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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation.	DOCKET NO. 20180054-GU ORDER NO. PSC-2019-0078-FOF-GU ISSUED: February 25, 2019

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN
GARY F. CLARK
ANDREW GILES FAY

FINAL ORDER ON THE TAX IMPACTS ASSOCIATED WITH THE TAX CUTS & JOBS ACT OF 2017

Pursuant to Notice and in accordance with Rule 28-106.208, Florida Administrative Code (F.A.C.), a Hearing was held on November 27, 2018, in Tallahassee, Florida.

APPEARANCES:

GREGORY M. MUNSON and BETH KEATING, ESQUIRES, Gunster Law Firm, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1839
On behalf of Florida Public Utilities Company (FPUC).

J.R. KELLY, VIRGINIA PONDER, CHARLES J. REHWINKEL, and PATRICIA CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

RACHAEL DZIECHCIARZ, MARGO DUVAL, and CHARLES MURPHY, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel.

BY THE COMMISSION:

Background

We opened Docket No. 20180054-GU on February 23, 2018, to consider the tax impacts affecting Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) resulting from the passage of the Tax Cuts and Jobs Act of 2017. Chesapeake is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is also the parent of Florida Public Utilities Company (FPUC). FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180052-GU, and 20180053-GU were opened to address the tax impacts affecting FPUC, FPUC – Fort Meade, and FPUC – Indiantown, respectively.

On April 25, 2018, an Order Establishing Procedure for the docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the OEP that allowed the Company to file revised and supplemental testimony, and to extend testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On Monday, November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, Prehearing Order No. PSC-2018-0535-PHO-GU was issued. The Order reflected proposed stipulations between FPUC and OPC on most of the issues in this docket. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for the purpose of the hearing.

The hearing was held on November 27, 2018. At that time, we voted to accept and approve the parties' proposed stipulations on Issue Nos. 1, 2, 3, 4A, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, and 22, as set forth in Attachment A of this Order. On December 28, 2018, Chesapeake and OPC submitted post-hearing briefs on Issue Nos. 4B, 5B, 18, 19, 20, and 23.

We have jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes (F.S.).

Decision

Stipulated Issues

As discussed above, we accepted and approved the proposed stipulations as set forth in Attachment A as being in the public interest, as we find they are just and reasonable and supported by competent, substantial evidence of record.

Contested Issues

I. Protected Excess Deferred Taxes

This section addresses the appropriate disposition of the protected excess deferred taxes.

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that the Company is projected to be earning at the bottom of its allowable range of return on equity (ROE).[1] In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately $369,596, less the unprotected excess deferred tax amortization annual amount of $119,554, for an annual net savings of $250,042. Chesapeake argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of ROE, while also enabling the Company to provide utility service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's ROE for 2019 is projected to be 10.90 percent. Chesapeake also argued that if it is required to reduce its base rates by $250,042 for the net excess deferred tax savings, its projected 2019 ROE would be 10.43 percent.

OPC

OPC argued that we should reject Chesapeake's proposal to retain the tax savings associated with the protected excess deferred taxes as being unjust, unfair, and unreasonable, and should instead apply the annual tax savings of $369,596 for the benefit of customers in the form of a rate reduction. OPC also argued that the tax savings represents money that was previously paid by Chesapeake's customers, and the money therefore belongs to those customers and should be returned to them. OPC further argued that the TCJA did not contain any language, express or otherwise, that suggested an intended goal of the TCJA was to allow a utility to keep tax savings so as to continue making capital investments while potentially delaying the need for a rate proceeding.

ANALYSIS

Both Chesapeake and OPC agree on the amount of the protected excess deferred tax of $9,609,491, and agree that the amount should be amortized over 26 years, resulting in an annual tax savings of $369,596. Where the parties differ is how the disposition of the tax savings should be resolved. OPC argued that the tax savings should be returned to Chesapeake's customers

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[1] Although Chesapeake witness Cassel's testimony stated that the Company expects to be earning *at* the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 9.77 percent, which is *below* its allowable range.

regardless of the Company's earnings posture to satisfy the intent of the TCJA. Chesapeake proposed to retain the tax savings, asserting that retention of the tax savings will benefit its customers by enabling the Company to delay a rate case and place downward pressure on the requested rate increase in its next rate case.

