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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240022-WS

PROPOSED AMENDMENT OF
RULE 25-30.0371, F.A.C.,
ACQUISITION ADJUSTMENTS.

_____ /

PROCEEDINGS: RULE HEARING

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

DATE: Tuesday, May 7, 2024

TIME: Commenced: 10:00 a.m.
 Concluded: 10:51 a.m.

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

PREMIER REPORTING
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9 COX, Central States Water; appearing on behalf of
10 Central States Water Resources.

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14 DOUGLAS SUNSHINE and SAMANTHA CIBULA,
15 ESQUIRES, FPSC General Counsel's Office, and MARK
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18 Public Service Commission (Staff).

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I N D E X

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1 P R O C E E D I N G S

2 CHAIRMAN LA ROSA: Good morning, everybody.
3 It looks like everyone is settled, or getting
4 settled. Today is May 7th still. We will start
5 our rule hearing. So let's go ahead and start by
6 reading the notice.

7 Mr. Sunshine, you are recognized.

8 MR. SUNSHINE: Thank you, Mr. Chair.

9 By notice published in the April 10th, 2024
10 edition of the Florida Administrative Register,
11 this time and place was set for a rule hearing in
12 Docket No. 20240022-WS, as set forth more fully in
13 the notice.

14 CHAIRMAN LA ROSA: Thank you.

15 Let's take appearances. We will start with
16 OPC.

17 MS. CHRISTENSEN: Patricia Christensen for the
18 Office of Public Counsel. I would also like to put
19 in an appearance for Walt Trierweiler, the Public
20 Counsel.

21 CHAIRMAN LA ROSA: Thank you.

22 Central State Water Resources of Florida.

23 MR. CRABB: Good morning. Tom Crabb with the
24 Radey Law Firm for Central States.

25 CHAIRMAN LA ROSA: Sunshine Water Services.

1 MR. FRIEDMAN: Yes. Martin Friedman on behalf
2 of Sunshine Water Services.

3 Sean.

4 MR. TWOMEY: And Sean Twomey, Sunshine Water
5 Services.

6 CHAIRMAN LA ROSA: Awesome.

7 MR. COX: Josiah Cox Central States.

8 CHAIRMAN LA ROSA: Thank you.

9 Seeing no other participants, that's correct?
10 Let's move to staff.

11 MR. SUNSHINE: Yes, we have myself, Douglas
12 Sunshine, Samantha Cibula, Mark Cicchetti, Mary
13 Anne Helton and Keith Hetrick.

14 CHAIRMAN LA ROSA: Thank you.

15 Are there any preliminary matters?

16 MR. SUNSHINE: Yes.

17 As a preliminary matter, staff wants to
18 provide an overview of the purpose and procedure of
19 this rule hearing.

20 This public rule hearing was timely requested
21 by the Office of Public Counsel following the
22 Commission's decision to propose amendments to Rule
23 25-30.0371, Florida Administrative Code,
24 Acquisition Adjustments.

25 In accordance with Section 120.54(3)(c)1,

1 Florida Statutes, this hearing will provide
2 affected persons an opportunity to present evidence
3 and argument on all issues under consideration,
4 which are set forth in OPC's petition for hearing.

5 As required by Section 120.54(3)(c)1, Florida
6 Statutes, staff is available to explain the
7 agency's proposal, and to respond to questions or
8 comments that may be raised regarding the rule
9 during the course of this hearing.

10 The hearing will proceed as follows:

11 First, affected persons will be provided an
12 opportunity to present argument and evidence, and
13 to ask questions of Commission staff regarding the
14 two specific issues under consideration in the
15 proposed rule. One, the Commission's decision to
16 not include OPC's proposed deletion in subsection
17 (2) of the proposed rule. And, two, the
18 Commission's decision to not include OPC's proposed
19 clarifying language in subsection (3)(a) of the
20 proposed rule.

21 OPC, who requested the hearing, will have the
22 first opportunity to address the Commission,
23 followed by any other affected person present who
24 would like an opportunity to respond.

25 Next, Commissioners may, if they choose, ask

1 follow-up questions of affected persons or of
2 Commission staff; however, Commissioners may choose
3 to pose such questions or make comments at any time
4 during the hearing.

5 Any materials provided by participants during
6 the hearing will be marked as an exhibit and
7 received into evidence in the rule hearing record.
8 The rule hearing record will be comprised of the
9 evidence and argument presented in this hearing,
10 and any other written material submitted after the
11 rule is proposed.

12 If the Commission chooses to make a change to
13 the proposed rule pursuant to Section 120.54(3)(d),
14 Florida Statutes, its decision will be based on the
15 rule hearing record.

16 CHAIRMAN LA ROSA: Excellent.

17 Let's -- then let's hear first from OPC.

18 Ms. Christensen, your recognized.

19 MS. CHRISTENSEN: Good morning, Commissioners.
20 Patty Christensen on behalf of the Public Counsel's
21 office.

22 On April 3rd, 2024, OPC filed a request for
23 today's hearing on the adoption of the proposed
24 changes to the acquisition adjustment rule. At the
25 prior workshops, OPC raised concerns about the

1 changes to the rule, and whether they would provide
2 adequate protection for water and wastewater
3 customers.

4 Our con -- first concern is whether allowing
5 up to three years after the transfer of an
6 acquiring utility to request an acquisition
7 adjustment provides adequate protection for the
8 customers, and if it provides adequate opportunity
9 for the customers to know the potential impact to
10 their rates of a large positive acquisition
11 adjustment in time to protest the transfer.

12 This is why it is important from the
13 customer's perspective to have the acquisition
14 adjustment and potential customer saving
15 information available at the time of transfer.
16 Once the transfer is approved by the Commission,
17 even if it comes to light a year or more later,
18 that the company is seeking a large positive
19 acquisition adjustment without any potential
20 savings to offset its impacts, customers cannot
21 protest the transfer of the potential -- the
22 transfer.

