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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220019-WU

Application for transfer of water
facilities of Neighborhood Utilities,
Inc. and water Certificate No. 430-W
to CSWR-Florida Utility Operating
Company, LLC, in Duval County.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 8

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, October 4, 2022

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

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P R O C E E D I N G S

COMMISSIONER GRAHAM: I know we have one more item on the agenda, but I figure there is going to be quite an exodus right now. So as you are leaving, if you could be kind of quiet, and then let's switch over to Item No. 8.

COMMISSIONER LA ROSA: Chairman, and I will just entertain this, if that's okay, for a few seconds.

COMMISSIONER GRAHAM: Sure.

COMMISSIONER LA ROSA: And I will entertain just to talk about, you know, the -- you know, going back to my comments when we started, right, is that the reason why this sits at the PSC is because of the intellect and the detail that we can get into. So I just want to comment about how we work as a commission, the five of us, and, you know, a vote that's not in favor of what another Commissioner is, that doesn't mean it's not a good idea. Phenomenal ideas that are going to be thrown out, and I just want to make the point that, hey, I think we are doing the right thing. These are very, very, very difficult items and discussion points, and being slightly deciding one direction or another couldn't obtain a different result.

1 But I just wanted to say thank you to my
2 fellow Commissioners. I know there is a lot of
3 hard work behind this. I know everyone has been
4 dedicated the same, similar time that we all have
5 been, so I just wanted to say that, because those
6 have been tough items that have been weighing on
7 us, and certainly me over the last couple of days.

8 COMMISSIONER GRAHAM: I agree. A lot of this
9 stuff is very tough, and one of the things you got
10 to be careful of is as we are feeling our way
11 through all of this stuff, you have got to be
12 careful what you let in because, you know, next
13 year, or next time, it's going to become something
14 that they feel like they deserve every single time.
15 And so you are more cautious not letting more
16 things in, and then kind of feeling your way
17 through piece by piece what you should let in.

18 Commissioner Clark.

19 COMMISSIONER CLARK: Yeah, I want to echo
20 those comments. I want to just add a couple of
21 points on to there.

22 This is not a perfect system. We are -- we
23 are continuing to work our way through it, and we
24 are going to stumble, we are going to take some
25 things out that might should have been in and

1 forget to put some things in that should have.

2 But I want to thank staff for the work that
3 you did in going through these plans, making these
4 assessments and these recommendations. You know, I
5 don't ever want the staff to take an insult when
6 the Commission makes a change as to what the
7 recommendation is. You know, we all have our own
8 opinions and own views, but the work that you guys
9 do is incredible, and it's spot on, and I think it
10 always reflects the interest of the citizens of the
11 state of Florida, and that you are to be commended
12 for that.

13 And I would also, Mr. Chairman, like to
14 acknowledge the Prehearing Officer on this. He
15 took on a pretty big task here very early on, and
16 did an outstanding job. And thank you,
17 Commissioner La Rosa, for the work that you did in
18 the prehearing work.

19 COMMISSIONER GRAHAM: Okay. Item No. 8,
20 staff.

21 MS. RAMOS: Item No. 8 is staff's
22 recommendation for the transfer of Neighborhood
23 Utilities, Inc's, water facilities to CSWR-Florida
24 Utility Operating Company, LLC. The utility
25 provides service to approximately 439 residential

1 customers and four general service customers in
2 Duval County.

3 Along with its transfer request, CSWR is also
4 requesting a positive acquisition adjustment. This
5 item was deferred from the August 2nd Commission
6 Conference.

7 Staff recommends the Commission approve the
8 transfer effective the date that the sale becomes
9 filing.

10 Staff also recommends the Commission deny the
11 request for a positive acquisition adjustment, as
12 CSWR did not demonstrate extraordinary
13 circumstances.

14 Representatives from the Office of Public
15 Counsel and also the utility are available today.
16 Staff is available to answer your questions as
17 well.

18 COMMISSIONER GRAHAM: Thank you, staff.

19 Utility, do you want to go before or after
20 Public Counsel?

21 MS. CLARK: I can go before, as long as you
22 give me an opportunity to respond.

23 COMMISSIONER GRAHAM: Well, I may not. Go
24 ahead.

25 MS. CLARK: Well, then I want to go last.

1 COMMISSIONER GRAHAM: Ms. Clark.

2 MS. CLARK: Thank you, Mr. Chairman.

3 I am Susan Clark with the Radey Law Firm.

4 With me, also with the Radey Law Firm, is Tom Crabb
5 sitting behind me. And next to me is Aaron Silas
6 who is the Regulatory Case Manager, and also we
7 have Mr. Russ Mitten, General Counsel.

8 As we said in the August 2nd Agenda
9 Conference, we are pleased that your staff has
10 recommended the approval of the transfer. However,
11 we are still requesting that you defer a decision
12 on the acquisition adjustment until the utility's
13 first rate case.

14 So at the August Agenda, I think we
15 established that neither the rule nor the statute
16 on transfers requires you, or prohibits you to make
17 -- to defer this decision. We also don't think
18 there is anything in Chapter 120 that prohibits you
19 from deferring this decision. And we think the
20 three gas cases support our position that a utility
21 really needs to operate the utility they have
22 acquired before they can really identify what is
23 feasible as far as improvements.

24 In the discussion that at the August Agenda,
25 there were other arguments raised against the

1 deferral, and I would like to address those
2 arguments, because we believe none of them are well
3 founded.

4 First it was pointed out that you have no
5 authority over transfer cases for gas utilities,
6 and that lack of authority over the transfer made
7 the gas cases distinguishable from the water cases.

8 We believe that's a distinction without a
9 difference as it applies to an acquisition
10 adjustment. Your authority over such adjustments
11 is the same whether it's a gas utility or a water
12 utility. It is your decision as to what rate base
13 a utility is allowed to earn on.

14 And, in fact, the factors to be considered in
15 approving a positive adjustment are similar in the
16 gas industry as well as the water industry. Those
17 include improvements in quality of service,
18 cost-efficiencies and reductions, and improvements
19 in the utility's ability to comply with regulatory
20 mandates.

21 Next it was argued that the rule says positive
22 acquisition can be later modified if the
23 extraordinary circumstances do not materialize, or
24 are eliminated or changed, and that this
25 possibility infers that the rule's intent was meant

1 to require a decision at the time of the transfer.

2 The fact is the Commission's authority to
3 modify a previously given acquisition adjustment is
4 the same whenever you approve the adjustment. The
5 Florida City Gas case cited by your staff
6 references such an instance in the gas case that
7 approved an adjustment.

8 Next it was argued the purpose of the rule is
9 to prevent churning of rate base. In other words,
10 an ever-increasing rate base that might adversely
11 affect customers who have no ability to choose
12 their utility provider.

13 The fact is that timing of a decision on an
14 acquisition adjustment has no bearing on the
15 Commission's authority to protect customers from
16 such a result. Your regulation is a substitute for
17 the free market, and any decision on increasing the
18 rate base on which a utility can earn is your
19 decision.

20 Finally, it was argued that the extraordinary
21 standard can only be met when the utility being
22 acquired is in such bad shape that violations of
23 health and safety standards have occurred or are
24 imminent. That is not what your rule says, and it
25 would seem a better policy is to encourage the

1 acquisition of small utilities by larger, more
2 efficient and well funded utilities well before
3 your standards are violated.

4 Commissioners, we are not asking for you to
5 change your standards here. We are simply asking
6 you to change the timing of your decision. So
7 again, we are asking you to defer a decision on an
8 acquisition adjustment until the utility's first
9 rate case.

10 And as I said, Mr. Chairman, if there are
11 comments by staff and OPC, we would like the
12 opportunity to respond to them.

13 COMMISSIONER GRAHAM: Thank you, Ms. Clark.
14 Mr. Rehwinkel.

15 MR. REHWINKEL: Thank you, Mr. Chairman and
16 Commissioners. Congratulations to Commissioner
17 Passidomo and Commissioner Clark.

18 I will not spend much time rehashing what we
19 said at the last agenda. We strongly support
20 staff's recommendation. Staff's recommendation is
21 rock solid consistent with your policy about
22 acquisition adjustments and when you establish
23 acquisition adjustments.

24 We vehemently disagree, with all due respect
25 to my good friend Susan Clark, that the gas cases

1 are any precedent. They are a totally separate
2 type of circumstance, where gas companies do not
3 come in for approval of certification.

