

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 23, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Regulatory Compliance & Consumer Assistance (Vandiver)
Office of the General Counsel (Fleming)

RE: Docket No. 050926-GU – Request for authorization to maintain accounting records outside of the State of Florida, pursuant to Rule 25-7.015(1), F.A.C., and Rule 25-7.015(2), F.A.C., by Florida Division of Chesapeake Utilities Corporation.

AGENDA: 04/04/06 – Regular Agenda – Proposed Agency Action on Issue 1 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCA\WP\050926.RCM.DOC

Case Background

On December 21, 2005, pursuant to Rule 25-7.015, Florida Administrative Code, Chesapeake Utilities Corporation (Chesapeake or company) filed a request that the Commission authorize the company to maintain various accounting records at its corporate office located in Dover, Delaware, rather than at the company's Florida Division office in the State of Florida.

The Commission has jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission authorize Chesapeake to keep its accounting records out-of-state?

Recommendation: Yes, the Commission should approve Chesapeake's request to keep its records out-of-state. (Vandiver)

Staff Analysis: Rule 25-7.015(1), Florida Administrative Code, states "all records that a utility is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the utility within the state, unless otherwise authorized by the Commission." In the filing for this docket, Chesapeake states that

The Company is centralizing its accounting functions to reduce the cost of complying with the Sarbanes-Oxley Act. Centralization of accounting records reduces accounting and auditing costs and will also decrease the cost of the external audit by outside auditors.

The utility estimated that the annual cost savings of moving its records to Dover, Delaware is \$71,770. This cost represents a portion of the external audit fees incurred by Chesapeake for the 2004 audit by PricewaterhouseCoopers. While staff has not verified this estimate, staff agrees that, in principle, centralization of records should result in reduced audit fees by reducing the need for the utility's external auditors to visit the Winter Haven office to review invoices and other accounting records.

Section 366.05(11), Florida Statutes, states that the "commission has the authority to assess a public utility for reasonable travel costs associated with reviewing the records of the public utility and its affiliates when such records are kept out of state." Rule 25-7.015(2), Florida Administrative Code, further defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business." Subsection 366.05(11)(a), Florida Statutes, also states that the "utility shall remit reimbursement for out-of-state travel expenses within 30 days from the date the Commission mails the invoice." The utility's filing confirms the utility's awareness of this statute and rule by stating that the utility will provide reimbursement for all travel expenses incurred to inspect records or perform out-of-state audits.

Therefore, staff recommends that the Commission authorize Chesapeake to keep its records out-of-state. Staff agrees that the centralization of the records should result in improved efficiency and cost savings. Because the Commission rule requires the utility to reimburse the Commission for reasonable travel costs associated with reviewing the records kept out of state, the Commission should not be substantially affected by this change.

Issue 2: Should Chesapeake be required to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Rule 25-7.015(1), Florida Administrative Code, for its failure to obtain Commission approval prior to taking its records out of state?

Recommendation: No. Chesapeake should not be required to show cause why it should not be fined for its apparent violation of Rule 25-7.015(1), Florida Administrative Code, for its failure to obtain Commission approval prior to taking its records out of state. (Fleming)

Staff Analysis: On December 21, 2005, Chesapeake filed a request to maintain its accounting records out of state. In response to a Staff Data Request on the matter, staff was informed that Chesapeake moved relevant records regarding accounts payable and other accounting records to its Delaware office without first seeking permission as required by Rule 25-7.015(1), Florida Administrative Code.

Chesapeake's failure to obtain Commission approval prior to moving its records out of state is in apparent violation of Rule 25-7.015(1), Florida Administrative Code. Rule 25-7.015(1), Florida Administrative Code, provides that:

[a]ll records that a utility is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the utility within the state, unless otherwise authorized by the Commission. Such records shall be open for inspection by the Commission or its authorized representatives at any and all reasonable times.

Section 366.095, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes. Each day that such refusal or violation continues shall constitute a separate offense. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although regulated utilities are charged with knowledge of Chapter 366, Florida Statutes, and of Commission rules, staff does not believe that the apparent violation of Rule 25-7.015(1), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Rule 25-7.015(1), Florida Administrative Code, was enacted to ensure that accounting records would be available to Commission audit staff in carrying out required audits of regulated companies. In this instance, staff did not have difficulty accessing any records.

Upon inquiry as to why Chesapeake failed to seek Commission approval prior to moving its accounting records out of state, Chesapeake responded that it was centralizing its accounting functions to reduce the cost of complying with the Sarbanes-Oxley Act. Chesapeake asserts that

centralization of its accounting records will reduce accounting and auditing costs and will also decrease the cost of the external audit by outside auditors.

According to Chesapeake, Section 404 of the Sarbanes-Oxley Act requires all financial reports to include an internal control report. This section has added additional audit functions at all publicly traded companies. Chesapeake began a series of "404 audits" last spring. In an effort to offset some of the additional audit costs, Chesapeake moved certain accounting records from Florida to Delaware to consolidate its accounting records. This action simplified the audit process in that the auditors did not need to audit the internal controls in Delaware as well as in Florida. At the time that Chesapeake moved the records to facilitate the "404 audits," it did not consider Commission rules regarding the location of the records. Once Chesapeake recognized the error in moving its records to Delaware prior to obtaining Commission approval, it sought to comply with the requirements of Rule 25-7.015(1), Florida Administrative Code, by filing this petition.

In its petition, Chesapeake assures the Commission that it will comply with the requirements of Rule 25-7.015(2), Florida Administrative Code. Rule 25-7.015(2), Florida Administrative Code, states in pertinent part:

[a]ny utility that keeps its records outside of the state shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the utility or its affiliates.

Chesapeake must be mindful of its legal responsibilities under Chapter 366, Florida Statutes, and of the rules of this Commission. Rule 25-7.015(1), Florida Administrative Code, expressly required Chesapeake to obtain Commission approval prior to moving its records out of state, not promptly thereafter. However, when Chesapeake recognized the error it filed this petition. Chesapeake was attempting to minimize the cost of the accounting requirements for the Sarbanes-Oxley Act. This action is beneficial to the company as well as the rate payers. There has been no denial of access to records or difficulty in obtaining records. Moreover, Chesapeake has moved the records back to Florida pending the Commission's decision regarding a permanent move of the records to Delaware. Therefore, staff does not recommend that the Commission initiate a show cause proceeding against Chesapeake for failure to obtain approval prior to taking its records out of state.

Docket No. 050926-GU

Date: March 23, 2006

Issue 3: Should this docket be closed?

Recommendation: Yes, 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. (Fleming)

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.