

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: September 6, 2012

TO: Office of Commission Clerk (Cole)

FROM: Division of Economics (Ollila, Stallcup) *S.D. CB J.W.D.*
Office of the General Counsel (Klancke) *CMK JSC*

RE: Docket No. 120178-GU – Joint petition for waiver of depreciation study filing requirement of Rule 25-7.045(8)(a), F.A.C., by Florida Public Utilities, Indiantown Division and for extension of waiver of Rule 25-7.045(8)(a), by the Florida Division of Chesapeake Utilities Corporation.

AGENDA: 09/18/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: 09/24/12 (Petition Deemed Approved If Not Granted or Denied Within 90 Days of Receipt)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECO\WP\120178.RCM.DOC

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Case Background

On October 28, 2009, Chesapeake Utilities Corporation (Chesapeake) and Florida Public Utilities Company (FPUC) announced their corporate merger, whereby the electric and gas utilities of FPUC became a wholly owned subsidiary of Chesapeake. On November 5, 2009, pursuant to Rule 25-9.044(1), F.A.C., Chesapeake notified the Commission of its acquisition of FPUC. On August 6, 2010, FPUC acquired Indiantown Gas Company (Indiantown).

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On June 25, 2012, Indiantown and Chesapeake filed a joint petition for waiver and extension of waiver (waiver petition) of the depreciation study filing requirement in Rule 25-7.045(8)(a), Florida Administrative Code (F.A.C.). Rule 25-7.045(8)(a), F.A.C., requires gas utilities to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission.

As filed, the waiver petition applies to the filing dates of the depreciation studies for Indiantown and Chesapeake. The waiver petition also concerns the filing date for the FPUC, National Gas Division (FPUC-Gas) depreciation study.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), the notice of the Company's petition was submitted to the Secretary of State for publication in the July 20, 2012, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, F.A.C. In accordance with Section 120.542(8), F.S., the petition is deemed approved if the Commission does not grant it or deny it by September 24, 2012.

The Commission has jurisdiction pursuant to Sections 120.542, 350.115, and several provisions of Chapter 366, F.S., including Sections 366.04, 366.05, and 366.06.

Discussion of Issues

Issue 1: Should the Florida Public Utilities Company, Indiantown Division's request for a waiver and the Florida Division of Chesapeake Utilities Corporation's request for extension of a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, be granted?

Recommendation: Yes. The Commission should grant the Florida Public Utilities Company, Indiantown Division's request for a waiver and the Florida Division of Chesapeake Utilities Corporation's request for extension of a waiver of Rule 25-7.045(8)(a), Florida Administrative Code (F.A.C.). The depreciation studies for Florida Public Utilities Company, Indiantown Division, the Florida Division of Chesapeake Utilities Corporation, and Florida Public Utilities Company, Natural Gas Division should be filed no later than January 15, 2014 and every five years hereafter, pursuant to Rule 25-7.045(8)(a), F.A.C. The petition satisfies the statutory criteria for a rule waiver. (Klancke, Ollila)

Staff Analysis: Section 120.542(2), F.S., provides that waivers and variances from agency rules shall be granted:

. . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-7.045(8)(a), F.A.C., provides that each company must file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission.

- Chesapeake's original due date for filing its depreciation study was no later than May 17, 2012. By Commission Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, the Commission granted Chesapeake's petition for a waiver to file the study no later than August 17, 2012;¹
- Indiantown's depreciation study is due no later than May 30, 2013; and
- The depreciation study for FPUC-Gas is due no later than December 2013.

¹ Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 120081-GU, In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation.

Chesapeake, Indiantown, and FPUC-Gas (collectively, the Companies) believe that there are significant administrative efficiencies to be gained by filing the three depreciation studies at the same time. The Companies are working towards a full consolidation of their operations in 2013, including the consolidation of tariffs and filing requirements. Should this petition be granted, the Companies anticipate that they will also request approval of a single set of blended depreciation rates in their depreciation study filings, thus eliminating the need for any subsequent study required as a result of the consolidation of the Companies' rates and tariffs.