4 So we agree with staff, that those cases do
5 not provide any precedent for you deferring the
6 decision on rate base establishment here today.
7 Your policy and practice has always been to
8 establish rate base for water companies at the time
9 transfer is decided. And that practice and policy
10 you are required to follow under the law.
11 Chapter -- Section 120.68(7)(e) requires you to do
12 that.

13 Florida City's Water Company versus PSC, 705
14 So.2d 620, reversed the Commission when you changed
15 your policy on used and useful midstream. And
16 that's a strong admonition to the Commission not to
17 change your policy.

18 The regulatory system, the customers expect
19 that you would do that and follow that precedent.
20 So we ask you to do that, and make the decision
21 today on acquisition adjustment, and to deny it
22 because acquisition adjustment policy of this
23 commission is, again, uniformly to be -- to only
24 allow acquisition adjustments when extraordinary
25 circumstances have been established. You cannot

1 split the difference. Give some. Give a little.
2 That -- it's either on or off. You prove an
3 acquisition adjustment or you don't.

4 This is an original cost state, and the
5 staff's analysis that they've given in prior CSW
6 cases applies here today. You -- this commission
7 cannot, and should not, allow an acquisition
8 adjustment where there are not extraordinary
9 circumstances.

10 These utilities are not in disrepair, and they
11 are not asking, begging for a change that would
12 increase the cost to customers.

13 So that's -- that's all we have to say. We
14 support staff's recommendation, and we ask you to
15 approve it in toto.

16 Thank you.

17 COMMISSIONER GRAHAM: Thank you, sir.

18 Ms. Clark, quickly.

19 MS. CLARK: Yes, I would like to respond to
20 that.

21 What Mr. Rehwinkel has not stated is that you
22 can be reversed on appeal if you don't explain why
23 you may have deviated.

24 Further, I would like to point to the first
25 parts of statute 120.68, referring to when an order

1 of yours can be appealed, and it requires that the
2 party taking the appeal be adversely affected. And
3 in this case, the staff and customers are not going
4 to be adversely affected by this.

5 We are not asking you to make the decision on
6 the merits of the acquisition adjustment now. We
7 are simply asking that you defer it. And I would
8 argue that that is not an appealable decision
9 because there has been no adverse affect to the
10 customers.

11 COMMISSIONER GRAHAM: Thank you.

12 Staff, did you want to add anything before I
13 go to the Commissioners? Ms. Crawford.

14 MS. CRAWFORD: Certainly I would say that I
15 continue to support the staff recommendation. I
16 continue to endorse the comments we made at the
17 Agenda. Just a few things addressing some of the
18 arguments you heard from Ms. Clark.

19 She's indicated to you that the gas cases are
20 fungible with the water and wastewater. We have
21 done acquisition adjustments in both industries,
22 but one of the distinctions I would point out to
23 you is we don't have an acquisition adjustment rule
24 in gas cases. We have one for water and
25 wastewater. It was a heavily litigated process. I

1 remember it very well.

2 And she also mentioned that the rule, the
3 section that talks about being able to take away an
4 acquisition adjustment after five years is not an
5 -- is not indicative of the rule's intent that
6 acquisition adjustments be determined at the time
7 of the transfer. However, there are other -- there
8 is other language in the rule that I think does
9 support staff's view of that rule, among other
10 things, that the improvements that they would like
11 you to defer -- I will refer to the rule as
12 anticipated -- the anticipated improvements and
13 compliance with regulatory mandates, the
14 anticipated rate restrictions, the anticipated
15 improvements of quality of service and cost
16 efficiencies.

17 And further, the rule also says very flatly,
18 the amortization of the acquisition adjustment
19 should begin -- shall begin at the date of the
20 issuance of the order approving the transfer.

21 And again, this -- just repeating, I suppose,
22 from the last Agenda, we do believe that the rule
23 supports making the acquisition adjustment at the
24 time of the transfer.

25 As far as the churning of rate base and how

1 customers are protected by the Commission's ongoing
2 regulation, that is true. But one of the concerns
3 I have had, and continue to have, is if you defer
4 making an acquisition adjustment until a later rate
5 case and you go ahead and approve the transfer, and
6 ultimately that acquisition adjustment is not
7 approved some years down the road, if there is a
8 substantial amount of good will on the company's
9 books relating to having this acquisition
10 adjustment that will not be realized through rates,
11 that very well could -- and I am not saying it's
12 necessarily doing it in this case, but if we are
13 going to change precedent, we need to be thinking
14 about the cases that are coming down the road, not
15 just with this company, but with all the other
16 transfers.

17 And I am concerned that a company who is
18 banking on having that acquisition adjustment
19 approved may decide it's simply not in its
20 shareholder's interest to continue carrying that on
21 its books, and it may look to divest the company.
22 And there is certainly nothing in the Commission's
23 ongoing regulatory authority that would prohibit a
24 company from transferring a system again.

25 There is also nothing -- if we are talking

1 about the churning of rate base issue specifically,
2 there is nothing that prohibits the Commission --
3 or that prohibits the company from selling and
4 reselling a company either.

5 I also echo Mr. Rehwinkel's concerns about
6 departure from ongoing precedent. If that is
7 something the Commission wants to do, certainly
8 that would issue as a PAA, and somebody who wishes
9 to protest and take that to hearing could. And
10 upon whatever resolution the Commission comes to,
11 if they are substantially affected by that final
12 decision, they could appeal.

13 The best way for the Commission to defend
14 against those types of actions is to explain the
15 reasons for the departure, if that's what the
16 Commission chooses to do. Certainly, I am, again,
17 advocating that we do not depart from established
18 precedent in this case.

19 COMMISSIONER GRAHAM: Thank you, Ms. Crawford.
20 Commissioners, who wants to go first?

21 Commissioner La Rosa.

22 COMMISSIONER LA ROSA: Thank you, Chairman.

23 So this item is in front of us, but we have to
24 talk about the greater -- the greater idea of
25 what's happening here is that a company coming in

1 and buying an existing company that, frankly, needs
2 it, and I don't want to stop that process. In
3 fact, I want to probably increase that process,
4 right?

5 How do we get smaller companies that can no
6 longer sustain be absorbed by other companies that
7 have flexibility, have economy of scales, may be
8 able to today provide customers in that territory
9 better reliability, better cost controls, a better
10 understanding of where their rates are.

11 Every time I see a rate case in front of us
12 that jumps 17, 18, 20 percent, it kind of jolts me
13 a little bit, realizing that's a big impact to a
14 customer.

15 I hear everything that's happening. And staff
16 has been very good with me to explain what's here,
17 you know, what else can be done. I would encourage
18 us, outside of this item, to discuss, maybe at a
19 later point, workshop or whatever the appropriate
20 time is, is that how do we encourage the
21 investment? And I think that's some of the
22 comments I made originally when this was -- when
23 this item was brought before us, I believe it was
24 last month.

25 That's where I am at. I want to hear from my

1 other Commissioners before I make -- make a motion.

2 COMMISSIONER GRAHAM: Okay. Commissioner
3 Clark.

4 COMMISSIONER CLARK: Yeah, I agree with
5 Commissioner La Rosa. I think that my position is
6 to see us encourage these type of acquisitions. I
7 make no bones about it.

8 I think, number one, that it's buyer beware.
9 We are not guaranteeing you are going to get
10 anything. You buy a system, that's your choice. I
11 think it's incumbent upon us to have a period of
12 due diligence. I think it's incumbent upon the
13 company to have a period of due diligence to see
14 what efficiencies they might gain. I think this is
15 an incentive for companies to look at these
16 acquisitions. I think we need incentives for
17 companies to look at these type of acquisitions,
18 and I am certainly in favor of it.

19 I disagree. I think that this commission has
20 the authority to enter into rule-making, and I
21 think that that's the second component of this, is
22 that after we consider this recommendation, that we
23 open -- I don't know if it will even open
24 rule-making, but have a rule workshop where we can
25 begin to accept some testimony from some companies

1 as to how this could potentially impact future
2 acquisitions, and hear, of course, from all of the
3 other interested parties that might not see this as
4 an opportunity, and then us make a future decision
5 based on that.

