

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
CHESAPEAKE UTILITIES CORPORATION FOR)
APPROVAL OF A CHANGE IN ITS GAS SALES) PSC DOCKET NO. 04-334F
SERVICE RATES ("GSR") TO BE EFFECTIVE)
NOVEMBER 1, 2004)
(FILED SEPTEMBER 1, 2004))

ORDER NO. 6654

AND NOW, this 21st day of June, 2005.

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner issued in the above-captioned docket, which was submitted after a duly noticed public evidentiary hearing, and which is attached to the original hereof as Attachment "A";

AND WHEREAS, the Hearing Examiner recommends that the Gas Sales Service Rates ("GSR") proposed by Chesapeake Utilities Corporation in its September 1, 2004 application and its December 1, 2004 supplemental application, be approved as just and reasonable for service on and after November 1, 2004 for the initial application, and on and after January 1, 2005, for the supplemental application;

AND WHEREAS, the Hearing Examiner recommends that the Proposed Settlement agreement, which is endorsed by all the parties, and which is attached to the original hereof as Attachment "B", be approved as reasonable and in the public interest; now, therefore,

IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the

June 9, 2005 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That the Commission approves the Proposed Settlement, appended to the original hereof as Attachment "B", and the Company's proposed GSR rates, effective for service on and after November 1, 2004 for the September 1, 2004 application, and on and after January 1, 2005, for the December 1, 2004 supplemental application.

3. That the Company's proposed rates are approved as just and reasonable rates effective November 1, 2004, and January 1, 2005, as set forth below:

<u>Service Classification</u>	<u>Effective 11/1/04</u>	<u>Effective 1/1/05</u>
RS, GS, MVS, LVS	\$0.995 per ccf	\$1.135 per ccf
GLR, GLO, GCR, GCO	\$0.824 per ccf	\$0.947 per ccf
HLFS, SFS	\$0.943 per ccf	\$1.077 per ccf
Firm Balancing Rate (LVS)	\$0.041 per ccf	(unchanged)
Firm Balancing Rate (HLFS, SFS)	\$0.021 per ccf	(unchanged)

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

PSC Docket No. 04-334F, Order No. 6654 Cont'd.

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

A T T A C H M E N T "A"

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: JUNE 9, 2005

WILLIAM F. O'BRIEN
HEARING EXAMINER

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IN THE MATTER OF THE APPLICATION OF)
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SALES SERVICE RATES ("GSR") TO BE)
EFFECTIVE NOVEMBER 1, 2004)
(FILED SEPTEMBER 1, 2004))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. Ch. 101, by Commission Order No. 6471, dated September 14, 2004, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Chesapeake Utilities Corporation - Delaware Division ("Chesapeake" or "Company"):

Parkowski, Guerke & Swayze, P.A.,
BY: WILLIAM A. DENMAN, ESQUIRE

On behalf of the Public Service Commission Staff ("Staff"):

Murphy, Spadaro & Landon
BY: FRANCIS J. MURPHY, ESQUIRE

On behalf of the Division of the Public Advocate ("DPA"):

G. ARTHUR PADMORE, PUBLIC ADVOCATE

II. BACKGROUND

1. On September 1, 2004, Chesapeake applied to the Public Service Commission ("Commission") for approval of an increase to its Gas Sales Service Rates ("GSR") to become effective for service rendered on and after November 1, 2004. On December 1, 2004,

Chesapeake filed a Supplemental Application seeking a further increase to its GSR to be effective for service rendered on and after January 1, 2005. The proposed rates, as compared to the current, approved rates, are as follows (per ccf):

<u>Service Classification</u>	<u>Effective 10/1/03 (approved)</u>	<u>Effective 11/1/04 (proposed)</u>	<u>Effective 1/1/05 (proposed)</u>
RS, GS, MVS, LVS	\$0.894	\$0.995	\$1.135
GLR, GLO, GCR, GCO	\$0.695	\$0.824	\$0.947
HLFS, SFS	\$0.805	\$0.943	\$1.077
Firm Balancing Rate (LVS)	\$0.059	\$0.041	(unchanged)
Firm Balancing Rate (HLFS, SFS)	\$0.014	\$0.021	(unchanged)

2. According to Chesapeake, under the proposed rates (as adjusted), residential space heating customers using 120 ccf of gas in the winter months will experience an increase of \$28.92 or 18.7%, in monthly gas billings over the rate in effect prior to November 1, 2004. Commercial and industrial customers will see increases in the range of 16% to 23% during a winter month, depending on their Service Classification.

3. Pursuant to 26 Del. C. §§ 304 and 306, the Commission, in Orders Nos. 6471 (Sept. 14, 2004) and 6540 (Dec. 21, 2004), permitted the proposed rate changes to go into effect on November 1, 2004, and January 1, 2005, on a temporary basis subject to refund, pending full evidentiary hearings. The Commission designated this Hearing Examiner to conduct such hearings and to report to the Commission proposed findings and recommendations based on the evidence presented.