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." OPC argued that the excess tax monies in Chesapeake's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. OPC noted that Chesapeake's witness Cassel did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax savings were retained by Chesapeake. However, in response to our staff interrogatory, Chesapeake indicated that its forecasted ROE for 2018 and 2019 would be 10.86 and 10.90 percent, respectively, if it were to retain all the tax savings resulting from the TCJA. Chesapeake's Commission-authorized range of ROE is 9.80 percent to 11.80 percent.

Chesapeake argued that OPC's reliance upon the Reedy Creek case is misplaced. OPC's witness Smith acknowledged that our orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that in addressing the 1978 Tax Reform, we considered the circumstances of the utilities on a case-by-case basis.[2] Only those utilities that were earning above the range of their Commission-approved ROE range were required to refund the tax savings arising under the 1978 Tax Reform. Witness Smith also acknowledged that the Reedy Creek utility was in an over-earnings position at the time of the 1978 Tax Reform. Thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much the utility would be required to refund. We had already determined that the utility would have to make a refund because it was over-earning. Chesapeake argued in its brief that witness Smith's refusal to consider Chesapeake's earnings posture in rendering his opinion on Chesapeake's proposals to retain some of the TCJA savings is contrary to our prior policy, as reflected in Order Nos. 8624 and 8624A, and overstates the applicability of the Court's conclusions in the Reedy Creek case. As such, Chesapeake contends OPC's arguments on this point should be rejected.

In the Reedy Creek decision, the Florida Supreme Court acknowledged our decision regarding a company's over-earnings position:

> Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return.

OPC maintains that Chesapeake witness Cassel's interpretation of Reedy Creek mistakenly links the over-earnings posture of the utility in that case with the Court's use of the term "windfall." It is our opinion that in the Reedy Creek case, the utility was ordered to make a

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[2] Order No. 8624, issued December 29, 1978, in Docket No. 780921-PU (CI), *In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978*.

refund to its customers because regulated utilities are not allowed to earn above a Commission-authorized range of ROE regardless of the cause, and therefore, any over-earnings must be refunded to the customers.

Record evidence demonstrates that Chesapeake is currently earning below its authorized ROE. The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. In response to a staff interrogatory, Chesapeake indicated its forecasted ROE for 2019, with tax savings retained by the Company, would be 10.90 percent. We agree with Chesapeake that a key factor in the Reedy Creek case pertained to the utility's earning's posture, and that the utility was required to make a refund because it was over-earning.

CONCLUSION

We find that it is fair, just, and reasonable for us to consider the earnings position of the Company in our decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put downward pressure on Chesapeake's earnings, and would accelerate the need for a full rate case sooner than it would otherwise. Therefore, we hereby find that Chesapeake shall be allowed to retain the amortized protected excess deferred tax balance, less the unprotected excess deferred tax amortization, attributed to the TCJA.

II. Unprotected Excess Deferred Taxes

This section addresses the appropriate disposition of the unprotected excess deferred taxes.

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that it is projected to be earning at the bottom of or below its authorized range of ROE. In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately $369,596, less the unprotected excess deferred tax amortization annual amount of $119,554, for an annual net savings of $250,042. Chesapeake further argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of ROE, to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's ROE for 2019 is projected to be 10.90 percent. Chesapeake also argued that if it is required to reduce its base rates by $250,042 for the net excess deferred tax savings, its projected ROE would be 10.43 percent.

OPC

OPC agreed with Chesapeake that the annual protected excess accumulated deferred income tax (ADIT) amortization of $369,596, less the estimated annual unprotected excess ADIT amortization of $119,554, produces an estimated annual net amount of $250,042. However, OPC argued that this net savings amount of $250,042 should be returned to customers via a base rate reduction, and not retained by the Company. OPC argued that in the recent cases before us that address tax savings, the electric and gas utilities have agreed to refund the monies to their customers or to apply them in a manner that directly benefits their customers (e.g., pay off storm costs in lieu of utilizing a storm surcharge). OPC contends that Chesapeake is currently earning a positive return, and that Chesapeake will continue to earn within its authorized range without the tax savings being retained by the Company. OPC argued that although Chesapeake claims that retaining the tax savings would not put the Company in an over-earning position, Chesapeake witness Cassel could not point to any calculations or evidence in his testimony to demonstrate where Chesapeake's projected earnings level would be if the tax savings were retained. OPC contended that the $250,042 net amount of the protected and unprotected excess ADIT should be applied for the benefit of the customers as a rate reduction. To do otherwise would be unjust, unfair, and unreasonable to Chesapeake's customers.

ANALYSIS

Both Chesapeake and OPC agree on the amount of the unprotected excess deferred tax of $1,195,541, amortized over 10 years, resulting in an annual tax detriment of $119,554. Where the parties differ is how the disposition of the tax detriment will be resolved.

OPC witness Smith agreed that the net annual amortization of the protected and unprotected excess ADITs is approximately $250,042, annually. Witness Smith further testified that the balance for the base rate TCJA savings should be applied for the benefit of customers as a permanent base rate reduction rather than being retained by Chesapeake.

Chesapeake witness Cassel testified that the annual unprotected excess deferred tax balance is $1,195,541, and the Company requests that this amount be amortized annually over 10 years at $119,554 per year. This annual amortization detriment of $119,554 should be netted against the annual protected savings ($369,596), and the Company requests that the net of these amounts ($250,042) be retained by the Company. We find that this treatment is appropriate because the Company is not earning above its authorized range of ROE.

CONCLUSION

We find that it is fair, just, and reasonable for us to consider the earnings position of the Company in our decision. Therefore, for the same reasons discussed in Section I, and the aforementioned analysis, we find that Chesapeake shall be allowed to offset the amount associated with the unprotected excess deferred taxes against the protected excess deferred taxes attributed to the TCJA. Because the Company's expected earned return, with the net amount of tax savings retained, is within its Commission-authorized range of ROE, Chesapeake shall be allowed to retain the annual net savings of $250,042.

III. Retention of the Tax Benefits Arising from the TCJA Rate Reduction

This section addresses the tax amount associated with the tax rate reduction, as well as the net tax savings amount of the protected and unprotected excess ADITs attributed to the TCJA, excluding the 2018 GRIP over-recovery.

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that even if the Company were allowed to retain the tax savings as it has requested, the Company would not exceed its authorized ROE range for 2019. In its brief, the Company argued that OPC witness Smith's characterization of the tax savings becoming a "windfall" for the utility fails to recognize that the Company's proposal ultimately inures to the benefit of its customers. Chesapeake also opined that if it were required to return all of the tax savings, along with the GRIP tax savings it has already proposed to refund, its ROE is projected to be only 8.66 percent. Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and the record demonstrates that the Company is currently earning below its range of ROE. Chesapeake argued that any of the results proposed by OPC would either drive the Company into a rate case, or force it to deal with an uneconomic result and severe financial duress. The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. Chesapeake argued retention of the tax savings as proposed will not cause the Company to earn above its Commission-authorized ROE range, but will allow Chesapeake to earn within its range.

OPC

OPC argued that Chesapeake is currently earning within its Commission-authorized range of ROE, and is projected to be earning within its authorized range – albeit at the lower end of the range – for the foreseeable future. OPC further argued that Chesapeake did not offer any evidence or provide any calculations indicating where Chesapeake would be earning relative to its authorized earnings range if we were to allow the Company to keep the tax savings. OPC contended that even though the Company asserts that it could avoid a potential rate case, an examination of Chesapeake witness Cassel's testimony demonstrates no rate case will be avoided. Further, witness Cassel's testimony shows that Chesapeake is earning within its range without the tax savings being retained. Finally, OPC argued that the tax savings resulting from the TCJA is money that belongs to the Company's customers and should be returned to them as a permanent base rate reduction.

ANALYSIS

Chesapeake's witness Cassel testified that the estimated impact of the federal income tax rate change from 35 percent to 21 percent for Chesapeake is approximately $954,499. Excluding $324,362 of tax savings related to the Company's 2018 GRIP savings, the incremental amount of tax savings is $630,137. In stipulated Issue No. 21, Chesapeake and OPC agreed to return the tax savings related to GRIP back to the customers. Further, Chesapeake proposed to retain the annual net tax savings amount of $250,042 related to the protected and unprotected excess deferred tax saving ($369,596 for the protected excess ADIT less $119,554 for the unprotected excess ADIT). We find that the record evidence demonstrates that Chesapeake is earning below its authorized range of ROE. The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE.

