

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
CHESAPEAKE UTILITIES CORPORATION TO)
REVISE ITS GAS RATES TO REFLECT) PSC DOCKET NO. 06-202
THE INCREASE IN THE ASSESSMENT RATE)
IMPOSED BY 26 DEL. C. § 115 AND)
§ 1012(c)(2) (FILED JUNE 20, 2006))

ORDER NO. 6992

This 25th day of July 2006, the Commission determines and orders the following:

1. As the Commission has explained (in somewhat greater detail) in PSC Order No. 6700 (Aug. 23, 2005), in July 2005, the General Assembly and Governor increased the assessment factor used in calculating the annual assessment that is paid by public utilities and retail electric suppliers. The factor has now moved from 2 mills (.002) to 3 mills (.003).¹

2. On June 20, 2006, Chesapeake Utilities Corporation ("Chesapeake" or the "Company") filed an Application (including implementing tariff leaves) seeking approval to increase its natural gas usage rates to recover the incremental costs that it has already

¹See 75 Del. Laws ch. 142 § 1 (July 12, 2005) (HB 78"), changing the assessment factor in 26 Del. C. § 115(d) from 2 mills to 3 mills. The assessment factor is multiplied against the utility's or supplier's prior calendar year gross intrastate revenues to determine the annual monetary assessment to be paid by the utility or supplier.

paid and will incur due to the 1 mill increase in the assessment factor brought about by HB 78.²

3. Under Chesapeake's proposal, it will assess a monthly charge in the amount equal to \$0.010 per ccf included in each block of the usage charge for all customers taking regulated gas service. That factor will prevail until January 1, 2007. According to Chesapeake, this charge will allow it to recover two types of costs arising because of HB 78. First, it will allow the utility to recover, during the period from August 1 through December 31, 2006, the additional 1 millage liability it expects to incur in its 2006 annual assessment - the assessment based on its calendar year 2006 gross intrastate revenues. Secondly, the proposed charge will allow Chesapeake to now recover, over the same period, the additional assessment liability it has already paid in its 2005 annual assessment - the payment based on its year 2005 gross intrastate revenues.³ On or before December 1, 2006, Chesapeake will then file another application to revise its regulated gas base rates to include the incremental costs (on an annual basis) caused by the 1 mill increase in the assessment factor.

4. In a Staff Memorandum dated July 6, 2005, Staff recommended approval of a separate line charge to collect the incremental regulatory assessment for calendar year 2006, but opposed the

²The July 2005 law specifically allows utilities and retail electric suppliers to recover the incremental costs resulting from the increased assessment factor and allows those entities to use a separate charge on subscribers' bills as the vehicle to do so. See 75 Del. Laws ch. 142 § 5 (2005).

³In PSC Order No. 6700, the Commission noted that the increased assessment factor, enacted in July 2005, would be applied to a utility's gross revenues for the entire 2005 year.

Company's application to now recover the incremental costs included in the already paid year 2005 assessment. Staff points to the timeliness of the Company's application, particularly as it relates to the 2005 assessment year, as well as the possibility that approval of the Company's request for recovery of the already paid calendar 2005 incremental costs could run counter to the regulatory principle that disfavors retroactive ratemaking.

5. The Commission has reviewed the Staff Memorandum and heard the Company's request that it be allowed to collect the incremental assessment for 2005, notwithstanding the timing of its application. The Commission believes that the General Assembly made its intent clear in HB 78 - "[t]hat the Commission shall allow full recovery for any incremental increase to the utilities and cable companies associated with enactment of this legislation."⁴ In the Commission's view, such statutory direction provides - in this matter - a limited exception to the normal rate-making principle that present rates should not be increased to recover past (and already incurred) expenses.⁵

6. Consequently, notwithstanding the Staff's recommendation to not allow the assessment amounts related to calendar 2005, the

⁴75 Del. Laws ch. 141 § 5 (2005).

⁵At the same time, the Commission does think that the legislative directive to allow for "full recovery" is subject to some temporal time limits. For example, what if several years from now, a rate regulated utility files to adjust its rates to reflect the 2005 1 mill increase in the assessment factor and at that time also seeks to recover the incremental assessment costs it has incurred and paid in yearly assessments since 2005. In such situation, the Commission may find that the utility's request for the recovery of its past increased assessment costs comes too late. The

Commission, for the reasons stated above, now approves Chesapeake's usage charge proposal of \$0.010 per ccf for usage on and after August 1, 2006 and through December 31, 2006.

Now, therefore, **IT IS ORDERED:**

1. That pursuant to 75 Del. Laws ch. 142 § 5 (2005), the application filed by Chesapeake Utilities Corporation on June 20, 2006, seeking permission to implement an increase to its usage charge to recover the incremental costs associated with the increase in the annual adjustment factor enacted by 75 Del. Laws ch. 142 § 1 (2005), is hereby approved. Chesapeake Utilities Corporation is hereby authorized to impose an amount equal to \$0.010 per ccf included in each block of the usage charge for all customers taking regulated gas service. The increased usage charge shall become effective beginning August 1, 2006 and continue through December 31, 2006.

2. That by December 1, 2006, Chesapeake Utilities Corporation shall file an application to reset its base rates to include only the incremental .001 assessment with such adjusted rate to be effective January 1, 2007.

3. That the Commission's decision in this matter is consistent with the direction of the General Assembly and Governor, announced in 75 Del. Laws. Ch. 142 § 5 (2005), that the Commission allow full recovery of the incremental costs arising from the increased assessment factor enacted by that legislation. Accordingly, this decision should be viewed as a very limited exception, created by the

Commission does not find that the timing of Chesapeake's present application triggers such a timing concern.

legislature, to the regulatory principle disfavoring retroactive rate-making.

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

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary