

**BEFORE THE PUBLIC SERVICE COMMISSION**

In Re: Proposed amendment of Rule 25-30.0371, F.A.C.,  
Acquisition Adjustments.

Docket No.: 20240022-WS

Filed: April 3, 2024

**CITIZENS' AMENDED PETITION FOR A HEARING ON PROPOSED RULE**

**25-30.0371, F.A.C.** Pursuant to Section 120.54(3)(c), Florida Statutes, the Citizens of Florida (“Citizens”), through the Office of the Public Counsel (“OPC”) file this request for a hearing on Proposed Rule 25-30.0371, Acquisition Adjustments, as contained in Order No. PSC-2024-0066-NOR-WS, issued on March 13, 2024. In support of this request, the Citizens state as follows:

1. On March 5, 2024, at an Agenda Conference (meeting) convened to consider, among other matters, proposing adoption of the above-styled Proposed Rule, the Florida Public Service Commission (“Commission”) heard comments from its Staff, the OPC and counsels for water and wastewater utilities regarding proposed amendments to Rule 25-30.0371, Florida Administrative Code, (“F.A.C.”).

2. At the meeting, the OPC made comments regarding proposed subsection (2), and subsection (3) summarized, section 2, lines 7 through 9 on page 16, would allow a 3 year extension of filing for approval of the acquisition adjustment for good cause. The Commission’s current policy grants or denies an acquisition adjustment at the time of transfer, which is when the information from the seller and buyer is most readily available. Further, the current timing allows for customers to know the potential bill impact from any acquisition adjustment when they could affect the potential transfer. OPC requested that the Commission continue its current practice of only determining the approval or denial of an acquisition adjustment at the time of transfer.

Second, section 3 (a) sets out the criteria for approval of a partial or full acquisition adjustment for a non-viable utility. OPC is concerned that there is no criteria for a cumulative present value of the revenue requirement (CPVRR) analysis or other form of objective type of economic analysis that would demonstrate the cost savings. This type of economic analysis is necessary to establish the cost savings expected and is an objective criteria that the commission can use as the basis for granting or denying a partial or full acquisition adjustment.

OPC's objections were raised at the Agenda Conference and were not adopted by the Commission in the Proposed Rule.

3. By Order No. PSC-2024-0066-NOR-WS, the Commission issued its Notice of Adoption of Rule 25-30.0371, F.A.C., in accordance with Section 120.54(3)(a)1. Citizens object to this Proposed Rule to the extent it does not include the proposed deletion in subsection (2) and clarifying language in subsection 3(a) as shown in Attachment A.

4. Pursuant to Section 120.54(3)(c), Florida Statutes, Citizens request a public hearing so that the Commission can consider the language proposed by Citizens herein or similar language that provides protections for customers for the rationale described above.

Because the Commission considered, and then rejected the modifications discussed by OPC at the Agenda Conference, OPC's concerns are unabated, that customers will be exposed to paying rates on a higher rate base which is greater than book value and is greater than actual circumstance can justify at the time of transfer.

5. Citizens submit that the language for subsection (3)(a) cannot fulfil the stated intent within the rule as currently proposed. The proposed language in subsection (3)(a) allows for a utility to request a positive acquisition adjustment if the purchase was made in an arms-length transaction and that the customers of the acquired utility will benefit from the acquisition. While the proposed language would have the Commission consider cost impacts, cost efficiencies, and capital cost impact

amongst other non-economic considerations, the lack of any economic analysis requirement undermines the Commission's ability to determine if there is a true "benefit" for customers.