23 The potential companies requested a large
24 positive acquisition adjustment impacting
25 customers' rates is also a feature of our second

1 concern, which is the criteria listed in the rule
2 for the nonviable utility for approval of partial
3 or full acquisition adjustments does not require a
4 cumulative present value of revenue requirement or
5 a CPVRR analysis, or similar type of economic
6 analysis.

7 We assert that an economic analysis is
8 necessary for the Commission to have the
9 information necessary to determine whether to grant
10 part or all of the requested acquisition
11 adjustment. Under the current acquisition
12 adjustment rule, the customers are protected from
13 the large positive acquisition adjustment because
14 they are limited to the potential customer savings.

15 While we are aware that the Commission's goal
16 is to make nonviable use -- utility systems more
17 attractive for companies to purchase and put in the
18 necessary -- necessary fixes, we are concerned,
19 however, that the rule may lead to unintended
20 consequences if not limited to the potential
21 customer savings.

22 Many so of those unintended consequences could
23 be rewarding system owners for neglecting their
24 systems and customers while giving them large
25 payday. Also, the proposed wording for the

1 nonviable systems could lead these -- could lead to
2 these neglected systems being bought and sold
3 multiple times without actual fixes being made by
4 an acquiring utility.

5 Although we strongly agree that it is
6 necessary to limit positive acquisition adjustments
7 to the potential customer savings to protect
8 customers, we are aware that under the proposed
9 rule, good system owners may be disincentivized to
10 maintain their systems because they are limited to
11 the potential customer savings. These scenarios
12 would make the customers of neglected systems worse
13 off, and potentially make the customers of adequate
14 systems at risk of neglect.

15 As provided with our request for today's
16 hearing, we included changes to the proposed rule
17 that we believe would significantly reduce this
18 potential -- or these potential risks.

19 First, we would delete the language allowing
20 for the three-year delay. Second, we would add
21 language borrowed from the viable utility section
22 of the rule that would require a CPVRR analysis, or
23 equivalent economic analysis, over a five-year
24 period be provided to the Commission to use in
25 determining a partial or full acquisition

1 adjustment along with the other criteria.

2 We think that a positive -- we think that
3 positive acquisition adjustments should not be
4 easily granted because it is a cost that will be
5 borne by the customers above the actual book cost
6 or book value of the system necessary to provide
7 service.

8 Thank you. That concludes my opening
9 statement.

10 CHAIRMAN LA ROSA: Thank you.

11 I will move on to the other parties, starting
12 with Central State Water Resources.

13 MR. COX: Yes, sir. Thank you, Chairman.

14 I think the recent PFAS rulemaking that was
15 promulgated by the EPA is a prime example of why
16 the for -- the kind of forthought and foresight of
17 this rulemaking.

18 So the PFAS rulemaking right now is four parts
19 per trillion. You have two years, according to the
20 EPA, to test your water systems to see if PFAS is
21 in it. Then you have to come up with a capital
22 plan, and you have five more years to be able to
23 put the -- you know, have final compliance.

24 Under the current rule it fits perfectly. You
25 would buy a system. You don't know it has PFAS.

1 Most of the systems in the state of Florida
2 don't -- have not tested for PFAS currently. You
3 would have to turn in to you all as the Commission,
4 hey, we found PFAS, and here are the fixes we are
5 going to have to do.

6 In the scenario that OPC is talking about, you
7 -- there is no economic analysis that's any cost
8 savings to a customer for treating PFAS, because
9 it's a new pollutant. It's a new contaminant
10 concern. It's a new technology. So it's a great
11 example of how these customers are at risk for a
12 cancer causing group of chemicals, and the only --
13 and only by raising rates by doing new investments
14 would you be able to fix those things.

15 So the economic analysis they are trying to
16 put in place would automatically preclude these
17 small failing systems who need the technical
18 manager and all the financial ability to fix these
19 problems from being taken out, being bought.

20 So I would just say that, you know, we've
21 belabored this, you know, quite a bit in front of
22 the Commission, but I think even the recent
23 rulemaking proves why a regulation like this is
24 really necessary to protect customers in the state
25 of Florida.

1 CHAIRMAN LA ROSA: Thank you.

2 Let's move to Sunshine Water.

3 MR. TWOMEY: Good morning, Chair,
4 Commissioners.

5 First of all, thanks for allowing me to speak
6 here today. And I would just second what Central
7 States has said.

8 It's quiet a complex issue that is not easily
9 understood right now, and there is -- we are
10 piloting a technology right now that has to be
11 proved out, and to do that within three years would
12 be a challenge in itself. So I would just second
13 that, you know, PFAS entering, you know, with the
14 new ruling from EPA is going to be a challenge for
15 all of us. And what I would without the financial
16 support of entities like ourselves, these small
17 systems will struggle.

18 Thank you.

19 CHAIRMAN LA ROSA: Thank you.

20 MR. FRIEDMAN: And if I could add to that.

21 CHAIRMAN LA ROSA: Please.

22 MR. FRIEDMAN: You know, these amendments as
23 were pointed out were the result of several
24 workshops, numerous written comments by all the
25 affected parties. The result comes out with what

1 we think is a descent result. Certainly, we don't
2 think it goes far enough. There were many things
3 that we thought should have been included that were
4 not. So it's a good compromise. It's a good first
5 step. Certainly an improvement over the existing
6 acquisition adjustment rule.

7 Now, to address specifically the comments by
8 Public Counsel. They want to include this CV --
9 CPVRR analysis for a nonviable utility. And if you
10 do that, it really -- there is no reason to have
11 viable versus nonviable, because the requirements
12 are going to be virtually the same. And the
13 purpose of having a definition of nonviable, I
14 believe, was a recognition that bringing the
15 quality of service, whether it's -- it's better
16 management, whether it's the actual taste, smell or
17 aesthetic qualities of the water, or the health
18 aspects of water, I think under the nonviable
19 alternative, we expect that there would be future
20 increases in rates, because there will have to be a
21 financial investment to bring up the quality of
22 service of those nonviable utilities. And as was
23 pointed out, that's particularly true now, because
24 of -- of the new PFAS -- PFAS regulations.

25 You know, most of these smaller utilities

1 aren't going to have the resources to spend the
2 kind of money that it's going to take to deal with
3 this PFAS issue. And if you include a financial
4 analysis, the rates are probably going to go up.

5 And so that's why there is a nonviable versus
6 viable difference in the application and rulemaking
7 process, is because it's recognized that the
8 nonviables have problems. And more important maybe
9 than the rate increase, is getting them the type of
10 service and water that they deserve.

11 The second issue the Public Counsel raised on
12 the three-year period within which the Commission
13 has to authorize an acquisition adjustment, you
14 know, one of the problems with the existing rule is
15 that it's been virtually impossible for somebody to
16 come in when they buy a utility and say, this is
17 what we are going to do to bring up the quality of
18 service. You know, y'all just -- you haven't
19 approved an acquisition adjustment in decades. And
20 the reason is because that's such a high standard,
21 because you are saying, this is what we are going
22 to do. This is what we are going to do. And you
23 say, well, how do we know? It's all speculation.

24 Well, this three-year timeframe allows you to
25 take speculation and turn it into facts. And it

1 will be able to show, instead of a utility coming
2 in at the time of transfer and saying, we promise
3 that we could do A, B, C, D, they are going to come
4 in three years later and say we did A, B, C, D, and
5 the customers benefited from that.

6 And to say that the customers don't have a
7 voice because the transfer would have been approved
8 isn't really true. They can contest -- they can't
9 contest a transfer, but they certainly can contest
10 the benefits, and whether the benefits that they
11 are getting fit the requirements of the acquisition
12 adjustment rule to increase the net book value or
13 rate base of the system.

14 So they've got a day in court, so to speak.
15 They've got a voice. And they get the voice, not
16 as to who owns the utility, but as to the revenue.
17 And that's what it's all about. That's what Public
18 Counsel wants you to do at the time of transfer, so
19 that the customers will know that revenue increase
20 is going to be. Well, they will know within that
21 three-year deadline when somebody files for an
22 acquisition adjustment. And if they don't think
23 that's an adequate benefit, they've got a
24 methodology and a procedure to contest that.

25 So while we don't think the current rule went

1 as far as we wanted it to go, it didn't go as far
2 as Public Counsel wants it to go, it's a good --
3 it's a good first step. Let's see how the rule
4 works. If it doesn't work like we -- like we --
5 like this amendment does, then we could always go
6 back to the drawing board and maybe tweak it some.

7 Thank you.

8 CHAIRMAN LA ROSA: Thank you.

9 Seeing no other parties, Commissioners, to us
10 on questioning, are there any questions we have of
11 the parties before us? Any questions?

12 Seeing no questions. If there is no
13 questions, is there any deliberation on --

14 MS. CHRISTENSEN: Commissioner, I have some
15 questions for Mr. Cicchetti on the provisions of
16 the rule specifically about the points that we
17 raised, and I think some of the points that were
18 raised by my colleagues today, specifically about
19 requiring an economic analysis, and whether or not
20 that would impact the acquiring company treating
21 PFAS or do any sort of fixes to the system.

22 It's not our intent on the nonviable systems
23 that requiring an economic analysis would impact
24 the fixes necessary for the system. Really, it's a
25 tool for the Commissioners to have available to

1 make a determination of whether or not to grant all
2 or part of a positive acquisition adjustment, which
3 is essentially a premium above what the book value
4 of the system is at the time of transfer.

5 So it's a tool in the toolbox that the
6 Commission could use to grant part or all of a
7 positive acquisition adjustment when it's
8 considering all the other criteria under the
9 nonviable rule so it can balance the rate impact to
10 the customers. We feel that without some sort of
11 economic analysis of what customer savings would
12 be, it would be difficult, we think, under the
13 current rule. But I do have some questions of Mr.
14 Cicchetti to see if we can't get some clarification
15 on that.

16 CHAIRMAN LA ROSA: Yeah, go ahead and state
17 your question.

18 EXAMINATION

19 BY MS. CHRISTENSEN:

20 **Q We do have some questions regarding -- Mr.**
21 **Cicchetti, you would agree that Florida is an original**
22 **cost state jurisdiction, correct?**

23 A Yes.

24 **Q And the original cost is the -- is based on**
25 **the cost of the utility's investment in the water and**

1 wastewater treatment plant at the time it was originally
2 placed into service, correct?

3 A Yes.

4 Q Okay. And this includes any investment and
5 any improvements made to the system, right?

6 A If there are investments made to improve the
7 system, they would be included at book value.

8 Q Okay. And you would agree that a positive
9 acquisition adjustment is a premium paid for acquiring a
10 utility system over and above the book value of the
11 system, correct?

12 A Yes.

13 Q And so you would agree that essentially a
14 positive acquisition adjustment is not based on any
15 investment made to serve customers, correct?

16 A I wouldn't necessarily agree with that.

17 Q Is the positive acquisition adjustment --

18 A I would like to explain.

19 Q Certainly.

20 A Generally speaking, the reason we have
21 original cost net book value ratemaking is based on the
22 concept of infrastructure devoted to the public service.
23 However, you can think of if a large utility can
24 purchase a smaller utility, and the economies of scale
25 are such that you can have an acquisition adjustment and

1 still have customer savings, you could argue that the
2 acquisition adjustment premium is actually a amount
3 devoted to the public service because it's producing
4 savings for the customers.

5 Q And that would be the amount that was limited
6 to the potential customer savings, you would agree with
7 that, correct, based on your answer?

8 A Yes.

9 Q Okay. And you would agree that nonviable
10 utilities typically tend to have lower economies of
11 scale and smaller customer bases, correct?

