

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)	
CHESAPEAKE UTILITIES CORPORATION)	PSC DOCKET NO. 11-151
FOR APPROVAL TO GUARANTEE DEBT)	
(FILED MARCH 10, 2011))	

ORDER NO. 7941

AND NOW, this 4th day of April, 2011:

BACKGROUND OF THE APPLICATION

1. On October 28, 2009, Chesapeake Utilities Corporation (“Chesapeake” or the “Company”) acquired all of the issued and outstanding stock of Florida Public Utilities Corporation (“FPU”). FPU was merged with a wholly-owned subsidiary of Chesapeake, with FPU being the surviving entity. (Docket 11-151 Application, ¶4 (the “Application”).

2. In order to effect its acquisition of FPU, Chesapeake needed to issue common stock. Consequently, on May 18, 2009, Chesapeake applied to the Delaware Public Service Commission (the “Commission”) for authority to issue up to 2.6 million shares of common stock (Docket No. 09-251, Order No. 7591 dated June 16, 2009; Application, ¶5). The Commission granted such approval on June 16, 2009. (Order No. 7591, dated June 16, 2009; Application, ¶5).

3. At the time of the acquisition, FPU had an aggregate amount of approximately \$49,557,000 in outstanding First Mortgage Bonds (the “FPU Bonds”). The FPU Bonds were secured by an Indenture of Mortgage and Deed of Trust dated September 1, 1942 (the “Original

Indenture”),¹ and all of FPU’s fixed assets were provided as collateral for the FPU Bonds. (Application, ¶4). Chesapeake did not assume or guarantee any of FPU’s debt as a result of the acquisition.²

4. In December 2009, Chesapeake executed a Sixteenth Supplemental Indenture, in which it agreed to “assume the due and punctual payment of the principal of, premium, if any, and interest on, any and all of the [FPU] Bonds” in the event of an FPU default thereon. (*Id.*, ¶6 Ex. A (Sixteenth Supplemental Indenture)). According to the Application, the negotiation and execution of the Sixteenth Supplemental Indenture was handled exclusively through the Florida legal counsel most familiar with the FPU Bonds. (*Id.*). Although the Docket 11-151 Application is silent on the issue, we can infer from that silence that the Chesapeake employee with whom this counsel worked did not submit it to Chesapeake’s Delaware legal counsel for its review. In any event, Chesapeake admits that it never received this Commission’s approval for its execution of the Sixteenth Supplemental Indenture by which it agreed to guarantee the FPU Bonds.

5. On May 25, 2010, Chesapeake applied to the Commission for authority to issue up to \$36 million of unsecured long-term debt securities through two separate issuances, one for up to \$29 million and another for up to \$7 million. (Application in Docket No. 10-187; Docket 11-151 Application, ¶10). In the Docket No. 10-187 Application, Chesapeake represented that it intended to use the proceeds of the long-term debt issuances to retire FPU’s existing long-term secured debt. (Application in Docket No. 10-187 at 2). The Commission approved Chesapeake’s request in Order No. 7787 dated June 15, 2010.

¹ The Original Indenture was thereafter supplemented by several additional indentures, only certain of which are relevant to this Application.

² In Schedule No. 1 of its Application in Docket No. 09-215 for approval to issue up to 2.6 million shares of common stock, however, Chesapeake reported the effect on its consolidated debt/equity ratios of (1) sums due under the FPU Bonds and (2) the pro forma impact of the proposed stock issuance and the FPU debts. (Docket 11-151 Application, ¶5).

6. According to the Docket 11-151 Application, the currently outstanding FPU Bonds consist of bonds issued in favor of Allstate Life Insurance Company and First Colony Life Insurance Company. There are two series of Allstate bonds, both due May 1, 2018, with an aggregate balance of \$11,273,000, and one series of First Colony bonds due June 1, 2022, with a current outstanding balance of \$8 million. (Docket 11-151 Application, ¶¶7, 9). The Allstate Bond Purchase Agreement contains a provision requiring FPU to deliver stand-alone financial statements for FPU. (Docket 11-151 Application, ¶9; Attachment B (Seventeenth Supplemental Indenture)).

7. After the execution of the Sixteenth Supplemental Indenture, Chesapeake sought Allstate's consent to satisfy the stand-alone financial statement requirement by submitting Chesapeake's consolidated financial statements. The Bondholders proffered a seventeenth Supplemental Indenture in which, in exchange for their consent to accept Chesapeake's consolidated financial statements, Chesapeake agreed to:

[i]rrevocably and unconditionally guarantee[] (1) the full and prompt payment of the principal of, premium, if any, and interest on the Bonds from time to time outstanding, as and when such payments shall become due and payable whether by lapse of time, upon redemption or prepayment, by extension or by acceleration or declaration or otherwise (including, to the extent permitted by applicable law, interest due on overdue payments of principal, premium, if any, or interest at the rate set forth in the Bonds) in federal or other immediately available funds of the United States of America which at the time of payment or demand therefor shall be legal tender for the payment of public and private debts, (2) the full and prompt performance and observance by Florida Public utilities of each and all of the obligations, covenants and agreements required to be performed or owed by Florida Public Utilities under the terms of the Bonds, the Indenture and any bond purchase agreement, each as amended from time to time and (3) the full and prompt payment, upon demand by any holders of the Bonds of all costs and expenses, legal or otherwise (including reasonable attorneys' fees) if any, as shall have been expended or incurred in

the protection or enforcement of any rights, privileges or liabilities in favor of the holders under or in respect of the Bonds, the Indenture, or any bond purchase agreement, each as amended from time to time, or in any consultation or action in connection therewith.