CONCLUSION

For the aforementioned reasons, and the analysis in Section I regarding the Reedy Creek case (which is also applicable to this Section), we find that Chesapeake shall be permitted to retain the tax amount associated with the tax rate reduction as well as the net tax savings amount of the protected and unprotected excess ADITs attributed to the TCJA, excluding the 2018 GRIP over-recovery.

IV. Retention & Amortization of Protected and Unprotected Excess Deferred Tax Balance

This section addresses the net amount and amortization associated with the protected excess deferred tax balance and the unprotected excess deferred tax balance.

PARTIES' ARGUMENTS

Chesapeake

Chesapeake contended that there is no debate between the Parties regarding the tax savings amounts that need to be addressed, nor is there any debate regarding Chesapeake's earnings posture. The Company contends that the Parties' disagreement is a policy question as to whether, given its earnings posture, Chesapeake should be allowed to retain the identified tax savings or return those tax savings to its customers.

The Company contended that it has an unprotected deferred tax asset balance of $1,195,541, and requested it be amortized over 10 years at $119,554 per year. For protected deferred taxes, the grossed-up balance for Chesapeake is approximately $9,609,491, which is recorded as a deferred regulatory tax liability, and should be amortized over 26 years using the Average Rate Assumption Method (ARAM), as prescribed by the Internal Revenue Service (IRS), which is approximately $369,596 annually.

OPC

OPC argued that similar to Section I and Section II, the net grossed up tax savings of $250,042 arising from the excess ADIT amortization should be returned to Chesapeake's customers through a base rate reduction. OPC agreed with the Company's proposal that $9,609,491 for the protected deferred tax savings should be amortized using the ARAM or the IRS prescribed methodology that complies with IRS normalization requirements, and flowed back over 26 years at approximately $369,596 per year. Chesapeake witness Cassel also testified that the unprotected excess deferred tax asset has an estimated balance of $1,195,541, and that this amount should be amortized over 10 years at $119,554 per year.

ANALYSIS

Both Chesapeake and OPC agree regarding the excess deferred tax amounts that need to be addressed, the amortization period of the protected excess deferred tax balance, the unprotected excess deferred tax balance, and the Company's earnings posture. What remains is a policy question as to whether, given its earnings posture, the Company should be allowed to retain the identified tax savings or return those tax savings to its customers. As discussed in the prior Sections, we find the record supports Chesapeake's retention of the net protected and unprotected excess deferred tax savings arising from the TCJA. The record shows that if all of the tax savings are returned to customers as proposed by OPC, the Company's earned return would drop to 8.66 percent, which is below the bottom of its Commission-authorized range of 9.80 percent to 11.80 percent. The record also shows that if Chesapeake were to retain these savings, the Company would not be in an over-earnings position. Chesapeake's proposal to retain the amortized amounts will allow the Company an opportunity to earn a return within its authorized range of ROE so that it can continue to provide safe and reliable service to its customers.

CONCLUSION

For the reasons discussed in Sections I and II, and the analysis above, we find that Chesapeake shall be allowed to retain the net amount associated with the protected excess deferred tax balance and the unprotected excess deferred tax balance, and shall be allowed to amortize the protected excess deferred tax balance over 26 years, and the unprotected excess deferred tax asset over 10 years.

V. Retention of the Tax Benefit Arising from the TCJA Rate Reduction

This section addresses the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

PARTIES' ARGUMENTS

Chesapeake

As the Company argued in the prior Sections, it should be allowed to retain the tax savings arising from the TCJA. Chesapeake argued that the record clearly reflects that Chesapeake is currently earning below its authorized ROE range, and that retention of both the net protected excess ADIT amount and the annual tax rate reduction savings, less the portion associated with GRIP, will not cause the Company to earn above its authorized range of ROE. If Chesapeake is not allowed to retain any of the tax savings, Chesapeake argued that its 2019 ROE would be 8.66 percent. Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and that OPC's proposed treatment would result in an ROE below this range. Chesapeake also argued that any of the results proposed by OPC would either drive the Company into a rate case, or force it to deal with an uneconomic result and severe financial duress. The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. The Company opined that its recommended treatment will ensure that the Company remains well-positioned financially pending its next rate case, so it can continue to provide safe reliable service to its customers.

OPC

OPC argued that for the reasons articulated in the prior Sections, the 2018 income tax savings arising from the TCJA rate reduction should not be retained by Chesapeake. OPC argued Chesapeake will be earning a "positive" return for the foreseeable future, as demonstrated by witness Cassel's testimony that Chesapeake is earning within its Commission-authorized ROE range without the tax savings being retained. OPC argued that under cross-examination, witness Cassel could not point to any evidence or calculations provided by Chesapeake which demonstrates what the Company's projected earnings would be if these tax savings were retained by Chesapeake. In contrast to the Company's proposal to keep the tax savings, OPC argued the tax savings should be flowed back to Chesapeake's customers. OPC argued that consistent with the Florida Supreme Court decision in the Reedy Creek case, and our recent decisions to return tax savings to utility customers when we approved settlements with other utilities regarding the TCJA, the 2018 tax savings should be applied for the benefit of Chesapeake's customers as a base rate reduction.

ANALYSIS

As previously discussed in Sections I, II, and III, we find that Chesapeake shall be allowed to retain the annual net savings amount of tax savings attributable to the TCJA rate reduction, excluding the 2018 GRIP savings. We disagree with OPC that there is not any record evidence provided by Chesapeake to demonstrate what the Company's earnings would be if the tax savings were retained. In response to a staff interrogatory, Chesapeake indicated its 2019 ROE forecast is 10.90 percent if all of the tax savings were retained. We find that requiring the Company to reduce base rates while the Company is not over-earning is contrary to past Commission decisions.

CONCLUSION

Based on the aforementioned analysis, and the analysis in Section I regarding the Reedy Creek case, we hereby find that Chesapeake shall be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

VI. Docket Closure

This section addresses whether this docket should be closed.

PARTIES' ARGUMENTS

FPUC

Yes.

OPC

No.

CONCLUSION

Upon issuance of this Order, this docket shall be closed after the time for filing an appeal has run.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulations as set forth in Attachment A of this Order are hereby approved. It is further

ORDERED that all other findings set forth in the body of this Order are hereby approved. It is further

ORDERED that Florida Public Utilities Company shall abide by the stipulations, findings, and rulings herein. It is further

ORDERED that this docket shall be closed after the time for filing an appeal of this Order has run.

By ORDER of the Florida Public Service Commission this 25th day of February, 2019.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

COMMISSION-APPROVED TYPE 1 STIPULATIONS

ISSUE 1: Is the methodology and process Florida Public Utilities Company (FPUC) Chesapeake Division d/b/a Central Florida Gas (CFG) used to calculate the impact of the Tax Cuts and Jobs Act of 2017 (TCJA) appropriate?

STIPULATION: Yes, the methodology and process Chesapeake used to calculate the impact of the TCJA is appropriate.

ISSUE 2: Were Accumulated Deferred Income Taxes (ADIT) appropriately calculated?

STIPULATION: Yes, ADIT is appropriately calculated.

ISSUE 3: Are CFG's classifications of the excess ADIT between "protected" and "unprotected" appropriate?

STIPULATION: Yes, Chesapeake's classifications of the excess ADIT between "protected" and "unprotected" is appropriate.

ISSUE 4A: Were "protected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated?

STIPULATION: Yes, "protected excess deferred taxes" for 2018 using a 21 percent corporate tax rate are appropriately calculated.

ISSUE 5A: Were "unprotected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated?

STIPULATION: Yes, the "unprotected excess deferred taxes" for 2018 using a 21 percent corporate tax rate are appropriately calculated.

ISSUE 6: Should CFG seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as "unprotected"?

STIPULATION: CFG should await IRS guidance, including guidance provided to larger, similarly-situated Florida utilities.