12 A Yes.

13 Q And with these low economies of scale, or
14 customer bases, the bill impact from any positive
15 adjustment could significantly affect customers' rates
16 of these nonviable utilities more than the customers of
17 larger viable systems, correct?

18 A Yes, but I would like to explain a
19 justification for the amendment to the rule, and it
20 reiterates what Mr. Friedman was saying.

21 When you are dealing with nonviable systems,
22 the question isn't how do we get customers adequate
23 service at less expense. It's how do we get customers
24 adequate service at a reasonable cost. And as Mr.
25 Friedman said, most of the times that's going to require

1 additional investment, because either the company isn't
2 making those investments, can't raise the capital, is
3 not meeting the environmental requirements or -- and by
4 definition, their management is inadequate. And by
5 definition in the rule a nonviable system is not
6 expected to be able to provide adequate service in the
7 coming five years.

8 So I think it's reasonable, and I think that's
9 why the Commission had asked staff to look into an
10 amendment, to see if there are some situations where we
11 can allow an acquisition adjustment because it's in
12 everyone's best interest. And even though rates might
13 go up for a nonviable system, I think it's still in the
14 customers' best interest.

15 **Q Well, to be clear and consistent with the**
16 **Commission's intent to have larger companies take over**
17 **smaller troubled utilities, you would agree that the**
18 **acquiring utility would be allowed the opportunity by**
19 **the Commission in future rate proceedings to earning a**
20 **fair rate of return on its prudent plant investments,**
21 **and allow recovery of its reasonable O&M, correct?**

22 A Yes, but it's also a matter of providing
23 incentives.

24 **Q Okay. And if the incentive is significantly**
25 **large over a small customer rate, you would agree that**

1 **such recovery would have substantial upward pressure on**
2 **the customers' rates of the acquired utility, correct?**

3 A Yes, but let me explain. It's also the whole
4 situation is before the Commission with all the numbers,
5 and I expect the Commission will make decisions that are
6 in the public's interest.

7 Q **Well, let me ask you this: The proposed rule**
8 **states that the Commission could grant a partial or a**
9 **full acquisition adjustment, correct?**

10 A Yes.

11 Q **In Section (3) subpart (a)1 through 6 sets out**
12 **the criteria that the Commission will consider in**
13 **deciding if to agree -- deciding if to agree to a**
14 **partial or a full positive acquisition adjustment,**
15 **right?**

16 A Yes.

17 Q **And you would agree further that the proposed**
18 **rule, there is no required CPVRR analysis, or similar**
19 **economic analysis for the nonviable systems, correct?**

20 A That is correct. And there is not a CPVRR
21 requirement in the current rule either.

22 And I would also point out that the current
23 rule does not require that the acquisition adjustment be
24 limited to just the savings. The current rule, when
25 there is extraordinary circumstances, said the

1 Commissioners will consider these certain items, which
2 are similar to the ones we have for a nonviable in the
3 amended rule, but it doesn't limit the acquisition
4 adjustment.

5 **Q Well, would you agree that a CPVRR or similar**
6 **economic analysis is a numeric and quantitative analysis**
7 **that shows the numeric cost benefits or the potential**
8 **negative impacts of allowing a positive acquisition**
9 **adjustment?**

10 **A Well, as I explained earlier, with non -- with**
11 **nonviable systems, we are more concerned about getting**
12 **adequate service at a reasonable cost than not adequate**
13 **service at less cost.**

14 **Q Right. But if you did a CPVRR or a similar**
15 **type of economic analysis, that would provide some**
16 **numeric or quantitative analysis that would show the**
17 **numeric monetary benefits of allowing the potential**
18 **acquisition adjustment, right?**

19 **CHAIRMAN LA ROSA: Real quick, Mr. Cicchetti.**
20 **Are you trying to insinuate on a viable system**
21 **or nonviable system, Ms. Christensen?**

22 **MS. CHRISTENSEN: We are discussing here is**
23 **really the nonviable systems. Although, you know,**
24 **obviously a CPVRR analysis, or similar economic**
25 **analysis is applicable equally to a viable system.**

1 But these questions are specifically directed
2 towards the nonviable systems, which is the issue
3 that we raised in our petition.

4 CHAIRMAN LA ROSA: And you are free answer
5 that.

6 MR. CICCHETTI: Yeah, our concern why we
7 didn't include a CPVRR for the nonviable is the
8 concern with getting a viable company to take over
9 the nonviable company. And I think imposing a
10 CPVRR is not necessary, and is somewhat burdensome,
11 but we don't expect that the nonviable systems'
12 rates are going to be less after you increase
13 investment, and increase the quality of service,
14 and meet environmental standards, and so on.

15 BY MS. CHRISTENSEN:

16 Q Right.

17 A So it's more a matter of getting the system in
18 good hands than it is to lower rates.

19 Q I understand that, but could you answer the
20 question that I was asking, which is whether or not that
21 CPVRR or economic analysis provides a numeric
22 quantitative analysis that would show a monetary cost
23 benefit, would you agree with that? If you do that
24 analysis, that would show you a monetary benefit or
25 negative impact?

1 A That's what it shows, but I think that's --

2 Q Okay.

3 A -- unnecessary and burdensome.

4 Q I understand that's your position, but I just
5 want to clarify the record.

6 Is the language in part 3 subpart (a)3 the
7 anticipated impact on the cost of providing service over
8 the next five years from the date of acquisition
9 intended to require a numeric value for the cost?

10 A Yes.

11 Q Okay. Is the language in part 3 subpart (a)4
12 the anticipated cost deficiencies, including any
13 economies of scale, intended to require numeric value
14 for the cost?

15 A It's going to produce a number, yes.

16 Q Okay. So we are looking for numeric analysis
17 there.

18 Is the language in part 3 subpart (b)12 the
19 five-year protected impact on the cost of providing
20 service to the customers of the utility system being
21 acquired, including the impact of any operation and
22 maintenance cost saving and economies of scales expected
23 to result from the acquisition transaction, the impact
24 of the cost of any plant infrastructure additions and
25 the impact of the acquisition adjustment intended to

1 require numeric value for the cost savings and the
2 economies of scale, the cost of plant additions and the
3 positive acquisition adjustment?