4. By petition dated December 22, 2004, the DPA filed its notice of intervention.

5. A duly noticed¹ public comment hearing was conducted on March 9, 2005, in the Commission's Dover office. No members of the public attended the public comment hearing. Four customers, however, submitted written comments, which are summarized below.

6. A duly noticed public evidentiary hearing was conducted on May 26, 2005, in the Commission's Dover office. At the hearing, the parties submitted a proposed settlement agreement ("Proposed Settlement"), which, if adopted, would resolve all issues in the case. (Ex. 8.) The record, as developed at the hearing, consists of a 33-page verbatim transcript and eleven exhibits. As there were no issues in dispute, post-hearing briefs were deemed unnecessary.

7. I have considered all of the record evidence and the Proposed Settlement and, based thereon, I submit for the Commission's consideration these findings and recommendations.

III. PUBLIC COMMENT

8. Four customers submitted written comments objecting to the proposed rate increase. By letter dated March 19, 2005, Charles Palmer asserted that Chesapeake's status as a monopoly provider has allowed it to overcharge its customers and earn excessive profits, which it uses to purchase competing energy companies. Kenneth Collins, in a March 11, 2005 letter, asked the Commission to consider a smaller, more affordable rate increase and asserted that if the

¹ The affidavits of publication of notice from the *Delaware State News* and *The News Journal* are included in the record as Exhibit 1. Exhibits will be cited as "Ex.____" and references to the hearing transcript will be cited as "Tr.____."

... (footnote continued to next page.)

rates continue to climb, he will have to look for alternative ways to heat his home. In a March 9, 2005 e-mail, Arlene Urian opposed the rate increase and noted that her last gas bill was over \$315, despite her practice of keeping the thermostat at 68 or below during the day and 60 degrees at night. Deborah Virdin, by e-mail dated March 9, 2005, called the increase "appalling" and asserted that high natural gas prices make it difficult to afford food and housing.

III. SUMMARY OF THE EVIDENCE

9. Jeffrey R. Tietbohl, Controller of Natural Gas for Chesapeake, submitted pre-filed direct testimony, dated September 1, 2004, and supplemental testimony, dated December 1, 2004. (Exs. 2, 3.) Mr. Tietbohl described the calculations of the three proposed gas sales service rates and discussed the Company's gas supply and transportation service offerings. According to Mr. Tietbohl, the three GSR rates were developed in accordance with the approved gas cost recovery mechanism prescribed by the Company's natural gas tariff. (Ex. 2 at 6.)

10. In his supplemental testimony, Mr. Tietbohl explained why it was necessary for Chesapeake to file a supplemental application, or "out-of-cycle" GSR filing. (Ex. 3.) According to the Company's gas tariff, if its latest estimated under collection exceeds six percent of the actual firm gas costs incurred to date along with its latest firm gas cost estimates for the remainder of the over/under collection period, the Company must apply for revised GSR charges to be effective until the next annual adjustment in rates. When the Company filed its supplemental application, the Company estimated that the under

collection level would be approximately 12.51 percent for the over/under collection period ending October 31, 2005. (*Id.* at 4.)

11. Jennifer A. Clausius, a Rate Analyst for Chesapeake, submitted pre-filed direct testimony, dated September 1, 2004, and supplemental testimony, dated December 1, 2004. (Exs. 5, 6.) Ms. Clausius discussed the mechanics of the GSR calculations. According to Ms. Clausius, the GSR charges are increasing primarily because of the rising cost of flowing commodity gas. In addition, fixed costs are expected to increase due to increased daily firm transportation entitlements on the Eastern Shore Natural Gas Company ("ESNG") pipeline. (Ex. 5 at 5.) In her supplemental testimony, Ms. Clausius explained that the "out-of-cycle" increase is a reflection of the current natural gas market and the continuing rise in commodity prices. (Ex. 6 at 4.) Ms. Clausius also adopted the prefiled testimony of another Rate Analyst, Drew Hammel, regarding the forecasted firm and interruptible sales volumes. (Ex. 7.)

12. Funmi Jegede, a Public Utilities Analyst for Staff, submitted pre-filed direct testimony, dated March 24, 2005. (Ex. 11.) Ms. Jegede reviewed both the original filing and the supplemental filing and verified that the projected commodity prices are reasonable and that the proposed rates comply with Chesapeake's tariff. Ms. Jegede, therefore, recommended approval of all of the proposed rate increases. (*Id.* at 21.) In addition, Ms. Jegede recommended that the Company provide Staff with periodic updates of the results from its testing of its proposed hedging program and that the Company submit and implement its hedging plan with its November 1, 2005 annual GSR filing. (*Id.*)

13. Andrea C. Crane, Vice President of The Columbia Group, submitted pre-filed direct testimony, dated March 24, 2005, on behalf of DPA. (Ex. 9 (confidential version) and Ex. 10 (public version).) Ms. Crane did not recommend any changes to the proposed GSR charges. She did, however, make several recommendations concerning reporting requirements and asserted that if the Company were unable to demonstrate the reasonableness of certain procurement decisions, such as its use of an Asset Manager and its decisions regarding intervention in FERC proceedings, then the Commission should make appropriate disallowances in the Company's next GSR proceeding. (Ex. 10 at 29.)