6. It is important to note, that at this time, two long-standing customer protections in the form of this Acquisition Adjustment Rule and the Parent Debt Adjustment Rule are under simultaneous attack. The proposed changes would result in the rollback of protections that could cost water and wastewater customers hundreds of thousands of dollars, by artificially inflating customers' bills for the additional cost of the positive acquisition without adding any value to their troubled systems. For example, some of the requested Acquisition Adjustments presented to the Commission are so inflated that to pass these costs on to customers could result in customer's financial inability to pay their bills thereby financially jeopardizing these smaller, beleaguered systems, which is contrary to the stated purpose of the Proposed Rule change. The absence of compelling arguments for stripping current and future customers of either of these long afforded protections is troubling, as they are not being driven by any statutory changes, which is normally where such drastic changes originate. These proposed changes to the Rule could result in the direct transfer of dollars from Florida's customers to the utilities that serve them, in exchange for zero value if no economic evaluation is required.

7. As an economic regulatory agency, to justify granting a full or partial positive acquisition adjustment, the Commission should require an economic analysis of the costs impacts and whether they are offset by cost efficiencies in making such a determination. To be effective, the balancing of costs versus efficiencies should be expressed in the rule. See, Order No. 15490, 85 FPSC 312, issued December 23, 1985 in Docket No. 850116-TL. (Attachment B). There, the Commission lamented that there "appears to be some inconsistency between our intent and the plain language of the Rule."

Citizens seek to avoid this circumstance in future proceedings and submit that the language in Attachment A (or similar) would cure this potential problem.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 3<sup>rd</sup> day of April, 2024

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## Attachment A

### Public Counsel's Suggested Changes to Proposed Rule 25-30.0371, Acquisition Adjustment

(2) Petition. A utility that acquires another utility may petition the Commission to establish an acquisition adjustment under either subsection (3) or subsection (4) of this rule to include some or all of a positive acquisition adjustment in the acquired utility's rate base. A utility may seek approval of a positive acquisition adjustment at the time the utility seeks approval to transfer the certificate of authorization, ~~or anytime within 3 years of the issuance date of the Commission order approving the transfer of the certificate of authorization. The utility may request an extension of the 3-year period, which must include a statement of good cause. The petition for a positive acquisition adjustment may be made as a separate filing or as part of a rate proceeding.~~

(3) Positive Acquisition Adjustments for Non-Viable Utility.

(a) A full or partial positive acquisition adjustment will be allowed if it is demonstrated that the acquired utility meets the definition of non-viable utility under paragraph (1)(e) of this rule; that the purchase was made as part of an arms-length transaction; and that customers from the acquired utility will benefit from the acquisition. **The acquiring utility will provide a cumulative present value of the revenue requirements (CPVRR) analysis or equivalent economic analysis over a 5-year period from the date of acquisition. If the CPVRR does not result in a positive customer benefit over the 5-year period, in determining whether the acquired utility customers benefit and to allow a full or partial acquisition adjustment,** the Commission will consider the following factors:

1. Anticipated improvements in quality of service;
2. Anticipated improvements in compliance with water or wastewater regulatory requirements;
3. Anticipated impacts on the cost of providing service over the next 5 years from the date of acquisition;
4. Anticipated cost efficiencies, including any economies of scale;
5. Ability to attract capital at reasonable cost; and
6. The professional and experienced managerial, financial, technical, and operational resources of the acquiring utility.

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**Document:** 1985 Fla. PUC LEXIS 29

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## 1985 Fla. PUC LEXIS 29

### Copy Citation

Florida Public Service Commission

December 23, 1985

DOCKET NO. 850116-TL; ORDER NO. 15490, 85 FPSC 312

#### Reporter

1985 Fla. PUC LEXIS 29

In re: Show cause to Southern Bell regarding custom calling features

#### Core Terms

telephone service, judicial review, show cause, telephone, notice, further proceedings, staff, customer service representative, notice of appeal, seek information, fully informed, plain language, rule violation, reconsider, rulemaking, issuance, withdraw, inquire, custom, train

**Panel:** The following Commissioners participated in the disposition of this matter: JOHN R. MARKS, III, Chairman; JOSEPH P. CRESSE, GERALD L. GUNTER, MICHAEL McK. WILSON

#### Opinion

**ORDER WITHDRAWING ORDER TO SHOW CAUSE**

**Public Counsel's Suggested Change to Proposed Rule 25-30.433(1)(c) and 2(d):**

Section (1)

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(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

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Section (2)

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(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

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## BY THE COMMISSION:

By **Order No. 14346**, issued May 6, 1985, this Commission **ordered** Southern Bell Telephone and Telegraph Company (Southern Bell or Company) to show cause why it should not be fined for violation of Rule 25-4.107(1), Florida Administrative Code (the Rule). The Rule requires a telephone company, upon initial contact, to inform an applicant for service of the least expensive service available. The **order** was predicated upon a **number** of complainants regarding the failure of the Company to inform the complainant of the least expensive service available as required by the Rule. Southern Bell responded as directed, providing us with information detailing the training, incentives, quotas and policies governing the actions of the Company's customer service representatives when they present information to potential customers. Subsequent to Southern Bell's response, our Staff conducted an investigation by telephoning various Southern Bell business offices throughout the Company's territory and inquiring as to the cost for basic telephone service. The responses given to our Staff's inquiries revealed a wide divergence between the tariffed rates for basic 1 and 2 party rotary service and the prices actually quoted over the telephone.

Southern Bell believes that the plain language of the rule limits the rule's application solely to applications for service. In accordance with that belief, the Company's service **ordering** system is designed to handle only those individuals who actually complete the **ordering** process for telephone service. The Company states that mere inquiries concerning rates for basic telephone service are not applications and that the inquiring party cannot, therefore, be considered an "applicant" within the scope of our Rule. The Company further states that in accordance with its interpretation of the Rule, its customer service representatives are trained to give the full disclosure required by the rule only within the structured format of the application procedure and, therefore, are unable to give adequate rate information outside the context of a full application for service.

We believe, and it was our intent in formulating Rule 25-4.107(1), that each person seeking information about basic telephone service should be fully informed regarding the type and rate for the least expensive telephone service available. However, there appears to be some inconsistency between our intent and the plain language of the Rule. On its face the Rule addresses only "applicants" for service. The questions asked by our Staff during its investigation were not actually applications for service since they did not initiate or complete the service **ordering** process established by Southern Bell.

Upon consideration, we find that there is a sufficient distinction between an inquiry and an application so as to remove our Staff's inquiries from the scope of Rule 25-4.107(1). Since the inquiries were not applications for service, Southern Bell's responses were not sufficient to constitute a willful violation of nor a refusal to comply with Rule 25-4.107(1). Therefore, we find it appropriate to withdraw our outstanding **Order** to Show Cause **No. 14346**.

While our Staff's investigation does not establish a willful rule violation on the part of Southern Bell, it does reveal the inconsistency between the language of the Rule and our belief that every person seeking information about telephone service should be fully informed of the least expensive basic telephone service available. Since the current language in Rule 25-4.107(1) is inadequate to achieve its intended effect, we are hereby directing our Staff to initiate rulemaking to amend Rule 25-4.107(1) consistent with our intent that each person who seeks information regarding basic telephone service shall be informed of the least expensive basic telephone service whether the person is applying for service or merely making a general inquiry.

Based on the foregoing, it is, therefore,

**ORDERED** by the Florida Public Service Commission that **Order** to Show Cause **No. 14346** is hereby withdrawn. It is further

**ORDERED** that the Commission shall initiate rulemaking to amend Rule 25-4.107(1), Florida Administrative Code, as set forth herein.

By **ORDER** of the Florida Public Service Commission, this 23rd day of DECEMBER, 1985.

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (Supp. 1984), to notify parties of any administrative hearing or judicial review of Commission **orders** that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request for further proceedings or judicial review, nor should it be construed as an indication that such request will be granted.

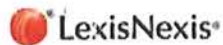
Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Commission Clerk within 15 days of the issuance of this **order** in the form prescribed by Rule 25-22.60, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Commission Clerk and the filing of a copy of the notice and the filing fee with the Supreme Court. This filing must be completed within 30 days after the issuance of this **order**, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**Content Type:** Administrative Materials

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