



(Application at ¶ 4.) Based on the average of Chesapeake's closing stock price for the fifteen trading days prior to April 15, 2009, the transaction has a value of \$12.20 per share of FPU common stock. (Application at Attachment A, page 2.)

4. If the Company receives the required regulatory and shareholder approvals, the Company anticipates that the acquisition will close sometime in the fourth quarter of 2009. (Application at Attachment A, page 2.) Prior to closing, FPU will redeem all of its outstanding shares of preferred stock at the redemption price(s) stipulated in the terms of the stock agreements, together with all dividends accrued and unpaid to the date of such redemption. (*Id.*) After the acquisition, FPU will become a wholly-owned subsidiary of Chesapeake under the name "Florida Public Utilities Company." (*Id.*)

5. Chesapeake will not issue any additional long-term debt in connection with the transaction. FPU's existing long-term debt as of the closing will remain with the new wholly-owned subsidiary. The estimated \$3 million of FPU's short-term debt as of March 31, 2009 will be repaid and replaced with borrowings from Chesapeake's existing short-term lines of credit. (Application at ¶ 5.)

6. The Company's decision to issue common stock to acquire FPU was based on its existing and projected capital structure, the current state of the capital markets, and its belief that the use of common stock was a more economical alternative than the issuance of debt. (Company Response to Staff Interrogatory; Application at ¶ 4.) Chesapeake and FPU intend the merger to be a tax-free transaction. (Application at Attachment A, page 2.)

**STAFF REVIEW AND INVESTIGATION**

7. Staff Public Utilities Analyst Funmi I. Jegede was assigned to review and investigate the Company's Application. She requested the following additional information:

- (a) Whether Chesapeake would file for a rate increase in the next 18 months?
- (b) Who would determine the outcome of the proposed transaction?
- (c) Post-closing coverage ratios.
- (d) What would happen if the Commission granted authority to issue the requested 2.6 million shares but the necessary approvals for the transaction were not obtained?
- (e) What would happen if the number of issued and outstanding FPU shares at the closing date was less than 6,420,000?
- (f) Whether, and if so in what areas, Chesapeake would be materially affected by the proposed transaction?

**THE COMPANY'S RESPONSES**

8. The Company provided the following responses to Staff's request for additional information:

- (a) Chesapeake will not apply for a base rate increase within the next 18 months, as the proposed transaction will not significantly affect Chesapeake's rate of return.

- (b) According to the Company, SEC and shareholders from both FPU and Chesapeake are required to consummate the transaction.
- (c) Although the Company is not rated by a national agency such as Moody's, Fitch or Standard & Poor's with respect to its ratio of earnings to fixed charges and preferred dividends, it provided a summary comparing its coverage ratios with those of some other regional utilities. Staff found the Company's and FPU's combined post-closing coverage ratios (on historic and annualized bases) to be satisfactory.
- (d) If the Company does not secure all necessary approvals of the transaction, the transaction will be terminated and the stock will not be issued.
- (e) If the number of FPU shares issued and outstanding at the closing date is less than 6,420,000, the Company will issue only the number of shares required to complete the transaction, and will not issue any more shares than are necessary to do so.
- (f) The Company was unable to quantify any material effects of the proposed transaction on Chesapeake. It responded that it had no current plans to file a base rate case in the near

future, and that ratepayers would continue to be charged rates based on the elements of rate base, operating expenses, and rate of return approved by the Commission in the Company's most recent base rate case. The Company observed that the proposed transaction was structured to maintain a consistent consolidated capital structure, but that if the FPU subsidiary continued to hold its long-term debt, the parent's capital structure could be different at the time a new base rate case is filed, and the Company could not predict those ratios at this time. Furthermore, the Company observed that the proposed transaction could result in economies of scale that could reduce the amount of corporate charges per customer allocated to Chesapeake and in obtaining more favorable interest rates on long-term debt, but the Company could not quantify any such effects at this time.

**STAFF'S RECOMMENDATION**

9. After reviewing the Company's Application and supporting documentation and the Company's responses to its requests for additional information, Staff analyst, Jegede, concluded that the Company had complied with the filing requirements for the proposed issuance and recommended that the Application be approved.

## COMMISSION FINDINGS

10. 26 Del. C. § 215(d) authorizes the Commission to investigate and hold such hearings in this matter as it deems necessary and, thereafter, may grant the application in whole or in part with such modification and upon such terms and conditions as may be appropriate. Section 215(d) further requires the Commission to approve any stock issuance when the proposed issuance is to be made in accordance with law, for a proper purpose, and is consistent with the public interest.

11. Section 215(d) further requires the Commission to grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within 30 days of its filing. In the absence of such action within 30 days, the issuance described in the application will be deemed to be approved.

12. Commission Staff has examined the proposed issuance and the schedules and exhibits thereto, and Staff's inquiries have been answered satisfactorily. Thus, Staff has determined, pursuant to 26 Del. C. §215(d), that the proposed issuance of up to 2.6 million shares of Chesapeake common stock will be made in accordance with law, will be made for a proper purpose, and will be consistent with the public interest. Accordingly, Staff recommends that the Commission approve Chesapeake's Application. Staff further recommends that the Commission direct the Company to provide notice to the Commission of the consummation of the transaction within 30 days of the closing, which notice should include the actual number of Chesapeake Utilities

Corporation shares that were issued to FPU common stockholders in the transaction.

**ORDER**

**NOW, THEREFORE, BY A VOTE OF NOT FEWER THAN THREE COMMISSIONERS, IT IS HEREBY ORDERED:**

1. That the Commission, having independently reviewed this matter and having determined that public notice and hearing are not required, finds that the Application for approval of the issuance of up to 2.6 million shares of Chesapeake Utilities Corporation common stock, filed by Chesapeake Utilities Corporation with the Commission on May 18, 2009, will be made in accordance with law, will be made for a proper purpose, and will be consistent with the public interest. The Application is, therefore approved.

2. That nothing in this Order shall be construed as a guarantee, warranty, or representation by the State of Delaware or by any agency, commission, or department thereof with respect to the stock of Chesapeake Utilities Corporation that may be issued under the Application herein approved.

3. That, within 30 days of the closing of the transaction, the Company shall provide notice to the Commission of the closing of the transaction, including the actual number of Chesapeake Utilities Corporation shares that were issued to FPU common stockholders in the transaction.

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/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary