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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY AND EXHIBITS

OF WILLIAM L. PENCE

ON BEHALF OF THE FLORIDA DIVISION OF

CHESAPEAKE UTILITIES CORPORATION

DOCKET NO. 000108GU

Q. Please state your name and present place of employment.

A. My name is William L. Pence. I am a member of the Florida Bar and a shareholder in the law firm of Akerman, Senterfitt & Eidson, P.A., 255 South Orange Avenue, Post Office Box 231, Orlando, Florida 32802-0231.

Q. What is your connection with the Florida Division of Chesapeake Utilities Corporation (the "Company") in this proceeding?

A. I serve as special environmental counsel for the Company. Specifically, I have been retained to provide counsel to the Company in connection with the investigation and remediation of environmental impacts at a certain former manufactured gas plant ("MGP") site located in Winter Haven, Florida.

Q. Can you please provide us with a brief description of your experience as an environmental attorney and your specific experience with environmental issues associated with former MGP sites?

A. I have been a practicing attorney for approximately twenty-one years, having received my law degree in 1979 from Syracuse University College of Law. A copy of my

1 current resume is attached as Exhibit "A" to Composite Exhibit No. WLP-1. For the
2 past thirteen to fourteen years, my practice has been exclusively in the environmental
3 field. I represent private industry, utilities, municipal corporations and individuals in
4 environmental regulatory matters related to assessment and remediation of
5 contaminated sites; management of hazardous wastes; defense of state and federal
6 environmental enforcement actions under the Comprehensive Environmental
7 Response, Compensation and Liability Act of 1980, the Resource Conservation
8 Recovery Act, the Clean Water Act, the Emergency Planning and Community Right
9 to Know Act, and similar state laws; and environmental risk management in
10 connection with corporate and real estate acquisitions and divestitures. I currently
11 represent four regulated utilities and three municipalities in connection with the
12 management of environmental liabilities at 12 former MGP sites throughout Florida.
13 My work at these sites includes interviewing and contracting with environmental
14 consulting firms for assessment and remediation tasks, negotiation of consent orders
15 and consent decrees with the Florida Department of Environmental Protection
16 ("FDEP") and United States Environmental Protection Agency ("USEPA"), review
17 of reports prepared by the consultants for transmittal to regulatory bodies, negotiation
18 of cleanup orders with FDEP and USEPA, negotiation of insurance claims with
19 insurance carriers and interviewing and contracting with remediation contracting
20 firms. Approximately thirty-five (35%) of my practice today is devoted exclusively
21 to former MGP sites.

22 Q. Have you ever provided written testimony before the Florida Public Service

1 Commission ("PSC") on behalf of a regulated utility in connection with a rate case
2 and, if so, what was the general purpose of your testimony?

3 A. Yes. I provided written testimony on behalf of West Florida Natural Gas Company
4 ("WFNG") in its rate case, Docket No. 871255-GU, and on behalf of Florida Public
5 Utilities Company ("FPUC") in its rate case, Docket No. 940620-GU. The purpose
6 of my testimony in each was to provide a brief history of the regulatory status of
7 former MGPs in general, and to describe the nature and extent of work required to
8 be performed by WFNG in connection with the former MGP located on property then
9 owned by WFNG in Ocala, Florida, and by FPUC in connection with the former
10 MGPs owned or operated by FPUC in Pensacola, Sanford, West Palm Beach and Key
11 West, Florida.

12 Q. What is the purpose of your testimony in this proceeding?

13 A. I am here to provide the PSC with a brief history of the gas manufacturing operations
14 conducted at the Winter Haven former MGP site, to review certain legal aspects of
15 those operations insofar as they relate to environmental conditions at the site, to
16 describe the Company's actions to date, to identify the Company's proposed future
17 responses to the presence of environmental impacts resulting from the former MGP
18 operations, and to provide a current estimate of remediation costs at the site.

19 Q. What is the connection of the Company with the former MGP site referenced above?

20 A. The Company is the current owner of a portion of the site and is the former
21 owner/operator of the MGP. The site is located at 1705 Seventh Street, S.W., Winter
22 Haven, Florida. An MGP was operated by the Company at the site from

1 approximately 1928 to 1953, during which time the entire site was owned by the
2 Company.

