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May 24, 2022

BY E-FILING

Mr. Adam Teitzman, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20220067-GU: Petition for rate increase by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company - Fort Meade, and Florida Public Utilities Company - Indiantown Division.

Dear Mr. Teitzman:

Attached, for electronic filing, please find the Testimony of Terry Deason.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

(Document 17 of 27)

Sincerely,

A handwritten signature in black ink that reads 'Beth Keating'. The signature is written in a cursive style and is positioned above a horizontal line.

Beth Keating
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 20220067-GU: Petition for rate increase by Florida Public Utilities Company,
Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities
Company – Fort Meade, Florida Public Utilities Company – Indiantown Division.

Prepared Direct Testimony of Terry Deason

Date of Filing: May 24, 2022

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I. INTRODUCTION

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Q. Please state your name and business address.

A. My name is Terry Deason. My business address is 4377 NW Torreya Park Road, Bristol, Florida 32321.

Q. By whom are you employed and in what capacity?

A. I am self-employed as a Special Consultant specializing in the fields of energy, telecommunications, water and wastewater, and public utilities generally.

Q. Please describe your educational background and professional experience.

A. I have over forty-four years of experience in the field of public utility regulation spanning a wide range of responsibilities and roles. I served a total of seven years as a consumer advocate in the Florida Office of Public Counsel (“OPC”) on two separate occasions. In that role, I testified as an expert witness in numerous rate proceedings before the Florida Public Service Commission (“Commission”). My tenure of service at OPC was interrupted by six years as Chief Advisor to Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst when I was first appointed to the Commission in 1991. I served as Commissioner on the Commission for sixteen years, serving as its chairman on two separate occasions. Since retiring from the Commission at the end of 2006, I have been providing consulting services and expert testimony on behalf of various clients, including public service commission advocacy staff, county and municipal governments, and regulated utility companies. I have also testified before various legislative committees on

1 regulatory policy matters. I hold a Bachelor of Science Degree in Accounting, summa
2 cum laude, and a Master of Accounting, both from Florida State University.

3 **Q. Are you sponsoring an exhibit?**

4 A. No.

5 **Q. For whom are you appearing as a witness?**

6 A. I am appearing as a witness for Florida Public Utilities Company (“FPUC”) and the
7 Florida Division of Chesapeake Utilities Corporation (“Chesapeake”).

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to address the regulatory policy considerations for
10 acquisition adjustments in general and how those policy considerations should be
11 applied to FPUC’s request for increased rates in this proceeding, which includes
12 continued recognition of the positive acquisition adjustments associated with the
13 acquisition of FPUC by Chesapeake and the acquisition of Indiantown Gas Company
14 (“Indiantown”) by FPUC. (A positive acquisition adjustment of \$34,192,493 with a
15 30-year amortization beginning November 2009 was earlier approved by the
16 Commission for the acquisition of FPUC by Chesapeake in its Order No. PSC-12-
17 0010-PAA-GU. A positive acquisition adjustment of \$745,800 with a 15-year
18 amortization beginning August 1, 2010, was earlier approved by the Commission for
19 the acquisition of Indiantown by FPUC in its Order No. PSC-14-0015-PAA-GU.)
20 Based upon regulatory policy considerations and the facts as presented by witness
21 Cassel, I recommend that the Commission again approve the acquisition adjustments
22 which FPUC is requesting in this proceeding.

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II. ACQUISITION ADJUSTMENTS OVERVIEW

Q. What is an acquisition adjustment?

A. According to Rule 25-30.0371, F.A.C. Acquisition Adjustments (“the Rule”), an acquisition adjustment is defined as the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the utility assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. A negative acquisition adjustment exists when the purchase price is less than the net book value.

Q. Is Rule 25-30.0371, F.A.C. Acquisition Adjustments, applicable to electric and gas utilities?

A. Specifically, no; this Rule is applicable to water and wastewater utilities subject to the Commission’s jurisdiction. However, the definition of an acquisition adjustment should be the same for all industries regulated by the Commission.