Docket 11-151 Application, Attachment B - Seventeenth Supplemental Indenture, ¶¶2; *see also* Attachments C and D – Guaranty Agreements, Section 2).

8. The Seventeenth Supplemental Indenture further provides that: “For the avoidance of doubt, this is a guarantee of payment and performance (not merely of collection).” (Attachment B – Seventeenth Supplemental Indenture, ¶3; *see also* Attachments C and D – Guaranty Agreements, Section 3). The Guaranty Agreements spell this out in greater detail:

... and the Guarantor [Chesapeake] hereby waives, to the fullest extent permitted by law, any right to require that any action on or in respect of any Bond, the Bond Purchase Agreement or the Indenture be brought against [FPU] or any other Person or that resort be had to any direct or indirect security for the bonds or for this Guaranty or any other remedy. Any Holder may, at its option, proceed hereunder against the Guarantor in the first instance to collect monies when due, the payment of which is guaranteed hereby, without first proceeding against [FPU] or any other person, and without first resorting to any direct or indirect security for the Bonds or for this Guaranty or any other remedy. The liability of the Guarantor hereunder shall in no way be affected or impaired by any acceptance by any Holder of any direct or indirect security for, or other guaranties of, any indebtedness, liability or obligation of [FPU] or any other person to any Holder or by any failure, delay, neglect or omission by any Holder to realize upon or protect any such guarantees, indebtedness, liability or obligation or any notes or other instruments evidencing the same or any direct or indirect security therefor or by any approval, consent, waiver or other action taken , or omitted to be taken by any such Holder.

(Attachments C and D – Guaranty Agreements, Section 3).

9. On March 10, 2011, Chesapeake filed this Application seeking Commission approval to execute the Seventeenth Supplemental Indenture and the Guaranty Agreements.

Chesapeake states in its Application that allowing the submission of its consolidated financial statements, rather than a stand-alone financial statement for FPU, will save it \$15,000 annually, resulting in a savings of more than \$150,000 over the remaining life of the FPU Bonds. (Docket 11-151 Application, ¶9).

10. Chesapeake further states that it anticipates that the guarantee to Allstate will only be in effect for a limited time because it intends to retire the Allstate Bonds with the lower cost debt that the Commission approved in Docket No. 10-187. (*Id.*, ¶10).

11. Chesapeake represents that the amount of long-term debt of it and its subsidiaries will not increase as a result of the Seventeenth Supplemental Indenture (because it is already reported as debt on a consolidated basis). (*Id.*). It has obtained an opinion of counsel that the proposed guarantee is for a proper purpose and consistent with the public interest because it enables Chesapeake to save over \$150,000 in auditing fees. (Attachment E – Opinion of Counsel).

STAFF'S REVIEW

12. Staff analyst Funmi I. Jegede conducted a review of Chesapeake's Application and posed informal discovery to Chesapeake. During Staff's investigation, Chesapeake informed Ms. Jegede that the Company does not intend to redeem or refinance the First Colony bonds because it would be cost-prohibitive to do so.

13. Ms. Jegede concluded that the Seventeenth Supplemental Indenture and the Guaranty Agreement are for a proper purpose and execution thereof would be consistent with the public interest. She recommended that the Commission approve the Application, subject to the caveats that (1) nothing in the Commission's approval should be considered as approving any ratemaking treatment of any expenses incurred as a result of this guarantee; and (2) Chesapeake

file with the Commission fully-executed copies of the Seventeenth Supplemental Indenture and the two Guaranty Agreements within thirty days of their full execution.

AND NOW, BY THE AFFIRMATIVE VOTE OF NO 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 of Chesapeake Utilities Corporation to enter into the Seventeenth Supplemental Indenture and the Guaranty Agreements is in accordance with law, will be made for a proper purpose, and will be consistent with the public interest. The Commission finds that: (1) the Application complies with the statutory requirements; (2) Chesapeake's stated goal of avoiding \$15,000 in annual auditing costs associated with preparing a stand-alone financial statement for FPU is a proper purpose for entering into the Seventeenth Supplemental Indenture and the Guaranty Agreements; and (3) that purpose, which will be achieved by Chesapeake's execution of the Seventeenth Supplemental Indenture and Guaranty Agreements is 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 this Commission of any ratemaking treatment of any costs that may be incurred as a result of Chesapeake's entry into the Seventeenth Supplemental Indenture and the Guaranty Agreements.

3. That, within 30 days of the full execution of the Seventeenth Supplemental Indenture and the Guaranty Agreements, Chesapeake shall file fully-executed copies of the same with the Commission.

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:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary