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December 14, 2023

BY E-PORTAL

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

(Undocketed): Response to December 6, 2023 Letter of Office of Public Counsel Regarding Test Year(s)

Dear Mr. Teitzman:

On behalf of Florida Public Utilities Company ("FPUC") and Florida City Gas ("FCG")(jointly herein, "Companies"), please accept this letter as the Companies' joint response to the Office of Public Counsel's ("OPC") letter of December 6, 2023 ("Letter"), to the Florida Public Service Commission ("Commission") regarding the recent base rate cases of each.[1]

The Commission should take no action on OPC's Letter. OPC's suggestion that the December closing of the transaction by which Chesapeake Utilities Corporation ("Chesapeake") acquired FCG is a "material change in test year facts" and could result in "immediate synergies" - in the month of December – finds no support in the actual facts around the transaction. OPC's suggested remedy of reopening either or both base rate cases[2], based upon the closing date is non-sensical in terms of the timing in question, and is barred by the doctrine of administrative finality, at least as it pertains to Florida Public Utilities Company.[3]

FPUC's petition for rate relief and seeking consolidation of its natural gas business units was filed May 24, 2022. The hearing was conducted October 25-26, 2022. The Commission approved 2023 as the appropriate test year on January 24, 2023[4], although the final order reflecting

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[1] *See* 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; and Docket No. 20220069-GU, Petition for rate increase by Florida City Gas.
[2] The Companies acknowledge that Docket No. 20220069-GU, which pertains to FCG's rate case remains open pending appeal. The record for that proceeding is nonetheless closed and a Final Order based upon that record was issued six months ago on June 9, 2023.
[3] Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).
[4] Document No. 00460-2023.

that decision was not issued until March 15, 2023, given the Commission's two-part decision process utilized for rate cases.

Similarly, FCG's petition seeking rate relief was filed May 31, 2022. The hearing regarding FCG's request was conducted on December 12-13, 2022. The Commission determined that 2023 was the appropriate test year for setting FCG's rates on February 28, 2023[5], although its final order reflecting the decision was not issued until June 9, 2023, due to the two-part decision process. In each case, it has been 12 months, or more, since the administrative hearing was conducted. The mere suggestion that there could be an impact on the projected test year due to the closing of a parent-level, stock transaction in the final month of the year provides no substantive basis for the Commission to move forward. Moverover, any action to reopen either record would likely create greater upward pressure on rates charged to customers (due in no small part to increased rate case expense) than could be offset by any "immediate synergies" found in the month of December.

The Companies welcome OPC's affirmative statement that it is not alleging that either FPUC or FCG misled or made misrepresentations to the Commission. Nonetheless, to put a finer point on it, the Companies find it important to note that while witnesses for each Company confirmed that they were unaware of any definitive merger or acquisition pending in the test year, each Company's witnesses provided context for their responses to OPC that is not reflected in the Letter.

For instance, at the FPUC hearing, FPUC witness Galtman was asked specifically whether there were any mergers or acquisitions being modeled in the test year that would impact the operations or costs allocated to FPUC. (Docket No. 20220067-GU, TR Vol 1, p. 183). Witness Galtman was clear that there were no costs included in FPUC's MFRs reflecting any anticipated merger or acquisition. He went on to emphasize that the Company's parent, Chesapeake, has a fiduciary duty to consider acquisition opportunities, whether within or outside of Florida. (TR 183). Witness Galtman was then asked whether he was aware of "anything the Commission should be aware of that would affect the expenses that they are approving in this case in terms of mergers and acquisitions." In response, Witness Galtman confirmed there was not. (TR 184). The statement by Witness Galtman was true then and remains true today. The announced acquisition of FCG has no impact on the expenses reflected by FPUC in its projected test year.

Similarly, FCG Witness Fuentes testified that, "It would be inappropriate to incorporate the impacts of a future acquisition in this base rate proceeding where it is entirely unknown and pure speculation. . . ." (Docket No. 20220069-GU, TR Vol. 4, pg. 822). In response to cross-examination by OPC, Witness Fuentes again emphasized that, "[i]t's inappropriate to incorporate any impacts of a future acquisition in this base rate proceeding when it's entirely unknown what that may be, and to include it in rates would be inappropriate." (TR Vol. 5, pg. 944). As it stands today, that is still the case.

[5] Document No. 02423-2023.