6 But in terms of this commission having the, I
7 think, authority to do this, I don't see where we
8 are prohibited from -- and I am even in favor
9 accepting staff's recommendation, other than the
10 fact that I would caveat that by allowing the
11 company to come in at ratemaking when they come in
12 for a rate case with their -- with their
13 acquisition costs to see if they can make a case
14 for it at that time. It is this commission's
15 decision at that point in time whether we accept
16 it. We can just as easily reject it then as we can
17 now.

18 They have to prove that there are exceptional
19 circumstances when they come to the rate case. And
20 what is the deal with giving them an additional six
21 months or a year to really get into the system and
22 figure out where those efficiencies are? I don't
23 have a problem with that. I can say no in six
24 months, or no now, or yes in six months, or yes no
25 now. It doesn't seem to matter to me which way we

1 go. But it gives that company a chance to make
2 their case, and if that's going to help with this
3 process, then I certainly many in favor of it.

4 And that would be my suggestion, Mr. Chairman.
5 I like the recommendation, other than just put the
6 caveat in there that we accept the positive
7 acquisition, not at this time, but give them the
8 authority to bring it back at their first rate
9 case, and end this with also for staff to schedule
10 a workshop on the rule.

11 Thank you.

12 COMMISSIONER GRAHAM: Commissioner Passidomo.

13 MS. PASSIDOMO: Thank you, Mr. Chairman.

14 I agree with the sentiments of both
15 Commissioner La Rosa and Commissioner Clark. I
16 also think it's important we encourage, you know,
17 well equipped financially stable companies to help
18 out for those small failing systems.

19 And I look at this in two parts, really, like,
20 you know, the time of -- you know, the time of we
21 are deciding whether to grant the positive
22 acquisition if it has to be at the initial transfer
23 or -- and then I look at whether extraordinary
24 circumstance have been proven.

25 For the initial part, I am -- I am -- actually

1 I am not opposed to it. I know that in August I
2 voted to accept, but, staff's recommendation
3 holistically, but I was -- I agree with
4 Commissioner Clark's sentiment there.

5 I just want to make sure -- I mean, when I am
6 looking at Chapter 120, it's (7)(e)3. It's very
7 clear. If we are going to deviate from Commission,
8 you know, prior Commission action, you know, I wish
9 that we never had had this initial policy from the
10 beginning, because I think it's -- I think it's
11 smart to give the utility time to assess the books
12 and make that determination. But that is -- it is
13 Commission practice, and so if we are going to
14 deviate that -- from that, we need to develop a
15 robust record right now as to why we are doing
16 that.

17 I think you have made good points,
18 Commissioner Clark, that we -- that it's, you know,
19 that we are seeing a difference. And I think going
20 forward to that having some sort of, whether it's
21 formal or informal, you know, workshop, staff
22 driven to kind of determine what -- getting those
23 stakeholders in the room and determining the best
24 way to move forward.

25 But I think I just want to -- I want to put

1 that out there, is that we make it clear why we are
2 change-- if we are going to go this approach,
3 because I agree, again, with staff's
4 recommendation, and I think it could be important
5 if we do -- if we do change what our practice is of
6 moving it past the time of transfer, that we -- we
7 adequately explain that here. And I -- I might --
8 I think we need to beef it up a little bit right
9 now.

10 COMMISSIONER GRAHAM: Thank you, Commissioner
11 Passidomo.

12 I am not going to belabor this too long, but I
13 disagree. I think the time to decide on the
14 positive acquisition adjustment is now. I think if
15 you start to kick this can down the road, as we
16 said before, maybe this case won't be problematic,
17 but you are going to open up the floodgates for the
18 next case and the next case and the next case.

19 I mean, to me, a company comes in and it's
20 going to spend seven times what they've -- what the
21 thing is worth, it's going to be a problem. I get
22 the fact in the sentiment that buyer beware, but
23 there is going to be more and more heartstrings,
24 more and more the poor guy is just trying his best,
25 more and more he didn't know when he walked in that

1 door what he was walking into, it becomes
2 problematic.

3 I am sounding like a broken record. I have
4 said this before. Positive acquisition adjustment
5 has got a huge hurdle to get over, and this client
6 has -- this applicant has not shown that hurdle.
7 And I see -- I hear that people want to give them
8 the chance to do it next year, two years from now,
9 five years from now, whenever they want to come
10 back, but I think now is the time do that. And I
11 think if you don't do it, then you are going to
12 start yourself running into trouble.

13 And he's been arranged the system long enough
14 now, they've seen the system enough now, you can
15 see some of the problems that are there now, maybe
16 you could find some later on, but I think this is a
17 mistake. And depending on which way the motion
18 goes, because I can't make the motion, we will see
19 what happens.

20 COMMISSIONER CLARK: I appreciate your
21 comments, Mr. Chairman. I see it the exact
22 opposite. I see the importance of us -- and I am
23 just going to call it dangling a carrot out there.
24 We have so many small -- and they keep coming back
25 in and we are looking at them on a regular basis --

1 so many small water systems that are just under
2 capitalized, and the system size will not allow
3 enough economy of scale to put a rate in place
4 that's going to allow that owner to be able to make
5 the changes or modifications to the system that the
6 customers deserve, and so that's my concern.

7 I think that we need to be looking at -- and
8 that's -- if someone has a system and they are
9 running it great, and they are capitalizing it
10 properly, that is well and good. But that is just
11 not the case of so many of these older systems that
12 are out there. And if you -- you look at a
13 company's -- you look at a company's motivation to
14 go do an acquisition and basically bail out a
15 failing system, there is none.

16 And I think that dangling the carrot of a
17 positive acquisition adjustment out there might be
18 the incentive they need to help us to resolve some
19 of our water quality and water issues that we have
20 in the state. Now, they are not going to get -- I
21 don't think that any commission is going to give
22 them, you know, seven X earnings on an acquisition
23 adjustment.

24 They have to still come in and prove
25 extraordinary circumstances to be able to get that

1 acquisition. The burden of proof is still on the
2 company that is making the acquisition. And it is
3 still this commission's prerogative to deny any and
4 all of that.

5 But if they have an incentive to look at
6 helping solve some of the state's water problems, I
7 certainly think it's worth at least us taking a
8 look at and opening up -- and Commissioner
9 Passidomo's point about clarifying for the record,
10 or building up the record in this case, you know,
11 in the last couple of years in this culture, I have
12 been told that a lot of things I have been doing or
13 saying in the past are wrong, and I think we
14 acknowledge that. That, hey, maybe we aren't
15 right, and I think that's part of the record. Our
16 record says here's the way we're going to do it.
17 That doesn't mean it was right. It doesn't mean
18 it's been the right way to do it or the right
19 thing.

20 I think in this particular environment, as
21 time moves on, we see things changing, and we see
22 these systems getting older and older and older and
23 needing more and more capital and capital costs
24 increasing that they can't provide. That's when I
25 think we look at the rule and go, okay, this may

1 have been a great rule in 1970 when all of these
2 systems were brand new and people were swapping
3 them around, you know, left and right, but today,
4 this doesn't apply. This is not the case anymore,
5 and so we have to be willing to look at changing
6 our rules in order to accommodate the times that we
7 are in. And I think that's -- to me, that's the --
8 that's the bulk of establishing the record.

9 Thank you, Mr. Chairman.

10 COMMISSIONER GRAHAM: One last thing. Maybe
11 this is the wrong -- maybe this is the wrong time
12 and place. You guys got to understand specifically
13 this case we are talking about, this is in the
14 middle of Jacksonville. This is surrounded by
15 JEA's providing, I don't know, 98 percent of
16 everything in the county. So it's not like it's
17 one of these little mom and pop shops we got, you
18 know, back behind a bunch of trailers and stuff.
19 You know, they are not destitute.

20 They weren't out there trying to find somebody
21 to desperately help them out. Somebody came along
22 and knocked on the door and said, I am going to
23 give you seven times what it's worth. And that's
24 the thing you got to take into account. And you
25 also got to take into account --

1 Well, I just think it's problematic. I think
2 maybe we look at this in rule-making. Maybe we
3 make these determinations later. I don't think
4 this is the time or the place to do that, but I
5 speak for myself. I don't speak for the Commission
6 as a whole.