Q. Is there a similar rule on acquisition adjustments applicable to electric and gas utilities?

A. No, there is not. Acquisition adjustments in the water and wastewater industry occur more frequently and have historically been a significant and contentious issue before the Commission. The Rule was first adopted in 2002 to establish a consistent policy upon which parties could rely and help remove some of the controversy surrounding acquisition adjustments. The Commission then made amendments to the Rule in 2010 to provide even more clarity, especially regarding negative acquisition adjustments.

1 **Q. Do you believe that Rule 25-30.0371 provides guidance for the appropriate**
2 **regulatory treatment of positive acquisition adjustments for natural gas and**
3 **electric utilities?**

4 A. Yes, it does. The Rule establishes that a positive acquisition adjustment shall not be
5 included in the utility's rate base absent extraordinary circumstances. The Rule further
6 contains a list of factors to be considered which demonstrate whether the
7 "extraordinary circumstances" test is met to allow a positive acquisition adjustment to
8 be included in rate base. These factors include:

- 9 • Quality of service to customers;
- 10 • Regulatory compliance;
- 11 • Rate levels and stability of rates;
- 12 • Cost efficiencies; and
- 13 • Whether the purchase was an arms-length transaction.

14 Just as these factors are applicable to a water or wastewater utility acquisition to
15 determine if it is in the public interest, these same factors can also be applicable to an
16 electric or gas utility acquisition.

17 **Q. Should only these factors, and no others, be considered for the appropriate**
18 **treatment of a positive acquisition adjustment for an electric or gas utility?**

19 A. No, these factors are only a guide. The ultimate test is whether the acquisition is in
20 the public interest such that the positive acquisition adjustment should be allowed in
21 rate base, or in this case, retained in rate base. The Commission should exercise its
22 considerable discretion in this area to encourage acquisitions which are in the public
23 interest and to discourage those which are not. By allowing a positive acquisition

1 adjustment in rate base for an acquisition that is in the public interest, the Commission
2 will encourage such transactions in both the near term and longer term.

3 **Q. Has the Commission addressed positive acquisition adjustments for utilities other**
4 **than water and wastewater companies?**

5 A. Yes, a good example is the acquisition of the Sebring Utility System by Florida Power
6 Corporation in Docket No. 920949-EU. In that case the Commission used its
7 considerable discretion to conclude that the acquisition was in the public interest. In
8 its Order No. PSC-92-1468-FOF-EU, the Commission stated:

9 It is our opinion that this acquisition will benefit all concerned, and thus we
10 will permit Florida Power Corporation to include a “going concern
11 value” for the purchase of the Sebring system in its rate base as a
12 positive acquisition adjustment.

13
14 **Q. What did the Commission mean by the term “going concern value”?**

15 A. In the context of its Order, the Commission was referring to the premium paid in
16 excess of book value as being attributable to Sebring’s going concern value. In the
17 broader context, “going concern value” recognizes that an existing business with
18 customers, revenue streams, and a valued product is often worth more than the net
19 book value of its assets or market value of its individual assets. In accounting
20 terminology, this additional benefit is referred to as the existing business’ goodwill.

1 **Q. What do you mean by “goodwill”?**

2 A. In an accounting context, goodwill refers to an intangible asset representing the future
3 economic benefits arising from other assets acquired in a business combination that
4 are not individually identified and separately recognized.

5 **Q. Is the Commission prohibited from allowing a positive acquisition adjustment
6 that can be attributable to goodwill?**

7 A. No, it is not. Section 366.06, Florida Statutes, only prohibits the inclusion of goodwill
8 or going concern value to the extent it exceeds payments made by the acquiring utility.
9 Therefore, an arm’s length transaction to acquire the assets of another utility is a
10 situation where goodwill is potentially eligible for inclusion in rate base because a
11 quantifiable payment has been made. The effect of this statutory provision is to make
12 two points clear: (1) absent an acquisition, a utility’s rate base should be based on net
13 book value (original cost less accumulated depreciation); and (2) in the event of an
14 acquisition, the acquiring utility may not increase its rate base by more than it actually
15 paid for the acquired assets.