While the fact of the acquisition by Chesapeake of FCG is now known, the transition is still in the early phases. Certainly, there is an expectation that there will be benefits associated with the transaction, as well as costs, but it will take time to make those assessments. In the interim, Chesapeake will operate FPUC and FCG as separate companies with separate rates, which, for the time being, are "fair and reasonable." The Commission will also have the opportunity to monitor whether those rates continue to be "fair and reasonable" through regular surveillance filings.

Furthermore, as it pertains FPUC's rate case, OPC has identified no mistake, misrepresentation, or fraud, nor has it indicated a matter of great public interest that would provide the basis for an exception to the doctrine of administrative finality.[6] FPUC is not a party to the acquisition referenced in OPC's Letter. Instead, as set forth in Chesapeake's Rule 25-9.044, Florida Administrative Code, compliance letter of December 8, 2023, the outstanding common shares of Pivotal Utility Holdings, Inc. were acquired by Chesapeake Utilities Corporation ("Chesapeake"), whereupon Florida City Gas became a wholly-owned, direct subsidiary of Chesapeake. Thus, any suggestion that the FPUC rate case should be reopened is utterly unwarranted.

Finally, as it pertains to the prior cases referenced by OPC, both are clearly distinguishable and certainly do not equate to "established policy."[7] In the 2008 rate case for FPUC, Docket No. 20080366-GU, an announcement was made, and filed in the docket, regarding Chesapeake's anticipated acquisition of FPUC very early in the proposed test year and before the Commission took any action on Commission staff's proposed agency action recommendation regarding the case. No testimony had been filed; no hearing had been conducted.

Moreover, the potential that the acquisition could have a material impact on the acquired utility was set forth in the acquisition announcement itself. FPUC, which, at the time, operated a stand-alone natural gas utility company in Florida, as well as a very small electric utility, was being acquired by the much larger Chesapeake Utilities Corporation. The transactional announcement was clear that, over time, the parent company intended to merge the operations of Chesapeake's existing Florida operating division into the FPUC subsidiary.[8] FPUC was a small, inefficient Florida corporation with no parent company being acquired by a much larger corporation. In contrast, FCG is being acquired by one large company from another large parent company. Thus, one can expect the transitional impact to be less dramatic and to occur outside the projected test year.

As for the Florida Power Corporation ("FPC") case referenced, that too is easily distinguishable. In that case, the acquisition of FPC by Caroline Power & Light, although a factor, was not the key driver for the Commission's investigation of FPC's earnings. Instead, the fact that FPC would have already been in an overearnings posture but for its accelerated amortization of its Tiger Bay Regulatory Asset was the primary impetus. When coupled with the Energy 2020 Study

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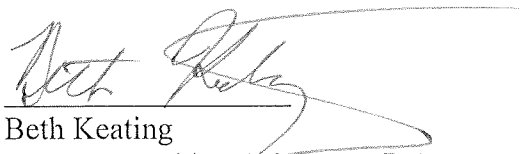
[6] *See* Sunshine Utilities v. Florida Public Service Commission, 577 So. 2d 663, 666 (Fla. 1st DCA 1991).
[7] OPC Letter at pg. 5.
[8] It is perhaps worth noting that the merger of the division into FPUC did not actually occur until FPUC's most recent rate case, Docket 20220067, some 13 years later.

Committee's proposal to deregulate the wholesale market and to cap retail rates during a transition period, as well as industry discussions regarding the potential establishment of GridFlorida, a regional transmission organization (RTO),) and the acquisition, the Commission determined that it was "necessary to initiate a base rate proceeding to address the level of FPC's earnings and to assure appropriate retail rates are implemented on a going forward basis so that appropriate benefits of the formation of the RTO and any future restructuring of the electric market are captured for the retail ratepayer." Order No. PSC-01-1348-PCO-EI, issued June 20, 2001, in Docket No. 000824-EI, at page 2.

For the above reasons, the Companies respectfully suggest that there is no sound basis or rationale by which either FCG's or FPUC's rate cases and test years should be revisited. Reopening either rate case based on the acquisition by one utility's parent of another utility in the final month of the test year would accomplish little more than a "make work" exercise that would generate additional, unnecessary costs to be born ultimately by ratepayers. As it stands, the Commission has the ability to monitor each Company's earnings, including review of surveillance reports, and can make its own determination as to whether review of either Company's rates is necessary based upon actual data presented by the Companies going-forward. Any review of synergies and savings, as well as any associated costs, would more appropriately be conducted in the next base rate proceeding for FCG, which will allow synergies and savings to materialize following integration and an adequate transition period.

As always, thank you for your assistance in connection with this filing. If you have any questions whatsoever, please do not hesitate to let me know.

Sincerely,



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