7 If nobody else has got anything else to say --
8 Commissioner Passidomo.

9 MS. PASSIDOMO: I just wanted to make -- I
10 agree with you on the point that, in this instance,
11 the company has not demonstrated extraordinary
12 circumstances. That's why, when I said I would
13 agree with staff's recommendation in that, is that
14 I don't -- and I didn't see any distinguishing --
15 any distinction between -- I think I said that last
16 time, the previous time that they came in, or
17 another, and that it is a high bar, but I just -- I
18 agree with Commissioner Clark's rationale as to why
19 we might need to revisit at least the timing, you
20 know, the timing of when we -- of when we establish
21 whether certain circumstances have been met or they
22 have not been met.

23 I don't know if the company wants to respond
24 and say that this is -- these are the things that
25 we need to look for in the next six to 12 months,

1 and not this is how we are going, you know, why we
2 think we are going to establish this. It might
3 help us -- it might help guide us a little bit.

4 MR. SILAS: Yeah. Thank you all. I
5 appreciate the opportunity to speak to you all
6 today.

7 I think that in this particular circumstance,
8 I think it's -- when we look at the state of water
9 and wastewater systems across the nation, we see
10 significant disrepair, and we get kind of
11 desensitized to some things, right?

12 In this particular case, the system jumps in
13 and out of compliance often. They are out of
14 compliance on many of the sanitary surveys dating
15 back in the past. There are a lot of significant
16 repairs that are needed. In the application, we
17 submitted an engineering memorandum, a third-party
18 engineering memo that details the state of the
19 assets, talks about the capital necessary to bring
20 it back into compliance and make sure the assets
21 are reinvested in.

22 There is a lot of capital that is necessary
23 for this particular system as well. Even if it's
24 not quite in the state of disrepair that some of
25 the other systems across the state are in.

1 I think that in all the other jurisdictions we
2 have operated in, in the first six to 12 months, a
3 lot of those repairs that we identified in the
4 engineering memorandums that we do were able to be
5 scrapped completely because of operational
6 efficiencies that were found. So if the current
7 operator or owner aren't fully up-to-date on
8 certain standards, the system can appear to be
9 running incorrectly when actually a simple
10 operational fix fixes the entire stem.

11 So I think, you know, to just kind of mirror
12 what has been said. I think allowing the time to
13 look into those operational efficiencies in the
14 first six to 12 months, or up until the first rate
15 case, would really allow the company to be able to
16 identify those things, see what has been done
17 incorrectly operationally, and allow us the
18 opportunity to see what needs to be reinvested in
19 the system, if that's answers your question.

20 Thank you.

21 MR. REHWINKEL: Mr. Chairman, I need to make
22 an objection for the record just to preserve the
23 record.

24 We were not given notice that there would be a
25 hearing to take evidence about the state of the

1 company, or extraordinary circumstances, or lack
2 thereof. And so I would object to the Commission
3 relying on general statements from the company for
4 making a major policy change that really ought to
5 be done through a rule-making in the future.

6 This is one company. There is 4,000 water
7 utilities in the state. This one company doesn't
8 decide what the policy of the Commission ought to
9 be for purposes of rule-making. So rule-making
10 ought to happen before you make your policy change,
11 and extraordinary circumstances either exist today
12 or they don't. They don't materialize down the
13 road and then fly back in a time machine to today
14 to make the decision.

15 So we don't have evidence. We would be happy
16 to go to hearing and put evidence on and have that,
17 if that's the case for this company. But for
18 making a policy change, this is not the time or
19 place.

20 MS. CLARK: Mr. Chairman?

21 COMMISSIONER GRAHAM: I can read the
22 tealeaves. I know where there is going, so let's
23 just go to staff.

24 Staff, make sure that we are -- give a
25 suggestion so who ever makes the motion puts this

1 in the legal posture we need to be in and let's
2 move forward from there, any comments or things you
3 need to add to make sure that we put in the record.

4 MR. HETRICK: Mr. Chairman, and I will let my
5 staff confirm, would you like a couple of minutes
6 to discuss?

7 MS. HELTON: Yes.

8 MR. HETRICK: I mean, if you could just allow
9 us that legal courtesy. I would say this is PAA,
10 so there is an opportunity for Mr. Rehwinkel to
11 challenge this decision so that -- if that's of
12 help. If you could just please give us three
13 minutes to try to get our thoughts together.

14 COMMISSIONER GRAHAM: We will take three to
15 five minutes. Thank you.

16 MR. HETRICK: Thank you.

17 (Brief recess.)