16 **Q. Can you provide an example of a positive acquisition adjustment being allowed
17 for a gas utility?**

18 A. Yes, perhaps the most relevant cases are the acquisitions of FPUC by Chesapeake in
19 Docket No. 110133-GU and the acquisition of Indiantown by FPUC in Docket No.
20 120311-GU, which I earlier identified. Based upon its review of the evidence, the
21 Commission allowed the requested acquisition adjustments, but made them subject to
22 review in FPUC’s next rate case. Thus, these acquisition adjustments are again before
23 the Commission in FPUC’s current rate case.

1 **Q. On what basis did the Commission initially approve the acquisition adjustments**
2 **resulting from Chesapeake’s acquisition of FPUC and FPUC’s acquisition of**
3 **Indiantown?**

4 A. Like the considerations I identified in Rule 25-30.0371, the Commission identified
5 five factors useful in determining whether the acquisitions were in the public interest.
6 The factors identified by the Commission were: (1) increased quality of services; (2)
7 lower operating costs; (3) increased ability to attract capital for improvement; (4)
8 lower overall cost of capital; and (5) more professional and experienced managerial,
9 financial, technical, and operational resources. Based on the favorable outcomes of
10 these factors, the Commission approved the acquisition adjustments, subject to future
11 reconsideration.

12 **Q. Was this the first time the Commission used these five factors to determine**
13 **whether an acquisition was in the public interest?**

14 A. No, the Commission used these factors as far back as 1990 when the Commission
15 approved a \$2.4 million acquisition adjustment in the acquisition of Southern Gas by
16 Peoples Gas in Docket No. 891353-GU.

17 **Q. Did the Commission approve this acquisition adjustment subject to future**
18 **review?**

19 A. Yes, the Commission made the associated revenues subject to refund in the
20 Company’s next rate case. In Peoples next rate case, Docket No. 911150-GU, the
21 Commission made no refunds due to any unrealized benefits of the acquisition and did
22 not make the acquisition adjustment subject to further review in any future
23 proceedings.

1 **Q. Has the Commission made any other policy pronouncements in any other gas**
2 **company acquisitions?**

3 A. Yes, the Commission has recognized that its acquisition policy should provide an
4 incentive for acquisitions to take place which are in the overall public interest. In its
5 Order No. PSC-07-0913-PAA-GU, approving an acquisition adjustment for AGL
6 Resources' acquisition of Florida City Gas, the Commission stated: "Such an
7 acquisition provides an incentive for stronger companies to purchase weak or troubled
8 companies."

9 **Q. Is the Commission limited to only consider the five factors that have traditionally**
10 **been used to evaluate acquisitions?**

11 A. No. The Commission has broad discretion to determine whether an acquisition is in
12 the public interest. A good example of this can be found in Docket No. 20170235-EI,
13 involving the acquisition of Vero Beach Utilities ("Vero") by Florida Power & Light
14 ("FPL"). In this case, FPL presented evidence in support of the acquisition and in so
15 doing addressed each of the five factors traditionally considered by the Commission.
16 Instead of relying on these five factors, the Commission found there were other
17 extraordinary factors surrounding the acquisition of Vero by FPL and approved the
18 resulting acquisition adjustment as being in the overall public interest.

19 **Q. Are you suggesting that the Commission should disregard these five factors in its**
20 **review of the acquisition adjustments in FPUC's current rate case?**

21 A. No, I am merely stating that the Commission has great discretion in determining
22 whether extraordinary circumstances exist and whether an acquisition adjustment is in
23 the public interest. As such, the Commission can consider all five factors, can consider

1 some and not others (giving different weight to different factors), or not consider any
2 of the five factors at all. However, given that the Commission’s initial approval of
3 these acquisition adjustments were based on the five factors, it is logical and consistent
4 to look at those same factors in the instant case. Witness Cassel will provide testimony
5 showing that these same five factors continue to show benefits to customers such that
6 the acquisition adjustment should remain in rate base and continue to be amortized
7 consistent with the originally approved amortization schedules.

