

State of Florida



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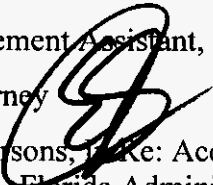
Public Service Commission

CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 25, 2010 10000-OT

TO: Kim Pena, Records Management Assistant, Office of Commission Clerk

FROM: Erik L. Sayler, Senior Attorney 

RE: Comments by Interested Persons, Re: Acquisition Adjustment Workshop
Regarding Rule 25-30.0371, Florida Administrative Code

Attached is the Comments from interested persons related to the Acquisition Adjustment Workshop being held on January 27, 2010.

Attachment

CC: Greg Shafer (w/o) Attachment
Cindy Miller (w/o) Attachment

DOCUMENT NUMBER-DATE

00572 JAN 25 2

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Erik Sayler

From: Greg Shafer
Sent: Thursday, January 21, 2010 2:10 PM
To: Erik Sayler; Cindy Miller; Jessica Hilgendorf; Patti Daniel
Subject: FW: Comments for Acquisition Adjustment Workshop
Attachments: Ltr and Responses for Acq Adj Workshop 1-20-10.pdf

From: Mike Ashfield [mailto:mashfield@niamerica.com]
Sent: Wednesday, January 20, 2010 10:03 PM
To: Greg Shafer
Cc: Rick Melcher; Marsha Rule
Subject: Comments for Acquisition Adjustment Workshop

See attached correspondence for the workshop. If you have any questions or need for clarification, feel free to contact me.

Thanks, Mike

*Michael J. Ashfield
VP Acquisitions
Ni America LLC
10913 Metronome
Houston, Texas 77043
(o) 713-574-7762
(c) 979-224-2334*

1/25/2010

DOCUMENT NUMBER-DATE
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January 20, 2010

Florida Public Service Commission
Division of Regulatory Analysis
Attn: Greg Shafer
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0852

Via email: gshafer@psc.state.fl.us

Re: Acquisition Adjustment Workshop Regarding rule 25-30.0371

Dear Mr. Shafer:

This is written in response to the Commission notice as to the workshop referenced herein. The purpose of said workshop is to discuss the Commission's policy on water and wastewater acquisition adjustments as set forth in rule 25-30.0371, Florida Administrative Code.

Ni America ("Ni"), through its utility Ni Florida LLC, has acquired utilities in Florida in recent years and is actively pursuing other utilities. As such, the workshop topic has directly impacted Ni in its efforts to acquire and consolidate certain utility operations.

We respectfully submit the attached comments pertaining to Questions to Comment as presented in Attachment Three of the Notice of Workshop. We welcome the opportunity to visit with Commission Staff where appropriate.

If you have questions or comments, please contact either Rick Melcher (rmelcher@niamerica.com) or me (mashfield@niamerica.com). Ni appreciates the Commission's desire to review this existing rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Ashfield".

Michael J. Ashfield
VP Acquisitions

Attachment

cc: Rick Melcher, Ni America
Marsha Rule, Rutledge, Ecenia & Purnell, P.A

10913 Metronome • Houston, Texas 77043
(713) 574-5952 • Fax: (713) 647-0277

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Ni America's Responses to Questions for Comment

1. We are not aware of the specific number of distressed IOUs under Commission jurisdiction, but are well aware that there are distressed systems in Florida whose physical and financial condition negatively affects the quality of service to their customers. As such, the customers would benefit greatly from the acquisition of a larger or more financially sound utility company that could provide the investment necessary to improve and manage such systems. We would welcome the opportunity to meet with Commission Staff to discuss how certain systems could be packaged together so that necessary capital costs could be planned and factored into rates so that the utility could still receive its expected ROI.
2. The current Commission adjustment rule impedes certain acquisitions of older systems primarily. The reason being is that rate base has been depreciated and therefore the ROI on the depreciated rate base is not sufficient, or does not correlate, with the utility's actual market value (determined by either cash flow projections, replacement cost studies, or comparable sales). When this occurs, the acquiring utility is not as incentivized to make capital improvements to the system.
3. The number of IOUs available for acquisition has definitely been negatively affected by the Commission's current acquisition adjustment rule, as has our company's willingness to acquire distressed systems.
4. Current market for acquisitions: While there are systems available for acquisition, there is a disconnect between the two parties (Buyer/Seller) and the Commission as to market value of a utility. Mid to large sized utility companies are in the market for IOU acquisitions so that economies of scale can be achieved ultimately providing for better management and service to its customers. Larger utilities are only incentivized to acquire a system if the proposed acquisition is not dilutive to its shareholders. As to capital, it is definitely tighter today than it was just five years ago. Nonetheless, the utility business historically had been relatively stable and predictable so financial institutions remain open to invest in states with sound regulatory policy that adequately protects the financial health of the utility.
5. The customers have been negatively impacted by the Commission's acquisitions adjustment rule; the rule limits the desirability of acquiring and improving utility systems whose owners who are unwilling or unable to invest the necessary capital and resources into utility plant to better serve their customers. Those customers therefore are denied the improved facilities and service that would result from an acquisition.

6. Additional comments:

- The Commission should consider permitting the use of original cost studies for purposes of establishing rate base in some transfer situations - for instance, where the Seller of utility does not have sufficient records to support rate base - preferably before the parties "sign off" on the agreed rate base for Approval of Transfer. This process would encourage larger utilities to consider potential acquisitions of distressed utilities; additionally, this could promote open conversation between the Commission and the larger utilities as to formulating plans for desired consolidation.

- In situations where a rate case is needed and required within the first year of acquisition, but Seller does not have sufficient records for the period under its ownership, the Commission should permit use of normalized (Buyer's results projected out for a complete 12 months) income statement figures or accept projections that can later be substantiated if so desired. This process would help facilitate the acquisition of systems as a larger utility would then be able to achieve the cash flow necessary to justify taking over the operations and capital improvement needs of the utility, whether it is distressed or not.

Erik Sayler

From: Greg Shafer
Sent: Friday, January 22, 2010 8:11 AM
To: Jessica Hilgendorf; Erik Sayler; Cindy Miller; Patti Daniel
Subject: FW: Acquisition Adjustment Workshop Regarding Rule 25-30.0371, Florida Administrative Code
Attachments: AUF Pre-Workshop Comments.pdf

fyi

From: bruce.may@hklaw.com [mailto:bruce.may@hklaw.com]
Sent: Thursday, January 21, 2010 4:41 PM
To: Greg Shafer
Cc: kajoyce@aquaamerica.com; WTRendell@aquaamerica.com
Subject: Acquisition Adjustment Workshop Regarding Rule 25-30.0371, Florida Administrative Code

On behalf of Bruce May, please see the attached.

D. Bruce May, Jr. | Holland & Knight

Partner

315 South Calhoun Street, Suite 600 | Tallahassee FL 32301

Phone 850.425.5607 | Fax 850.224.8832

bruce.may@hklaw.com | www.hklaw.com

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1/25/2010

Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

D. Bruce May, Jr.
850.425.5607
bruce.may@hklaw.com

January 21, 2010

VIA E-MAIL

Mr. Greg Shafer
Division of Regulatory Analysis
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0852

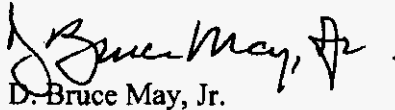
Re: *In re: Acquisition Adjustment Workshop Regarding Rule 25-30.0371, Florida
Administrative Code, Undocketed*

Dear Mr. Shafer:

Attached are Aqua Utilities Florida, Inc.'s pre-workshop comments concerning the undocketed matter referenced above.

Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May, Jr.

DBM:kjg
Enclosure

cc: Kimberly A. Joyce
William T. Rendell

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Acquisition Adjustment Workshop
Regarding Rule 25-30.0371, Florida
Administrative Code

UNDOCKETED

**AQUA UTILITIES FLORIDA, INC.'S
PRE-WORKSHOP COMMENTS**

Aqua Utilities Florida, Inc. ("AUF") appreciates the opportunity to provide pre-workshop comments in the above-referenced matter. The Commission's current policy on acquisition adjustments for water and wastewater utilities is articulated in Order No. PSC-02-0997-FOF-WS¹ (the "Final Order") and codified in Florida Administrative Code Rule 25-30.0371 (the "Rule"). In addressing that policy now, AUF believes that certain principles discussed below should be taken into account.

The Commission's current policy on water and wastewater utility acquisition adjustments was developed through extensive rulemaking, and is based on a careful balancing of the interests of all stakeholders.

Prior to issuing the Final Order and adopting the Rule, the Commission conducted a series of formal and informal rulemaking workshops during which it carefully considered numerous comments from all stakeholders, including the Office of Public Counsel, customers, and the water and wastewater industry. That rulemaking process extended over a period of approximately 32 months and culminated in a thoughtful and balanced approach for determining the rate base of purchased utility systems. AUF respectfully submits that information gathered in

¹ In re: *Proposed Rule 25-30.0371, F.A.C., Acquisition Adjustments*, 02 F.P.S.C. 7:326; Docket No. 001502-WS, Order No. PSC-02-0997-FOF-WS (July 23, 2002).

that rulemaking proceeding is relevant today and should be part of any discussion regarding the Commission's existing acquisition adjustment policies.²

The Rule continues to be relevant and serve a valid public purpose today.

The Rule was designed to facilitate acquisitions while providing customers with better water and wastewater quality at reasonable rates.