4 CHAIRMAN LA ROSA: Real quick, I just want to
5 go to legal staff.

6 I just want to make sure that we are within
7 the issues that are raised. I feel like we are
8 starting to deliberate all the way through the
9 entire rule, and that wasn't what the intentions
10 were today.

11 MR. SUNSHINE: Well, I think it is within the
12 four corners of their petition as it relates to
13 their issues with subsection (3) of the proposed
14 rule.

15 CHAIRMAN LA ROSA: Okay. All right.

16 BY MS. CHRISTENSEN:

17 Q Essentially, does part 3 sub (b)12, is that
18 unintended to require a numeric value for the cost
19 savings, the economies of scale, cost of plant additions
20 and positive acquisition adjustment?

21 A Yes, we expect it to be a number.

22 Q Okay. And if part 3 subpart (b)12 requires
23 numerical quantification of cost savings and economies
24 of scale, in your opinion, could that be used to limit
25 the amount of the positive acquisition adjustment

1 **allowed to the anticipated numeric or quantified**
2 **benefits?**

3 A Yes. As the precedent to that section says,
4 it's things for the Commission to consider. So upon the
5 Commission's consideration, they may choose to allow a
6 partial acquisition adjustment.

7 Q Okay. And would you agree the Commission's
8 **decision to grant a positive acquisition adjustment**
9 **should be based on whether the customers will benefit**
10 **economically and mitigate the economic impact on the**
11 **customers' rates for any positive acquisition**
12 **adjustment?**

13 A No. I don't think it's to limit them to
14 adjust an economic impact. As I said, it's more about
15 getting adequate service at a reasonable cost, not at a
16 lower cost.

17 Q So based on your answer, you would agree,
18 **though, that the economic impact of any positive**
19 **acquisition adjustment granted should be considered, and**
20 **should be mitigated against as to what the potential**
21 **rate increase on the customers' rates should be,**
22 **correct?**

23 A Well, when you say should be mitigated
24 against, I think these are all things that the
25 Commission should consider. That's what we anticipate.

1 But I don't necessarily think that one should be
2 subtracted from the other.

3 Q And you would agree that it's generally in the
4 public interest to keep customers' rates affordable, and
5 not increase rates without some direct benefit to
6 customers, correct?

7 A Well, it could be that a rate increase is in
8 the customers' benefit.

9 Q Would you also agree that there is a risk that
10 a utility could buy a system at a premium, let's say
11 hypothetically, 10,000 over book value, and be granted
12 the positive acquisition adjustment and thereafter sell
13 the utility for a premium, let's say 50,000 over book
14 value, without making any significant improvements?

15 A That's a possibility.

16 Q And would you agree that if this churning of a
17 nonviable system can occur, this creates an incentive to
18 buy and sell nonviable utility systems without actually
19 making the improvements, there are no limitation -- if
20 there are no limitations on the positive acquisition
21 adjustment?

22 A Well, that's the purpose of the rule, so that
23 all those things can be brought to the Commission's
24 attention, and they can determine whether or not it's in
25 the public interest.

1 Q Would you agree that one of staff's concerns
2 raised at its agenda for the February 1st, 2023, rule
3 workshop was how customers would be protected from
4 utilities swapping assets?

5 A Absolutely.

6 Q Okay. And are -- is it your opinion that
7 there is specific provisions in the nonviable rule
8 section that would protect customers from this potential
9 utility swapping of assets?

10 A Yes.

11 Q And can you please tell me which specific
12 provisions you think actually would eliminate this
13 potential utility swapping?

14 A I believe the whole rule does that, because it
15 gives the Commission the information they need to
16 determine whether or not this is in the public interest.

17 Q Does it say public interest in the rule?

18 A I don't believe it does.

19 Q And the lack of any limitation on a nonviable,
20 poorly run system creates -- would you agree that the
21 lack of limitation for the nonviable, poorly run systems
22 can create a perverse incentive that puts at risk well
23 run utility system customers because those systems will
24 have an incentive to neglect their systems, and if they
25 plan on selling, they would get a bigger acquisition

1 adjustment over book value if they allowed the systems
2 to be neglected, correct?

3 A No, I don't agree with that.

4 Q If large acquisition adjustments are allowed
5 and not limited to economic benefits, how do you protect
6 vulnerable customers of these smaller nonviable systems
7 from the predatory practices of equity firms, whose main
8 goal may not be to run a system, and which raising rates
9 so high that customers cannot afford them?

10 A Well, again, I think what we have done is in
11 these -- this rule, and in the market value, fair market
12 value rule, is to provide the Commission with all the
13 information they need to make a determination of what --
14 whether or not an acquisition adjustment would be in the
15 public interest.

16 Q Is the language of part six that nothing
17 herein removes the Commission's existing authority to
18 review a positive acquisition adjustment if the
19 Commission finds that customer benefits did not
20 materialize, or subsequently changed within five years
21 of the date of the order approving the positive
22 acquisition adjustment intended to require that the
23 customers benefit numerically or quantitatively from
24 some type of economic customer benefit in the nonviable
25 systems?

1 MR. SUNSHINE: Mr. Chair, I would object.
2 That's beyond the scope of their petition. They
3 limited to subsections (2) and (3) and did not --

4 CHAIRMAN LA ROSA: Agreed.

5 MR. SUNSHINE: -- raise any issues with
6 subsection (6).

7 MS. CHRISTENSEN: I am not contesting the
8 language. I am just trying to get clarification
9 if, as Mr. Cicchetti has indicated before, there is
10 some requirement of a quantification under the
11 viability section of the -- of those criteria, if
12 that's the intent of the rule. When you go and do
13 a look-back, we want to make sure that you are
14 looking back on the same quantification analysis.
15 I am just trying to get clarification.