8

9

III. SUBSEQUENT REVIEW

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11 **Q. Does Rule 25-30.0371 provide any other guidance relevant to gas utility**
12 **acquisitions?**

13 A. While this Rule is for water and wastewater utilities, I believe it does provide some
14 guidance. It allows the Commission to modify a positive acquisition adjustment
15 should the benefits justifying the adjustment not materialize. Such a review is not
16 required by the Rule and is at the discretion of the Commission. In addition, the
17 permissible period to conduct such a review is limited to within five years of the order
18 approving the acquisition.

19 **Q. Why is the review permissive and limited to five years?**

20 A. The Commission wanted to give some finality to such decisions and provide
21 reasonable assurances that once approved, a positive acquisition adjustment is not the
22 target of continued litigation. Such assurances are important to encourage utilities to
23 pursue beneficial acquisitions and to mitigate unnecessary regulatory uncertainty. In

1 addition, the Commission recognized that there should be a materiality consideration
2 and thus made any review permissive and not a requirement.

3 **Q. The Commission has routinely required a subsequent review of an initially**
4 **approved gas company acquisition adjustment, correct?**

5 A. Yes, the Commission has routinely done so, especially when the acquisition was
6 initially considered outside of a general rate proceeding. Through subsequent reviews,
7 the Commission has gained assurances that the initially determined benefits of the
8 acquisition continue and that customer rates are fair and reasonable.

9 **Q. Do you agree with the use of subsequent reviews of acquisition adjustments?**

10 A. Yes, I generally agree when the circumstances call for it. It certainly depends on the
11 facts of each case and the degree to which the Commission is assured that an
12 acquisition is in the public interest. Another consideration would be the amount of
13 time that has elapsed between when the initial acquisition adjustment was approved
14 and when the subsequent review is undertaken. Of course, a subsequent review is not
15 required in all cases, such as the Vero acquisition by FPL that I earlier discussed. Also,
16 subsequent reviews should be balanced with other regulatory policy considerations.

17 **Q. What are some of these other regulatory policy considerations?**

18 They generally fall into three broad categories: 1.) Regulatory certainty and finality;
19 2.) Incentives for beneficial outcomes; and 3.) Avoidance of retrospective ratemaking.

20 **Q. What do you mean by regulatory certainty and finality?**

21 A. Regulatory certainty refers to a structure where all interested parties can have
22 confidence that decisions are consistent based upon Commission precedence and
23 policy and that similar factual situations will result in the same or essentially the same

1 outcomes. Regulatory finality refers to a recognition that at some point a decision
2 becomes final, not subject to continued litigation, and something upon which all
3 interested persons can base future decisions.

4 **Q. What do you mean by incentives for beneficial outcomes?**

5 A. An essential tool of effective regulation is the use of incentives to help achieve
6 beneficial outcomes. For example, as I earlier discussed, the acquisition of weak or
7 troubled companies by stronger and well-managed companies is a beneficial and
8 desirable regulatory outcome. This would also extend to situations where a company
9 may not be troubled but whose customers would be better served and receive service
10 more efficiently from a larger, well-managed company. Thus, a consistently-applied
11 acquisition adjustment policy with finality is a positive regulatory incentive. At some
12 point, a lack of finality for an acquisition adjustment could promote regulatory
13 uncertainty and thus act as a deterrent to such beneficial acquisitions being undertaken
14 and eventually presented to the Commission for consideration. Policies that deter
15 innovative alternatives from ever being considered and presented to the Commission
16 would constitute a failure of regulation.

17 **Q. What do you mean by retrospective ratemaking?**

18 A. Retrospective ratemaking is the use of new, after-the-fact information, to second guess
19 or reevaluate a prior ratemaking decision. It can colloquially be referred to as
20 “Monday morning quarterbacking.” I do not intend to suggest that regulation cannot
21 ever reevaluate prior decisions. Certainly, there can be situations where this is not
22 only appropriate but required to ensure that rates remain fair and reasonable.
23 However, such reevaluations should be the exception, rather than the rule. This is

1 especially true when the only change is the passage of time and more certainty with
2 inputs to well-reasoned decisions that were based on the best information available at
3 the time.