In their petition, the Companies note that Rule 7.045(8)(a), F.A.C., provides a detailed and lengthy list of items that must be included in a depreciation study and assert that even under ordinary circumstances, preparing a depreciation study is a time-consuming and difficult task. The Companies state that they are engaged in the preliminary tasks necessary to effectuate the consolidation of Chesapeake's and FPUC-Indiantown's books and tariffs (and depreciation rates) under Florida Public Utilities Company. Consequently, according to the Companies, the personnel that are responsible for plant accounting have been charged with projects that have increased their workload significantly. The Companies further assert that these projects will ultimately facilitate consolidation, enabling the Companies to recognize the synergies associated with the merger. As such, the Companies argue that filing all three studies before June 2013 will impose an undue hardship on the Companies, as a result of the recent and increased demand on the Companies' personnel and resources. The Companies further argue that filing separate studies would be unnecessarily duplicative for all involved because upon the completion of the consolidation efforts, targeted for 2013, the consolidated entity would be required to submit a depreciation study for itself.

Every depreciation study requires a substantial amount of investigation and analysis before staff can develop the inputs necessary to determine staff's recommended depreciation rates. Developing blended rates for three formerly separate companies adds an additional layer of complexity because staff must determine the appropriate relationships among the three companies so that blended rates accurately reflect the relative investment, service lives, and net salvage of every investment account for each company in the combined organization. The Companies' petition requests a due date of May 30, 2013 for the studies. Staff notes that both Florida Power and Light Company and Gulf Power Company are scheduled to file their depreciation studies in the first half of 2013. In order to ensure that staff has the necessary time and resources to devote to the Companies' studies and blended rate proposal, staff suggested to the Companies in a noticed informal meeting on July 20, 2012 that their filing be made no later than January 15, 2014. The Companies agreed with staff's suggestion.² Staff believes that the additional time will also be beneficial to the Companies as they undertake consolidation. Staff notes that the January 15, 2014 filing is less than one month past the December 2013 due date for the FPUC-Gas depreciation study.

The Companies assert that the purpose of the underlying statutes will still be fulfilled if the Commission grants the requested waiver. Specifically, Section 350.115, F.S., authorizes the Commission to "prescribe by rule uniform systems and classifications of accounts for each type

² Letter filed by petitioner on July 23, 2012 in Docket No. 120178-GU, Document Number 04905-12.

of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges.” Section 366.06(1), F.S., authorizes the Commission to:

. . . investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public utility company and such property which value, as determined by the Commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation and shall not include any goodwill or going concern value or franchise value in excess of the payment made therefore.

The Companies are only seeking an extension of time in which to file their studies for two of the Companies. Staff believes that the purpose of both underlying statutes will still be fulfilled when Chesapeake, Indiantown, and FPUC-Gas file their studies no later than January 15, 2014, thereby providing the Commission with the required data.

Staff believes that the Companies have adequately demonstrated that application of the rule would create a substantial economic hardship. Staff believes that the constraints on the Companies’ resources and personnel to complete the studies in light of the recent relocation and reorganization, will impose an ongoing substantial hardship within the meaning of Section 120.542(2), F.S.

The extension of time agreed to by staff and the Companies should be considered reasonable and provides no hardship to staff or other utilities in scheduling future depreciation studies. As the Companies noted, they expect to file for blended depreciation rates, which will avoid an additional study being filed prior to the five-year requirement described in Rule 25-7.045(8)(a), F.A.C.

Staff recommends that the Commission grant Indiantown's request for a waiver and the Chesapeake's request for extension of a waiver of Rule 25-7.045(8)(a), F.A.C. Moreover, staff recommends that the depreciation studies for Indiantown, Chesapeake and FPUC-Gas should be filed no later than January 15, 2014 as agreed to by the Companies and staff, and every five years hereafter, pursuant to Rule 25-7.045(8)(a), F.A.C. The petition satisfies the statutory criteria for a rule waiver.

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Issue 2: Should this docket be closed?

Recommendation: 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. (Klancke)

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.