16 CHAIRMAN LA ROSA: Mr. Cicchetti, you don't
17 have to answer that question if you don't want to.
18 I do agree it's outside the scope of what's been
19 brought up today as far as the issues.

20 MR. CICCHETTI: I -- the review process, I
21 think, provides some safety, some -- for customers,
22 because the Commission can look back and see if the
23 savings that the company was anticipating and
24 estimated, or proposing, actually occurred; and if
25 they didn't, the Commission can then end the

1 acquisition adjustment.

2 BY MS. CHRISTENSEN:

3 Q And we are just trying to clarify whether or
4 not that review would also include some sort of numeric
5 evaluation of the cost savings?

6 A If -- if it was a numeric valuation that the
7 decision was based on, but it could be some other
8 qualitative factors that the decision was based on. But
9 to the extent that there were numeric, we would
10 anticipate on review looking at these numeric values.

11 Q Okay. Without requiring some type of
12 improvements to be made to maintain part or all of a
13 positive acquisition -- acquisition adjustment, how
14 would the Commission require the new owner to comply
15 with the new federal standards on forever chemicals that
16 were discussed here today?

17 A Could you repeat that question?

18 Q We are just trying to understand if -- is
19 there anything in the nonviable rule that would require
20 the type of improvements that are going to be posited by
21 the utility when they are asking for a positive
22 adjustment, is there any requirement that those
23 improvements actually take place under the rule?

24 A Well, if something was proposed to the
25 Commission, and the Commission accepted that, upon

1 review, we would look to see if -- the Commission would
2 look to see if those assumptions actually occurred.

3 Q Okay.

4 CHAIRMAN LA ROSA: Yeah, I am confused. Are
5 you asking the question if the utility would --
6 would comply with federal standards?

7 MS. CHRISTENSEN: Well, if there is anything
8 in the rule that would require if the positive
9 acquisition adjustment is granted, whether or not
10 the improvements have to be made, is there a tie
11 between the granting of positive acquisition
12 adjustment and the improvements that are needed by
13 the nonviable utility, is there any tie in the
14 rule, or requirement that those improvements be
15 made before you can grant -- get a positive
16 acquisition adjustment in the rule?

17 CHAIRMAN LA ROSA: I think that's subjective,
18 but I think you can answer that question if you
19 like.

20 MR. CICCHETTI: Well, the look-back is five
21 years. And if the utility said, well, we are going
22 to meet these new environmental standards, and
23 that's part of the reason we want to get an
24 acquisition adjustment, and the Commission allowed
25 an acquisition adjustment for that reason, and then

1 on a five-year look-back they didn't make that
2 investment, I would think that the Commission could
3 then cancel the acquisition adjustment.

4 BY MS. CHRISTENSEN:

5 **Q Wouldn't you agree that a CPVRR analysis**
6 **that's shown the absence of a cost-effective transaction**
7 **would be important information for the Commission should**
8 **consider evaluating a nonviable system's acquisition?**

9 A As I have said, I think that's been asked and
10 answered, but I, again, don't think that the CPVRR is
11 required for a nonviable system, because it's more
12 important to get adequate service at a reasonable cost
13 to the customers, and the CPVRR is a disincentive for a
14 company to take over a nonviable system that needs
15 immediate action.

16 **Q But you are not saying here today that having**
17 **that type of an economic analysis would not be valuable**
18 **information for the Commission to consider at the time**
19 **of the request for a positive acquisition adjustment?**

20 A Not for a nonviable system. If we thought
21 that was important, we would have included it.

22 **Q Okay. Under Section 2 of the rule, would you**
23 **allow the utility -- Section 2 of the rule would allow**
24 **the utility to file asking for a positive acquisition**
25 **adjustment any time within three years after transfer,**

1 or it could ask for an extension beyond three years for
2 good cause; is that correct?

3 A Yes.

4 Q And you would agree is that if the utility
5 does not have to provide the documentation to justify
6 the positive acquisition adjustment until after the
7 transfer is granted, the customers will not have the
8 information about the potential rate impacts of a
9 positive acquisition adjustment at the time of transfer,
10 correct?

11 A They will not, but they will receive notice
12 when an acquisition adjustment is asked for.

13 Q And because the customers don't have the
14 information in a timely manner, the customers won't be
15 able to protest the transfer based on the positive
16 acquisition adjustment at that time, correct?

17 A That's correct, but we see the two issues as
18 being separate. The transfer will decide whether the
19 company has the necessary experience to operate the
20 system adequately, and whether they have the financial
21 wherewithal.

22 These rules will not be secret. The public
23 will know that an acquisition adjustment can be asked
24 for in the future, and they will have due process by
25 receiving a notice that they can contest the acquisition

1 adjustment when it's asked for, if it's asked for.

2 Q Right. But it would be correct that if you
3 deleted the language in Section 2 of the proposed rule
4 that allows for up to three years to file, and the
5 potential additional years for good cause, as OPC
6 suggests, this would eliminate the risk the customers
7 would not have the information about the positive
8 acquisition adjustment at the time of transfer, and
9 could oppose the transfer based on that information at
10 that time, correct?

11 A That's true, but staff believes it's in the
12 company's best interest to ask for it at the time of
13 transfer. However, the companies have indicated that
14 they are willing to take that risk, because there can be
15 some situations where it takes them time to operate the
16 system and see where the cost savings are, and be able
17 to come back to the Commission and say, we -- we have
18 achieved this level of savings. And the Commission can
19 then determine if they want to say, let's share the
20 savings between the customers and the company.

21 And that provides an incentive that other
22 companies can see that, you know, if we go in there,
23 operate the system for a while, and then have some cost
24 savings, we can share in those savings, and then it's in
25 everyone's best interest to be allowed to do that. So

1 we think that the notice provides due process for the
2 customers.

