1 review of these costs over time and the procedures that  
2 they elected to treat this. And if there are any  
3 challenges that it was unreasonable, that would be --  
4 those would be scrutinized as well.

5 **CHAIRMAN GRAHAM:** You said there will be a  
6 review. When is there going to be a review prior to  
7 August 31st?

8 **MR. MAUREY:** That's not one scheduled prior  
9 to, prior to August 31st. It's -- the review when it  
10 occurs will either be -- in a rate case these types of  
11 matters are ordinarily looked at, but until it's  
12 finished would be the final review.

13 **MS. KEATING:** Mr. Chairman, may I?

14 **MR. MAUREY:** I stand corrected. We're going  
15 to have a complete audit of these costs.

16 **CHAIRMAN GRAHAM:** When is that going to be?

17 **MR. MAUREY:** If it's not in the next rate  
18 case, it will be prior to the true-up. My apologies for  
19 the confusion.

20 **CHAIRMAN GRAHAM:** That's all right.

21 Ms. Keating.

22 **MS. KEATING:** Mr. Chairman, I was just going  
23 to offer, the company would be more than happy to comply  
24 with the reporting requirement, if you saw fit to impose  
25 one, to have us report when the consent order is issued,

1 what the remediation plan entails, and more specifically  
2 what costs that we anticipate when that amended consent  
3 order is issued. We'd be happy to do that.

4 **CHAIRMAN GRAHAM:** I actually -- I think that's  
5 a good idea if you came back to staff and kept staff  
6 informed of those things.

7 I, I understand where staff came up with the  
8 recommendation. I think I agree with it. You know,  
9 it's, it's difficult to -- there's a surplus that's in  
10 play and people are used to it. And if you were to take  
11 it away today and then 60 days from now you've got to  
12 reinstate it, I think the confusion factor to all that  
13 is just, it's really just not worth it, especially  
14 because all these dollars are protected. I get it.

15 The legal aspects of it all, that's why I lean  
16 towards some of my other colleagues, those are fair  
17 questions, and I guess we'll wait to see where the  
18 motion goes as I wait for one.

19 Commissioner Edgar.

20 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
21 I appreciate the opportunity to ask some questions and  
22 have some additional discussion about it.

23 If I, if I may, I would like to pose to staff,  
24 if you could elaborate again as to what the protections  
25 are for the customers and with the audit of these costs

1 and the true-up that will occur.

2 **MR. MAUREY:** As I mentioned earlier, there  
3 will be an audit that will determine how much money was  
4 expended, what was the purpose. If there's an excess,  
5 it will be -- it's protected, it will be returned to the  
6 customer. If it's spot on, then everything's good.  
7 It's anticipated, as we saw here, that there could be an  
8 overage or an under collection. It's very hard to be  
9 exact.

10 **COMMISSIONER EDGAR:** And, Mr. Chairman,  
11 similar to your comments, stopping, starting,  
12 restarting, stopping a surcharge is, if those costs are  
13 required to be incurred, certainly is not in anybody's  
14 best interest. It is confusing and does require, of  
15 course, additional administrative costs, and I would  
16 want to discourage that when applicable.

17 But I also think that it is our responsibility  
18 to tie cost recovery to those legal requirements, and  
19 the information that I had was, was just a little fuzzy  
20 on that. So I, I, I do not think that we need to go,  
21 for my opinion, go as far as keeping the docket open or  
22 anything like that. What I would ask is, of our staff  
23 and of the company, to continue to coordinate and to  
24 supply to our staff and to follow along the additional  
25 information as to what the requirements are and what



1 those costs will be, and then, of course, follow through  
2 with that audit process. And with that, I would move  
3 approval of staff recommendation.

4 **COMMISSIONER BRISÉ:** Second.

5 **CHAIRMAN GRAHAM:** It's been moved and  
6 seconded, approval of staff recommendation.

7 I guess the question I have, I guess the  
8 question to staff, is it necessary to amend staff  
9 recommendation to just make sure that there is that  
10 communication back and forth between the company and  
11 staff? I mean, I hate for the dialogue to be here but  
12 the order doesn't reflect, you know, what we're talking  
13 about here.