We still believe that our current policy provides a much needed incentive for acquisitions. The buyer earns a return on not just the purchase price but the entire rate base of the acquired utility. The buyer also receives the benefit of depreciation on the full rate base. Without these benefits, large utilities would have no incentive to look for and acquire small, troubled systems. The customers of the acquired utility are not harmed by this policy because, generally, upon acquisition, rate base has not changed, so rates have not changed. Indeed, we think the customers receive benefits which amount to a better quality of service at a reasonable rate. With new ownership, there are beneficial changes: the elimination of financial pressure on the utility due to its inability to obtain capital, the ability to attract capital, a reduction in the high cost of debt due to lower risk, the elimination of substandard operating conditions, the ability to make necessary improvements, the ability to comply with the Department of Environmental Regulation and the Environmental Protection Agency requirements, reduced costs due to economies of scale and the ability to buy in bulk, the introduction of more professional and experienced management, and the elimination of a general disinterest in utility operations in the case of developer owned systems.

Final Order at 2 (citing Order No. 25729).

The policy of encouraging well-run utilities to acquire smaller systems is just as valid today as it was when the Rule was first promulgated. Public and private water and wastewater utilities continue to face financial difficulties in meeting the new water and wastewater Environmental Protection Agency ("EPA") standards. In its February 2009 study, the EPA recommends that over \$330 Billion dollars in infrastructure improvements are necessary over the next 20 years for water utilities. AUF believes that it will be increasingly difficult for smaller utilities to fund these necessary infrastructure improvements.

² AUF also would respectfully refer the Commission to the white paper it published in February, 2001, entitled, "Refocusing on the Commission's Acquisition Policy Regarding Water and Wastewater Utilities."

The Commission's current acquisition policy was designed to benefit customers.

As mentioned on the preceding page, the Commission's existing acquisition adjustment policy was specifically designed with ratepayers in mind. In addition, the Commission has made it clear that the Rule is designed to dissuade a purchasing utility from seeking a rate increase when the purchase price is significantly below the acquired utility's net book value.

Paragraph (3)(b)[of the Rule] outlines our treatment when the purchase price is less than 80 percent of net book value . It requires that the amount that exceeds 20 percent of the net book value will be recognized for ratemaking purposes as a negative acquisition adjustment as an incentive for the utility not to file for a rate increase. The paragraph also establishes an amortization period for the acquisition adjustment of five years. If the utility does not file for a rate increase that will be effective during the amortization period, then the negative acquisition adjustment is not booked to recognize for any review of earnings. If the utility does file for a rate increase that will be effective during the amortization period, the unamortized negative acquisition adjustment is booked and used to test the earnings level and the need for a rate increase. The 20 percent that was not booked has a negative acquisition adjustment would not be recognized.

Final Order at 4. The Commission summarized the Rule's customer-oriented provisions as follows:

We are modifying our existing policy to provide an incentive for a purchasing utility to refrain from filing a rate case for a five-year period subsequent to the purchase. In addition, the rule also provides an incentive for a utility to obtain the lowest price possible when negotiating a purchase price lower than book value. We believe that codification of this rule will reduce costs in future proceedings by diminishing some of the controversy over acquisition adjustments and expediting transfer or rate case proceeding.

Final Order at 3. AUF believes that the Commission's approach to acquisition adjustments carefully balances the need to encourage utilities to acquire smaller utility systems with the customer's need for reasonable rates.

The Commission's policy is consistent with directives from the Florida Legislature.

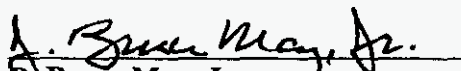
It is important to note that, prior to promulgating the Rule, the Commission considered and ultimately determined that an acquisition adjustment policy that

encouraged larger well-run utilities to acquire smaller systems was entirely consistent with the directives of the Florida Legislature. See page 11 of Staff Recommendation dated August 23, 2001 in Docket No. 001502-WS (" . . . the Legislature already directed the Commission to encourage consolidation and the acquisition of small utilities when it enacted certain policy changes following its 1989 Sunset Review of Chapter 367, Florida Statutes.").

* * *

AUF is hopeful that the Commission will find the foregoing comments constructive and useful. AUF appreciates the opportunity to participate in this process.

Respectfully submitted this 21st day of January, 2010.


B. Bruce May, Jr.
Florida Bar No. 354473
Holland & Knight, LLP
Post Office Drawer 810
Tallahassee, Florida 32302-0810
(850) 224-7000 (Telephone)
(850) 224-8832 (Facsimile)

-and-

Kimberly A. Joyce, Esquire
Aqua America, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
(610) 645-1077 (Telephone)
(610) 519-0989 (Facsimile)

Attorneys for Aqua Utilities Florida, Inc.