3 And as Mr. Friedman said, this was a
4 give-and-take, this whole process. And so we saw that
5 as, you know, even though we would prefer, and we think
6 it's in the company's best interest to file your
7 acquisition adjustment at the time of the transfer. We
8 think it's reasonable that they be given some time, and
9 be able to make that determination, and then have that
10 incentive that there can be a sharing of savings if they
11 do, in fact, incur.

12 **Q And I just want to clarify in your answer,**
13 **when you are talking about customer -- or the savings,**
14 **the customer savings, that's numeric economic type of**
15 **savings you are talking about which would require some**
16 **level of an economic analysis be presented to the**
17 **Commission, correct?**

18 **A Yes.**

19 MS. CHRISTENSEN: I have no further questions.
20 Thank you.

21 CHAIRMAN LA ROSA: Okay. Commissioners, are
22 there any questions based on what you heard today
23 of either the parties in front of us or staff?

24 Commissioner Clark, you are recognized.

25 COMMISSIONER CLARK: Yeah. I have a couple of

1 questions, Mr. Chairman, and just one observation.

2 There continues to be a statement made that
3 this acquisition adjustment rule is intended to set
4 up larger companies to purchase smaller nonviable
5 smaller companies. I just want to make sure that,
6 just from my perspective, that that's not
7 necessarily the intent. There seems to be this
8 hangup that it always has to be a larger company
9 buying a smaller company, and that's not
10 necessarily the case.

11 What we are looking for is viable companies
12 that would be interested in taking over nonviable
13 companies. I think that's an important
14 clarification, because the other -- the other
15 scenario is not what the Commission -- not this
16 Commissioner's intention.

17 Two questions. Number one, are there any
18 trigger -- and, Mr. Cicchetti, I think these are
19 probably going to be addressed to you. Are there
20 any trigger points in the rule that would
21 automatically guarantee a positive acquisition
22 adjustment?

23 MR. CICHETTI: No.

24 COMMISSIONER CLARK: Is there anything that
25 would prohibit the Commission from requiring a

1 utility to bring a CPVRR to the Commission in its
2 analysis for their consideration for an acquisition
3 adjustment?

4 MR. CICCHETTI: Not at all.

5 COMMISSIONER CLARK: So if we saw there was a
6 need that we wanted to see if they could show
7 something specific, we have the right to ask them
8 for that, and they would have to produce -- our
9 decision could be based on whether they produced it
10 or not?

11 MR. CICCHETTI: Absolutely.

12 COMMISSIONER CLARK: Okay. Great. Thank you.
13 That's all, Mr. Chairman.

14 CHAIRMAN LA ROSA: Thank you.

15 Commissioners, further questions?

16 MS. CIBULA: I would just point out that, you
17 know, the rule says what people have to file, so
18 if, you know, we are not requiring that they do a
19 CPVRR, then under the rule they wouldn't be
20 required to file a CPVRR. I would just make that
21 clarification.

22 COMMISSIONER CLARK: So even though the rule
23 requires -- the rule says they do not have to file
24 it, I think my -- it kind of gets subjective at
25 that point. The Commission could say, we would

1 like for you to do it. If you don't do it, you are
2 saying you are not going to comply, we have the
3 right to say, well, we are not going to give you a
4 positive acquisition adjustment; is that fair?

5 MS. CIBULA: The rule sets out what the
6 Commission requires. So if we don't require a
7 CPVRR in the rule, then they are not required to
8 file one, and we couldn't say that since you didn't
9 file one, you are not going to get an acquisition
10 adjustment.

11 COMMISSIONER CLARK: It would weigh into the
12 Commission's opinion, I assume, on how --

13 MS. CIBULA: But -- but -- I guess companies
14 could -- you know, if the Commissioners wanted
15 something, and the companies wanted to provide it,
16 that would be fine. They can go above and beyond
17 what the rule requires, but the rule does set forth
18 what is required be filed.

19 COMMISSIONER CLARK: I think I understand.
20 Thanks.

21 CHAIRMAN LA ROSA: Commissioners, further
22 questions?

23 Commissioner Fay, you are recognized.

24 COMMISSIONER FAY: Thank you, Mr. Chairman.
25 Mr. Cicchetti, so my question is on this --

1 the six components in 3(a) that Ms. Christensen was
2 asking about. When we -- we make that analysis of
3 a nonviable utility, what -- what components of
4 this would give the Commission the ability to
5 weigh, I guess, either a positive or negative of a
6 utility being transferred multiple times?

7 So obviously if it's sold, then we go through
8 this process. That's one thing. Then if another
9 entity wants to buy it based on that valuation, I
10 would presume we could take that into account as
11 far as if we had a concern about inflation of
12 price, or whatever the argument may be at that
13 time. But where in this process would we -- we be
14 able to sort of give weight to that?

15 MR. CICCHETTI: It's going to show up in the
16 cost impact, and so you will be seeing what will be
17 the affect on consumers' bills, and that will be
18 factored into your determination.

19 COMMISSIONER FAY: Gotcha. So to your point,
20 if we go through the process, there is an approval,
21 there's an adjustment in rates that impact
22 consumers, and then there is another acquisition
23 and the evaluation is done, again, we would be well
24 aware of the adjustment made previously and then
25 what's in front of us at that time, is that what

1 you are saying?

2 MR. CICCHETTI: Yes.

3 COMMISSIONER FAY: Okay. Great.

4 All right. That's all I had, Mr. Chairman.

5 Thank you.

6 CHAIRMAN LA ROSA: Thank you.

7 Any further questions?

8 Commissioner Passidomo, you are recognized.

9 COMMISSIONER PASSIDOMO: All right. Thank
10 you, Mr. Chair.

11 So am I kind of -- my question along those
12 same -- those factors that we have in 3(b), Ms.
13 Christensen did bring up -- made up -- brought up a
14 point that I thought was a -- is a significant it
15 concern about, you know, selling and continuing --
16 companies selling their assets and then none of
17 these planed coming to frui -- any sort of planned
18 infrastructure investments coming to fruition.