14 **MS. KLANCKE:** You can include that in your  
15 motion, the reporting requirement as it exists now. The  
16 last issue -- Issue 2 in this recommendation provides  
17 that this docket will be closed in the event that no  
18 protest is filed. If it is your wish to keep the docket  
19 open, we will be amenable to that to allow reporting.

20 However, that -- keeping the docket open is  
21 not preclusive of the utility's ability to communicate  
22 with staff, to update us and advise us about the status  
23 of the consent order; thus, it is not a requirement. We  
24 can also ensure that your comments today about requiring  
25 the utility to update the Commission can be reflected in

1 the order on this matter.

2 **CHAIRMAN GRAHAM:** Well, my concern is -- and I  
3 have no desire to keep this open, this docket open --  
4 but my concern is we just had a case just recently where  
5 the conversation went on back and forth with the  
6 Commission here, and the utility said, well, that wasn't  
7 what the order said, even though they were here two  
8 years later, everybody remembered the conversation, but  
9 it didn't happen. And so that's my question, is there  
10 something we need to do or say here in the amendment to  
11 make sure -- I mean, yes -- in the, in the motion to  
12 make sure that, you know -- I know staff is going to  
13 say, well, they never got back to us, the utility is  
14 going to say they never got back to us. We want to make  
15 sure that -- we want to hold somebody's feet to the fire  
16 if we have this conversation eight months from now or,  
17 what is it, 14 months, 15 months from now.

18 **MS. KLANCKE:** Absolutely. Based on the  
19 assertions of the board today, the order, if it is your  
20 preference, will specify the requirement that the  
21 utility advise the Commission with respect to the status  
22 and the ongoing developments in this matter going  
23 forward.

24 **CHAIRMAN GRAHAM:** So -- you've got to slow  
25 down to my engineering mind. Is that a yes, we need to

1 amend the motion or, no, we do not need to?

2 **MS. KLANCKE:** If it is your preference,  
3 perhaps it would be cleanest to amend the motion to  
4 create a requirement that the utility advise the  
5 Commission with respect to the status of this regardless  
6 of this, the closure of this docket. That will be  
7 binding on them and will be reflected in the order.

8 **CHAIRMAN GRAHAM:** Was that your motion,  
9 Commissioner Edgar?

10 **COMMISSIONER EDGAR:** Just to restate, I would  
11 move approval of the staff recommendation, with  
12 direction to our staff and to the company to coordinate  
13 and to report on the status of the consent order and  
14 requirements for costs to be incurred thereby.

15 **CHAIRMAN GRAHAM:** That was moved and seconded.  
16 Commissioner Balbis.

17 **COMMISSIONER BALBIS:** Thank you. And I'm  
18 supportive of the motion. I just wanted to clarify one  
19 point. There's been a lot of discussion on if there's  
20 cost underruns or overruns on the remediation.  
21 Obviously if there is no consent order and there's no  
22 requirement to remediate, then all of the money would be  
23 returned to customers; is that correct?

24 **MR. MAUREY:** That's correct.

25 **COMMISSIONER BALBIS:** Okay. Thank you.

1           **CHAIRMAN GRAHAM:** Commissioner Brisé.

2           **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

3           I'm supportive of the motion. I think the  
4 motion, the original motion sort of contemplated the  
5 coordination, but I'm supportive of the clarity that  
6 this provides. And obviously there's certainty that at  
7 the end of the period if what needs to be done is done,  
8 then there's no concern. And if something occurs and  
9 what's supposed to happen doesn't happen, there's  
10 certainty that there will be recovery for the consumer.  
11 So I'm very comfortable with the motion.

12           **CHAIRMAN GRAHAM:** Okay. It's been moved and  
13 seconded. Any further discussion? Seeing none, all in  
14 favor, say aye.

15           (Vote taken.)

16           Any opposed? By your action, you have  
17 approved staff recommendation as amended for item number  
18 4.

19           (Agenda item concluded.)

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

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

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

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

18 DATED THIS 2/5<sup>th</sup> day of January,  
19 2014.

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23  
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25  
Linda Boles

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