3 Q. Can you please provide us with a general description of the nature of MGP
4 operations?

5 A. Prior to the availability of natural gas in Florida, gas used to light streets and houses
6 was primarily made at MGPs. The manufacturing process for "carbureted water gas,"
7 the most common form of gas manufacturing in the 1900s and the method employed
8 at the Winter Haven site, included passing steam over a bed of hot coals to produce
9 "blue gas." The blue gas was then sprayed with hydrocarbons such as fuel oil and
10 passed through a superheated chamber to thermally crack the hydrocarbons and
11 produce energy-rich gases. The gas was then passed through wood shaving filled
12 scrubbers and over iron oxide in purifier boxes prior to collection in a central holding
13 tank for distribution. Common by-products of this process included tar, spent fuel
14 oils and sludges, waste scrubber shavings and purifier box wastes. These by-products
15 typically contain polycyclic aromatic hydrocarbons ("PAHs"), benzene, toluene,
16 ethylbenzene, xylenes, phenols and cyanide.

17 Q. What environmental impacts are normally found in connection with former MGP
18 operations?

19 A. Investigations at MGP sites have typically found coke, coal and clinkers in surface
20 soils; tars and oily wastes in the bottom of gas holders, in tar tanks or in soils on site;
21 wood shavings from the scrubbers; purifier box wastes; and fuel oil or light oils from
22 tars in pits or in the soils on site. Soil and groundwater impacts detected at many

1 MGP sites in Florida include concentrations of PAHs, benzene, toluene, ethylbenzene,
2 xylenes and cyanide in excess of current regulatory standards.

3 Q. What is the source of these environmental impacts?

4 A. Most are the result of routine operations at the MGPs. Inadvertent or accidental
5 releases may have occurred at several of the process areas, including at the tar tanks,
6 gas holders and associated piping, purifiers and petroleum storage areas.

7 Q. Were spills or releases of MGP waste materials in violation of any laws during the
8 operation of the former MGPs?

9 A. Generally, no. Evidence of such releases have been detected at many of the former
10 MGP sites located throughout the United States and the rest of the world, indicating
11 a state of industrial practice at the time that the MGPs were in operation that was
12 deemed normal and acceptable. It wasn't until the passage of the Clean Water Act
13 ("CWA") in the early 1970s and the Comprehensive Environmental Response,
14 Compensation and Liability Act ("CERCLA") in 1980 that the Federal government
15 began regulating such releases. Florida enacted legislation similar to the CWA and
16 CERCLA in the early 1970s and 1983, respectively.

17 With the passage of CERCLA in 1980, the federal government imposed retroactive
18 liability for remediating contaminated properties on certain classes of persons,
19 including the owner or operator of the facility at the time of the release and the
20 current owner or operator of the facility. Liability under CERCLA is strict, and, in
21 most cases, joint and several. Thus, to succeed in a claim under CERCLA to compel
22 remediation of a site, all the state or federal government need show is that the

1 property is contaminated and that the defendant is within the class of persons deemed
2 responsible under the Act, as described above. The state of Florida has a similar
3 statutory liability scheme under Chapters 376 and 403, Florida Statutes.

4 Q. Please describe the history of state and federal regulatory interest in the environmental
5 impacts associated specifically with former MGP sites.

6 A. MGP sites first became the subject of national attention in 1984. At that time, many
7 former MGP sites, including the Winter Haven site, were identified in a study
8 performed for the United States Environmental Protection Agency ("USEPA")
9 entitled "Survey of Tar Waste Disposal and Locations of Town Gas Producers"
10 ("EPA Survey"), first published in August 1984. Relevant excerpts of the EPA
11 Survey are attached as Exhibit "B" to Composite Exhibit No. WLP-1. The EPA
12 Survey constituted USEPA's "first step of a preliminary study to investigate the fate
13 and potential environmental impact of by-products (such as tar) from the
14 manufactured gas industry." The purpose of the EPA Survey was to identify the
15 locations of former MGP facilities so that authorities might become aware of potential
16 sites where environmental impacts may have resulted from prior gas manufacturing
17 operations and practices.

18 In cooperation with state and federal environmental officials, the PSC notified gas
19 utilities in June 1985 of concerns raised by regulatory bodies related to possible
20 environmental impacts of the gas manufacturing operations of former MGPs. The
21 PSC advised gas utilities in Florida that the Commission was interested in identifying
22 former MGP sites in Florida and requested that the utilities provide certain

1 information with respect to the known prior gas manufacturing operations conducted
2 by the respective utilities.

3 Q. Did the Company respond to the PSC's June 1985 letter of inquiry?

4 A. Yes. In its response, the Company identified the location of the Winter Haven MGP
5 site.

6 Q. Did other owners of former gas manufacturing facilities in Florida receive a similar
7 letter from the PSC with respect to gas manufacturing operations?

8 A. Yes. The PSC's June 1985 letter of inquiry was sent to all natural gas distributors in
9 the state of Florida with known or suspected prior gas manufacturing operations.

10 Q. Was the information received by the PSC in response to its inquiry ever provided to
11 other regulatory bodies?

12 A. The responses to the letter of inquiry received by the PSC were later shared with the
13 Florida Department of Environmental Regulation, now known as the Florida
14 Department of Environmental Protection ("FDEP"), the administrative agency of the
15 state charged with administering and enforcing the environmental laws and regulations
16 of the state of Florida.

17 Q. What was FDEP's response to the discovery of former MGP sites in Florida?

18 A. In September 1985, FDEP notified each of its District Managers of the locations of
19 former MGPs within their districts. Each FDEP District Manager was directed to
20 conduct an investigation into the potential environmental impacts of such operations
21 within their respective Districts. By letter dated March 25, 1986, a copy of which is
22 attached as Exhibit "C" to Composite Exhibit No. WLP-1, FDEP advised the PSC

1 that, due to experiences with a South Florida site, FDEP had discovered that a
2 "walkover" inspection of former MGP sites in Florida was not useful in identifying
3 potential environmental impacts arising from the former gas manufacturing
4 operations. In the March 25, 1986, letter, FDEP stated that the assessment of
5 subsurface conditions at the South Florida site disclosed the presence of organic
6 compounds in soil, sediment, and groundwater, and concluded that:

7 a preliminary contamination assessment will
8 need to be completed for each site. We
9 recommend that each property owner prepare
10 a Preliminary Contamination Assessment Plan
11 (PCAP) to sample site soil, groundwater, and
12 surface water in accordance with the attached
13 guidance. This should be coordinated with
14 [FDEP] in Tallahassee.

15 Q. How has the Company responded to the discovery of the former MGP operations at
16 the Winter Haven site?

17 A. I was retained as special environmental counsel in the mid 1980s to assist the
18 Company in its investigation of potential environmental liabilities associated with the
19 Winter Haven site. The Company's initial response was to dismantle and properly
20 dispose of the former gas holder and its contents still present at the Winter Haven site
21 in the mid 1980s. Following this effort, the Company executed a Consent Order with
22 FDEP in February 1990. A copy of the Consent Order is attached as Exhibit "D" to

1 Composite Exhibit No. WLP-1. Pursuant to the terms and conditions of the Consent
2 Order, the Company is obligated to investigate and remediate environmental impacts
3 attributable to releases from the former MGP operations.

4 Q. At present, is the Company in compliance with its obligations under the Consent
5 Order?

6 A. Yes.

7 Q. What activities has the Company undertaken since execution of the Consent Order?

8 A. Field work at the site has included extensive soil, sediment, groundwater and surface
9 water sampling. In addition, shallow trenches were excavated throughout portions
10 of the site to evaluate subsurface conditions and to delineate the more highly impacted
11 areas. The results of these investigations are included in formal reports transmitted
12 to FDEP for review and comment, including the Contamination Assessment Report
13 dated July 1990; Contamination Assessment Report Addendum dated March 1993;
14 June 21-22, 1995 Groundwater Sampling Results letter report dated August 15, 1995;
15 Summary Assessment Report dated October 5, 1995; Sediment Sampling Results
16 letter report dated October 15, 1997; and Additional Field Investigation Results
17 Report dated May 27, 1999. The transmittal of the latter report marked the
18 completion of the contamination assessment task at the site.

19 Q. Has the Company evaluated remediation options for the site?

20 A. Yes. As noted above, contamination assessment activities were materially completed
21 with the submission of the supplemental soil and groundwater data to FDEP in May
22 1999. Following this submittal, the Company was directed to evaluate remediation

1 options for the site. In June 1999, the Company implemented an Air Sparge/Soil
2 Vapor Extraction ("AS/SVE") pilot study to evaluate the potential effectiveness of
3 AS/SVE technology as a remedy for the majority of the site. Soil and groundwater
4 impacts at the site consist primarily of benzene, toluene, ethylbenzene, xylenes, and
5 polynuclear aromatic hydrocarbons. In general, the options for remediating these
6 constituents at former MGP sites are limited to excavation and treatment of all
7 impacted soils, implementation of some form of in situ remedy, or a combination of
8 both. AS/SVE is a form of in situ remedy that provides for soil and groundwater
9 remediation "in ground" by introduction of forced air into the groundwater and
10 extraction of vapors from the overlying soils. AS/SVE does not create a material
11 disruption to the ongoing use of a site during implementation, which makes it an
12 attractive remedy at sites, such as Winter Haven, where the property is continuing to
13 be used on a daily basis. By contrast, excavation and thermal treatment of impacted
14 soils can interfere with site use over a period of several months during implementation
15 of the remedy.

16 Q. Is AS/SVE an option for the Winter Haven site?

17 A. Yes. The Company delivered its AS/SVE Pilot Study Report to FDEP in January
18 2000. The AS/SVE Report concluded that AS/SVE is an appropriate remedy for the
19 majority of impacts present at the site. The Company is currently awaiting FDEP's
20 response to the AS/SVE Pilot Study Report. In addition to evaluation of the
21 appropriate remedy for the site, FDEP has indicated that additional investigations are
22 necessary for certain lake sediments located adjacent to the site. The Company is in

1 negotiations with FDEP on the scope of such additional work. The Company does not
2 believe at this time that the results of such an effort will evidence a need for
3 remediation of the sediments.

4 Q. Has the Company undertaken a responsibility to keep the PSC advised of the
5 Company's actions in responding to environmental impacts at the Winter Haven site?

6 A. Yes. Pursuant to the approved December 3, 1992 PSC Staff recommendation
7 regarding the Company's depreciation study in Docket No. 920315-GU, the
8 Company has provided periodic updates regarding the Company's investigations and
9 other activities conducted at the Winter Haven MGP site.

10 Q. What additional work is left to be done at the Winter Haven site?

11 A. The Company believes that contamination assessment activities have been completed
12 at the site, with the possible exception of further studies of adjacent sediments in Lake
13 Shipp. The AS/SVE Report delivered to FDEP on behalf of the Company in January
14 2000 indicates that AS/SVE may be an appropriate remedy for most of the impacts
15 present at the site. If FDEP agrees, the final remedy will be a combination of AS/SVE
16 and excavation/thermal treatment of a limited volume of heavier impacted soils for
17 which AS/SVE would not be effective as a remedy. If FDEP disagrees with AS/SVE
18 as a remedy, excavation/thermal treatment of all impacted soils will most likely be the
19 remedial action selected. In addition, further assessment of the adjacent sediments in
20 Lake Shipp will be required. At this time, the Company does not anticipate that those
21 sediments will require remediation.

22 Q. How long will it be before remediation activities are completed at the Site?

- 1 A. We currently expect to submit a final remedial design to FDEP in 2000. Assuming
2 a reasonable time for FDEP's review and approval, it is most likely that the final
3 remedy will be initiated in the year 2001. If AS/SVE is selected as the remedy, our
4 experts advise us that the remedy will take approximately two (2) years to complete,
5 with up to five (5) years of post-remediation monitoring to confirm cleanup. If
6 excavation/thermal treatment of all impacted soils is selected as the remedy, our
7 experts advise us that such activities can be completed within six (6) months after
8 initiation, with up to five (5) years of post remediation monitoring to confirm cleanup.
- 9 Q. Has the Company made an effort to calculate estimated costs to complete remediation
10 at the site, and, if so what are these costs?
- 11 A. Yes. Based upon currently known conditions at the site, the Company has calculated
12 the cost to complete soil and groundwater remediation utilizing certain assumptions.
13 The assumptions have been discussed with the environmental consultant performing
14 work at the Winter Haven MGP site and are believed to be reasonable in light of work
15 that is being conducted at similar sites throughout Florida and the rest of the country.
16 These assumptions include identification of: (i) estimated volume of impacted soils
17 to be remediated; (ii) most likely soil remediation alternatives; (iii) capital costs for
18 construction of groundwater treatment systems; (iv) projected operation and
19 maintenance costs of the groundwater treatment systems for the life of the
20 remediation projects; and (v) performance monitoring costs. These costs have been
21 calculated for each of the two remediation approaches described above, as well as for
22 further assessment of sediments in Lake Shipp. Depending on the remedy ultimately

1 accepted by FDEP, the estimated costs to complete assessment and remediation range
2 from approximately \$745,000 - \$1.44 million. This range of costs reflects the costs
3 of the two remedial alternatives: (i) AS/SVE with limited excavation/thermal
4 treatment - \$745,000; and (ii) excavation/thermal treatment of all impacted soils -
5 \$1.44 million. Both estimates include the projected costs for post remediation
6 monitoring and the continuing investigation of the sediments in Lake Shipp.

7 Q. Does this conclude your direct testimony?

8 A. Yes, it does.