18 COMMISSIONER GRAHAM: All right. Staff, some
19 words of wisdom, please.

20 COMMISSIONER CLARK: Can I -- can I go first,
21 Mr. Chairman?

22 COMMISSIONER GRAHAM: Sure.

23 COMMISSIONER CLARK: I think I may can get us
24 there a little bit quicker. I will ask a very
25 quick question.

1 I think Mr. Rehwinkel's point is very valid.
2 This motion was filed under an existing rule. I do
3 understand that. I am not going to give up on my
4 quest here, even though everybody tells me I need
5 to. I am going to ask you a very quick question.

6 Would the company be interested in, if we
7 deferred this item, had rule-making, come back, or
8 do you want an answer today?

9 MS. CLARK: Can I make two points before I ask
10 to be able to defer to my client?

11 COMMISSIONER CLARK: I have no objection.

12 COMMISSIONER GRAHAM: Go ahead.

13 MS. CLARK: I would point out, and I made the
14 point briefly in response, I don't think there is
15 anything -- if you defer this decision, it is not
16 appealable because no one is adversely affected by
17 it. And for that reason, I don't think you
18 necessarily have to explain any deviation. If you
19 feel like you have to, you did it in the gas case,
20 you have done it in prior water and wastewater
21 cases, and your staff has conceded that neither the
22 rule nor the statute require you to make the
23 decision now, and, in fact, the statute is
24 permissive.

25 So having said that, I will confer with my

1 client, but I think this sort of discussion about
2 needing to explain it, if you need to, I think it's
3 already here. It's in everything that's been
4 filed. Second point, I don't think it's appealable
5 because there is no adverse effect to deferring
6 this. But having said that, may I confer with the
7 client?

8 COMMISSIONER GRAHAM: Sure.

9 MS. CLARK: Commissioner, we have a seller who
10 is very anxious to make this go forward, so we
11 would like a decision today.

12 MR. HETRICK: Mr. Chairman, I apologize, but a
13 point of privilege here with respect to responding
14 to what Ms. Clark said. This absolutely is
15 appealable. Only a court can decide what's
16 appealable or not, and who's substantially
17 affected. But most certainly, the decision made
18 here is appealable. I want to be very clear about
19 that.

20 COMMISSIONER GRAHAM: Okay.

21 COMMISSIONER CLARK: Move staff
22 recommendation, Mr. Chairman.

23 COMMISSIONER GRAHAM: It's been moved and
24 seconded staff recommendation.

25 Any of further discussion?

1 Seeing none, all in favor say aye.

2 (Chorus of ayes.)

3 MS. PASSIDOMO: I just maybe want to put,
4 like, just a little amendment in there if that
5 moving approval with that we would, you know,
6 initiate some sort of, whether it's a workshop or
7 an official rule-making --

8 COMMISSIONER CLARK: We can do that. I was
9 going to do the same thing.

10 COMMISSIONER PASSIDOMO: Okay. Okay.

11 COMMISSIONER GRAHAM: All in favor say aye.

12 (Chorus of ayes.)

13 COMMISSIONER GRAHAM: Any opposed?

14 (No response.)

15 COMMISSIONER GRAHAM: By your action, you have
16 approved that motion.

17 Commissioner Passidomo.

18 MS. PASSIDOMO: What I just said, yeah,
19 basically.

20 MR. BAEZ: Message received.

21 COMMISSIONER PASSIDOMO: Okay. Good deal.
22 All right. Thanks.

23 COMMISSIONER CLARK: We are on the same page
24 there.

25 COMMISSIONER GRAHAM: Is there a timeframe

1 or --

2 MS. PASSIDOMO: I would advocate for as soon
3 as staff can do this. I think that this is an
4 important issue, so we need to get on it. I am not
5 going to -- I mean, I think staff knows best their
6 time, how they can time these things.

7 MR. BAEZ: Without attaching time limits, I
8 can tell you it just shot up to the top of the
9 list.

10 COMMISSIONER PASSIDOMO: Okay.

11 COMMISSIONER GRAHAM: Okay. Thank you.

12 All right. Thank you very much. With this,
13 this meeting is adjourned and we are going to start
14 the first hearing at 25 till, so seven minutes.

15 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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DATED this 13th day of October, 2022.



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