14. Mr. Tietbohl also submitted prefiled rebuttal testimony, dated April 26, 2005. (Ex. 4.) In it, Mr. Tietbohl responded to the recommendations and to certain statements made by Ms. Jegede and Ms. Crane. Among other things, Mr. Tietbohl defended the level of its gas cost charges, the Company's use of an Asset Manager, and its participation in FERC proceedings involving ESNG.

15. At the hearing, the parties submitted a Proposed Settlement, in which they agreed to certain reporting requirements for the Company regarding rate changes proposed by its upstream pipelines and regarding comparisons of its commodity gas costs with relevant market indices. (Ex. 8.) Ms. Clausius, Ms. Jegede, and Ms. Crane each testified that adoption of the Proposed Settlement would be in the public interest and that the proposed GSR charges are just and reasonable. (Tr. at 24 - 31.)

IV. DISCUSSION

16. The Commission has jurisdiction in this matter pursuant to 26 Del. C. § 303(b).

17. As discussed above, Staff and DPA have verified that Chesapeake developed the proposed GSR rates using reasonable price projections and made its calculations in conformance with its tariff. Although the size of the proposed increase is significant, the rates are a reflection of rising market prices for natural gas during the determination period, and, under its tariff, Chesapeake recovers such costs (without any profit component) through its gas cost recovery mechanism. Based on the Company's supporting testimony and documentation, and on Staff and DPA's favorable recommendations, I find that the proposed rates are just and reasonable and in compliance with the Company's tariff. I recommend, therefore, that the Commission approve the GSR rates as proposed in the Company's initial and supplemental applications, as seen above at paragraph 1.

18. Regarding the issues raised by Staff and DPA in their direct testimony, the parties agreed to enter into the Proposed Settlement as a resolution of all such matters. In particular, the Company agrees to notify Staff and DPA in writing of all rate changes proposed by ESNG or any of the Company's upstream pipelines that would result in any change in its GSR rates and quantify the potential impact upon its retail customers, and state whether the Company intends to intervene in the proceeding. In addition, the Company agrees to document that the commodity prices it pays for natural gas are competitive with relevant market indices, and provide an explanation for any significant variations from the relevant market index consistent with the reporting requirements contained in the Company's natural gas commodity procurement plan.

19. These reporting requirements appear to be a reasonable resolution to the issues raised by Staff and DPA in their direct

testimony. I agree with Ms. Clausius, Ms. Jegede, and Ms. Crane, therefore, that adoption of the Proposed Settlement would be in the public interest.

V. RECOMMENDATIONS

20. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- A. That the Commission approve as just and reasonable the Company's proposed revised GSR charges as proposed in the Company's initial and supplemental applications; and
- B. That the Commission adopt as reasonable and in the public interest the Proposed Settlement, which is attached to the proposed Order in this matter.

A proposed order, which will implement the foregoing recommendations, is attached hereto.

Respectfully submitted,

/s/ William F. O'Brien
William F. O'Brien
Hearing Examiner

Dated: June 9, 2005

A T T A C H M E N T "B"

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IN THE MATTER OF THE APPLICATION *
OF CHESAPEAKE UTILITIES CORPORATION * PSC Docket No. 04-334F
FOR APPROVAL OF A CHANGE IN ITS GAS *
SALES SERVICE RATES (GSR) TO BE *
EFFECTIVE NOVEMBER 1, 2004

PROPOSED SETTLEMENT

On this 26th day of May, 2005, Chesapeake Utilities Corporation, a Delaware corporation (hereinafter "Chesapeake" or the "Company"), and the other undersigned parties (all of whom together are the "Settling Parties") hereby propose a settlement that, in the Settling Parties' view, appropriately resolves certain issues raised in this proceeding.

I. INTRODUCTION

1. On September 1, 2004, Chesapeake filed with the Delaware Public Service Commission (the "Commission") an application for a change in its Gas Sales Service Rates ("GSR Rates") and firm balancing rate to be effective for service rendered on and after November 1, 2004. On or about December 1, 2004, Chesapeake filed a Supplemental Application seeking a further change in its GSR Rates to be effective for service rendered on and after January 1, 2005.

2. The Commission Staff (the "Staff") and the Division of the Public Advocate ("DPA") filed written testimony on or about March 24, 2005. While neither the Staff nor DPA took issue with the proposed changes in the GSR rates, both Staff and DPA raised several other issues.

3. Subsequently, on April 26, 2005, Chesapeake filed its rebuttal testimony in this docket pursuant to which it took issue with various recommendations of the Staff and DPA.

4. During the course of this proceeding, the parties have conducted substantial written discovery in the form of both informal and formal data requests.

5. The Settling Parties have conferred in an effort to resolve all issues raised in this proceeding. The Settling Parties acknowledge that the parties differ as to the proper resolution of many of the underlying issues in this proceeding. Notwithstanding these differences, the Settling Parties have agreed to enter into this Proposed Settlement on the terms and conditions contained herein, because they believe that this Proposed Settlement will serve the interest of the public and the Company, while meeting the statutory requirement that rates be both just and reasonable.

II. SETTLEMENT PROVISIONS

6. The Company agrees to notify Staff and DPA in writing of all rate changes proposed by Eastern Shore Natural Gas Company or any of the Company's upstream pipelines that would result in any change in the Delaware Division's retail gas cost recovery rates, and with respect to any such rate changes, in the notice the Company will quantify the potential impact upon the Delaware Division's retail customers and state whether the Company intends to intervene in the proceeding.

7. The Company agrees to document that the commodity prices it pays for natural gas are competitive with relevant market indices, and provide an explanation for any significant variations from the relevant market index consistent with the reporting requirements contained in the Company's natural gas commodity procurement plan.

8. The Settling Parties agree that the changes in the Company's GSR Rates (including the firm balancing rates) as proposed by the Company in its Application and Supplemental filing, are just and reasonable, and recommend approval of said changes by the Delaware Public Service Commission.

III. STANDARD PROVISIONS AND RESERVATIONS

9. The provisions of this Proposed Settlement are not severable.

10. This Proposed Settlement recommends a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any rate making or any other principle in any future case or in any existing proceeding, except that, consistent with and subject to the provisos expressly set forth below, this Proposed Settlement shall preclude any Settling Party from taking a contrary position with respect to issues specifically addressed and resolved herein in proceedings involving the review of this Proposed Settlement and any appeals related to this Proposed Settlement. No party to this Proposed Settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue addressed in this Proposed Settlement other than as specified herein, except that each Settling Party agrees that the Proposed Settlement may be submitted to the Commission for a determination that it is in the public interest and that no Settling Party will oppose such a determination. Except as expressly set forth below, none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or previously taken.

11. In the event that this Proposed Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and

remand, each of the Settling Parties reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

12. The Proposed Settlement will become effective upon the Commission's issuance of a final order approving this Proposed Settlement and all the settlement terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Proposed Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

13. The obligations under this Proposed Settlement, if any, that apply for a specific term set forth herein shall expire automatically in accordance with the term specified, and shall require no further action for their expiration.

14. The Settling Parties may enforce this Proposed Settlement through any appropriate action before the Commission or through any other available remedy. The Settling Parties shall consider any final Commission order related to the enforcement or interpretation of this Proposed Settlement as an appealable order to the Superior Court of the State of Delaware. This shall be in addition to any other available remedy at law or in equity.

15. If a Court grants a legal challenge to the Commission's approval of this Proposed Settlement and issues a final non-appealable order which prevents or precludes implementation of any material term of this Proposed Settlement, or if some other legal bar has the same effect, then this Proposed Settlement is voidable upon written notice by any of the Settling Parties.

16. This Proposed Settlement resolves all of the issues specifically addressed herein and precludes the Settling Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Settlement is made without admission against or prejudice to any factual or legal positions which any of the Settling Parties may assert (a) in the event that the Commission does not issue a final, non-appealable order approving this Proposed Settlement without modifications; or (b) in other proceedings before the Commission or other governmental body so long as such positions do not attempt to abrogate this Proposed Settlement. This Proposed Settlement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Settling Parties of all of the issues in this proceeding.

17. This Proposed Settlement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission should fail to grant such approval, or should modify any of the terms and conditions herein, this Proposed Settlement will terminate and be of no force and effect, unless the Settling Parties agree to waive the application of this provision. The Settling Parties will make their best efforts to support this Proposed Settlement and to secure its approval by the Commission.

18. It is expressly understood and agreed that this Proposed Settlement constitutes a negotiated resolution of the issues in this proceeding and any related court appeals.

IV. CONCLUSION

IN WITNESS WHEREOF, intending to legally bind themselves and their successors and assigns, the undersigned parties have caused this Proposed Settlement to be signed by their duly authorized representatives.

Chesapeake Utilities Corporation

By: /s/ C. J. Moore _____
A.V.P.

Delaware Public Service Commission Staff

By: /s/ Connie S. McDowell

Division of the Public Advocate

By: /s/ G. Arthur Padmore