4 **Q. Is the passage of time particularly relevant to subsequent reviews of acquisition**
5 **adjustments?**

6 A. Yes. An acquisition adjustment usually has an amortization period of from 15 to 30
7 years or roughly the remaining life of the physical assets being acquired. This is a
8 long timeframe within which many unanticipated changes can occur which could
9 materially impact the benefits initially achieved by an acquisition. Such unanticipated
10 changes, especially if they are beyond the control of management, should not be used
11 to reject a previously approved acquisition adjustment absent other extreme
12 extenuating circumstances. In addition to unanticipated changes, there can be
13 difficulties differentiating acquisition impacts from more routine changes that occur
14 as more time elapses. For example, it can be anticipated that changes will occur in
15 capital markets over time. The magnitude and direction of such capital market changes
16 along with their resulting impacts on a regulated utility's capital structure and overall
17 cost of capital cannot be predicted with precision over the long-term. Given that two
18 of the five factors used to evaluate acquisition adjustments heavily depend on capital
19 markets, i.e., Increased ability to attract capital for improvements and Lower overall
20 cost of capital, it becomes increasingly more difficult to differentiate changes due to
21 an acquisition versus changes due to fluctuations in capital markets. This becomes
22 even more difficult as more time elapses between the initial approval of an acquisition
23 adjustment and the point at which a subsequent review is undertaken.

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IV. CONCLUSION

Q. What are your conclusions regarding the previously approved acquisition adjustments resulting from the Chesapeake acquisition of FPUC and the FPUC acquisition of Indiantown?

- A. My conclusions are:
- The decision to include or exclude an acquisition adjustment should be based on a determination of public interest and the Commission has great discretion in determining what is in the public interest.
 - The acquisition adjustments resulting from Chesapeake’s acquisition of FPUC, that was initially approved by the Commission in its Order No. PSC-12-0010-PAA-GU, and the acquisition of Indiantown by FPUC, that was initially approved by the Commission in its Order No. PSC-14-0015-PAA-GU, should be reviewed in the current rate case as contemplated by those Orders.
 - While there is no given checklist of factors that must be considered in every case, the five factors that were initially considered should once again be the basis for the Commission’s current review.
 - Based on these five factors, the testimony of witness Cassel demonstrates that the acquisitions continue to provide benefits sufficient to establish the existence of extraordinary circumstances.
 - Using its extraordinary circumstances criterion, the Commission should find the acquisitions to be in the public interest and continue to allow the

1 unamortized acquisition adjustments to be included in rate base along with the
2 remaining amortizations to be recognized as an above-the-line expense for
3 ratemaking purposes.

4 • Subsequent reviews of previously approved acquisition adjustments are
5 discretionary, depending on the facts of each case. Imposing a subsequent
6 review of an approved positive acquisition adjustment should only be done
7 when the facts and circumstances require it and should be balanced with other
8 regulatory considerations. These considerations include: 1.) Regulatory
9 certainty and finality; 2.) Incentives for beneficial outcomes; and 3.)
10 Avoidance of retrospective ratemaking.

11 • The passage of time can complicate subsequent reviews of previously
12 approved acquisition adjustments. It should be noted that approximately ten
13 years have elapsed since the Commission initially approved the
14 Chesapeake/FPUC acquisition. It should also be noted that approximately
15 eight years have elapsed since the Commission initially approved the
16 FPUC/Indiantown acquisition and that less than four years remain on the
17 previously approved amortization schedule for this acquisition.

18 • Given the totality of the facts and circumstances in this case and the regulatory
19 policies considerations I discuss, I recommend that the acquisition adjustments
20 resulting from the Chesapeake acquisition of FPUC and the FPUC acquisition
21 of Indiantown be approved without the need for additional subsequent reviews.

22 **Q. Does this conclude your testimony?**

23 A. Yes, it does.