ISSUE 7: If CFG seeks a private letter ruling and the IRS rules therein (or in another private letter ruling) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as "protected," what process should be followed for the reclassification?

STIPULATION: If the IRS issues guidance that cost of removal should be a protected asset, the Parties agree that the balances associated with the cost of removal shall be accounted for using the IRS prescribed methodology for protected assets.

ISSUE 8: What mechanism should be utilized to avoid the negative impact to CFG of the cost of seeking a Private Letter Ruling?

STIPULATION: If it becomes necessary to seek clarification from the IRS by way of a Private Letter Ruling, then the Parties agree that the costs associated with the procedural activity may be deferred and amortized over five years, or until the next base rate proceeding.

ISSUE 9: Were appropriate adjustments made to CFG's Gas Reliability Infrastructure Program "GRIP" for the impact of the TCJA for the tax year 2018?

STIPULATION: Appropriate adjustments have not yet been made to Chesapeake's GRIP for the impact of the TCJA for the tax year 2018. Chesapeake is proposing in this case to treat the adjustments as a GRIP over-recovery in 2019, which Chesapeake believes would be an appropriate adjustment.

ISSUE 13: What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: $4,445,528 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 21: Should CFG pass-on to customers all tax benefits directly associated with the GRIP program through future GRIP surcharges?

STIPULATION: Yes, the tax benefits directly associated with the GRIP program should be passed-on to customers through future GRIP surcharges.

ISSUE 22: Should CFG update the estimated tax benefits for any adjustments to those estimates through December 22, 2018? If so, how should it be handled?

STIPULATION: Yes, Chesapeake should update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018 by flowing the benefit back to customers by incorporating it as an over-recovery in the 2019 GRIP projection.

COMMISSION-APPROVED TYPE 2 STIPULATIONS

ISSUE 10: What is the forecasted tax expense for CFG for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION: Appropriate adjustments have not yet been made to Chesapeake's GRIP for the impact of the TCJA for the tax year 2018. Chesapeake is proposing in this case to treat the adjustments as a GRIP over-recovery in 2019, which Chesapeake believes would be an appropriate adjustment.

ISSUE 11: What is the forecasted tax expense for CFG for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: Excluding the effects of any amortization of protected and unprotected ADIT, or the refund of any benefits, the forecasted tax expense using the 35% corporate tax rate for CFG is $2,077,689. If GRIP is refunded and the ADIT amortized but not refunded, the forecasted tax expense using the 35% corporate tax rate for CFG is $1,986,536.

ISSUE 12: What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION: $5,158,109 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 14: What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION:

			LOW POINT		MIDPOINT		HIGH POINT	
AVERAGE	BALANCE	RATIO (%)	COST RATE (%)	WEIGHTED COST (%)	COST RATE (%)	WEIGHTED COST (%)	COST RATE (%)	WEIGHTED COST (%)
COMMON EQUITY	$36,533,291	40.48%	9.80%	3.97%	10.80%	4.37%	11.80%	4.78%
LONG TERM DEBT	$17,933,200	19.87%	4.54%	0.90%	4.54%	0.90%	4.54%	0.90%
SHORT TERM DEBT	$16,903,676	18.73%	1.77%	0.33%	1.77%	0.33%	1.77%	0.33%
CUSTOMER DEPOSITS	$1,198,772	1.33%	2.37%	0.03%	2.37%	0.03%	2.37%	0.03%
DEFFERED INCOME TAXES	$17,679,502	19.59%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TAX CREDITS - WEIGHTED COST	($1,276)	0.00%	5.20%	0.00%	5.60%	0.00%	6.01%	0.00%
TOTAL AVERAGE	$90,247,165	100.00%		5.23%		5.63%		6.04%

ISSUE 15: What is the annual forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: The capital structure is the same as the capital structure at 21% because the Company has assumed that the regulatory liability should be grouped with deferred income taxes as a part of the capital structure at a zero cost rate.

ISSUE 16: What is the forecasted annual revenue requirement for CFG for the tax year 2018 using a 21 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is $6,816,048 using the 21% corporate tax rate.

ISSUE 17: What is the forecasted annual revenue requirement for CFG for the tax year 2018 using a 35 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is $8,426,190 using the 35% corporate tax rate.