19 You kind of countered by saying that all of
20 those -- all of that that is required in the filing
21 will help mitigate those sort of concerns. The one
22 that I think is important that any planned
23 infrastructure additions and maintenance to improve
24 acquired utility's quality of service or compliance
25 with the environmental regulations.

1 So for something like that, that's a
2 requirement that when they are asking for the
3 positive acquisition adjustment, that the acquired
4 utility has to file those plans. Will we -- is
5 that -- you know, can we withdraw that -- the
6 approval of the acquisition adjustment should they
7 sell -- they are going to sell that -- their
8 utility, and that's never come to fruition, is that
9 something that we can, as the Commission, can
10 withdraw that positive acquisition adjustment
11 because of -- they didn't -- they didn't, you know,
12 actually complete the plans that they submitted to
13 us when requesting?

14 MR. CICCHETTI: Yes. And you also have the
15 five-year review, the five-year look-back, where
16 you will be seeing if they actually did what they
17 said they were going to do.

18 COMMISSIONER PASSIDOMO: Okay. Yeah, that --
19 that helps alleviate the concerns that I initially
20 had that Ms. Christensen brought up.

21 And I am kind of in the same posture as I was
22 when we had the previous -- when we previously
23 discussed this, about, I think, the same as that
24 requiring the CPVRR for a nonviable utility seems
25 to remove the distinction between viable and

1 nonviable in my mind. That's sort of something
2 that Mr. Friedman brought up, and I have to agree
3 with him on that. So that's just where I am right
4 now.

5 CHAIRMAN LA ROSA: Staff, are there any other
6 matters?

7 MR. SUNSHINE: Yes, Mr. Chair.

8 If there are no further concluding matters to
9 be addressed regarding the proposed rule, staff
10 submits that the Commission, if it so chooses, may
11 proceed to deliberate and make a bench decision at
12 this time.

13 If the Commission determines not to make a
14 bench decision, this docket will be scheduled for
15 annuity Agenda Conference.

16 CHAIRMAN LA ROSA: Thank you.

17 And I would just add the comment that, you
18 know, when you provide adequate service at a
19 reasonable cost, it's certainly a balance. And I
20 may have made this comment prior, and I feel the
21 same way I did when we initially heard this. And
22 this is all true, especially when you are -- you
23 have safety as a concern.

24 Commissioners, we will throw it back to us.

25 Are we ready to make a bench decision? If so, is

1 there a motion?

2 COMMISSIONER FAY: Sure, Mr. Chairman.

3 And I just -- before I make my motion, if you
4 allow me one comment.

5 CHAIRMAN LA ROSA: Please.

6 COMMISSIONER FAY: I think, you know, from the
7 original discussion we had on this rule, and then
8 what's been presented today, I think, you know, it
9 would be an understatement to say once this is
10 applied, the Commission is going to be paying a lot
11 of attention to how the implementation actually
12 goes. And I think what was brought up by one of
13 the utility owners today is the PFAS adjustment
14 that's now this mandate out there, that's also
15 going to be something that we are going to have to
16 pay really close attention to.

17 So we are kind of moving our landscape in a
18 way to be responsive that I think, at least from my
19 perspective, is necessary at this point the
20 Commission and our state. But we are going to have
21 to really pay attention as to what other states
22 have done successfully to adjust their PFAS, and
23 what these rules do in this balance.

24 I mean, I think the parties, everybody today
25 that presented did a good job of articulating why

1 they have those concerns. And I think the
2 implementation will allow us to see what's working
3 and what's not working potentially.

4 So although it's not -- it's not a perfect
5 rule by any means, I sort of sit in the seat that
6 the parties sit in, in that there are some things
7 that maybe, you know, I would prefer over one way
8 over another, but I really think, when you look at
9 the -- the goal of moving us forward for this, I do
10 think the rule does that, and I think we will pay
11 close attention along with the parties as to, you
12 know, how it's working, and how customers and
13 utilities are actually being impacted for the
14 benefit of our state.

15 So, Mr. Chairman, I am comfortable moving to
16 approve the rule as proposed, which I guess would
17 be essentially a publication of the rule, is
18 that --

19 MR. SUNSHINE: Well, just for the Commission's
20 benefit. The question presented for decision is
21 should the Commission make any change to the
22 proposed Rule 25-30.0371, Florida Administrative
23 Code, based on the rule hearing record?

24 COMMISSIONER FAY: Okay. So then maybe to be
25 consistent with that question, then, my motion

1 would be to not make any changes to the rule as
2 proposed and previously approved by the Commission.

3 CHAIRMAN LA ROSA: Hearing a motion as
4 explained by Commissioner Fay, is there a second?

5 COMMISSIONER PASSIDOMO: Second.

6 CHAIRMAN LA ROSA: Hearing a second.

7 All those in favor signify by saying yay.

8 (Chorus of yays.)

9 COMMISSIONER LA ROSA: Yay.

10 Opposed no.

11 (No response.)

12 CHAIRMAN LA ROSA: Show that the motion
13 passes.

14 Okay. Well, thank you all for those that
15 participated. I know that this is certainly not an
16 easy process, but I think certainly an important
17 one, and do agree to most of the comments that were
18 made today.

19 If there is no further business before us in
20 this rule hearing, we can adjourn in a half a
21 second, but there is a prehearing following this.
22 We will give that prehearing 10 minutes to start,
23 approximately at 11:00 a.m.

24 Without -- without any other business, see
25 that this meeting is adjourned. Thank you.

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(Proceedings item concluded.)

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CERTIFICATE OF REPORTER

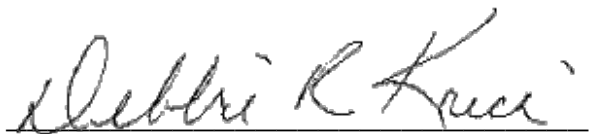
STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 23rd day of May, 2024.



DEBRA R. KRICK
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