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STATE OF FLORIDA



KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

May 28, 2024

Mr. Matthew Hargreaves
Director
Florida Department of State
Administrative Code and Register Section
Room 701, the Capitol
Tallahassee, FL 32399-0250

VIA E-MAIL
RuleAdoptions@DOS.MyFlorida.com

RECEIVED-FPSC
2024 MAY 28 PM 1:46
COMMISSION CLERK

Re: Rule Certification Packet for Rule 25-30.0371, F.A.C.

Dear Mr. Hargreaves:

Enclosed for filing is a complete rule certification packet for Rule 25-30.0371, F.A.C., consisting of:

- (1) One copy of the signed rule certification form;
- (2) One copy of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (3) One copy of the coded text of the rule, including the legal citations, history notes, and substantial rewrite verbiage pursuant to Rule 1-1.011(3)(c)3., F.A.C.;
- (4) One copy of the summary of the rule;
- (5) One copy of the detailed written statement of the facts and circumstances justifying the rule;
- (6) One copy of the summary of the hearings held on the rule;
- (7) One copy of the certification form required by Rule 1-1.013, F.A.C., for the materials incorporated by reference that were filed electronically and one copy of the e-mail approval confirmation from the Department of State; and
- (8) One copy of the coded text of the rule in Word version.

Mr. Matthew Hargreaves
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The contact name and information for this rule are Douglas Sunshine, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6224, dsunshin@psc.state.fl.us. Please let me know if you have any questions.

Sincerely,

/s/ Douglas D. Sunshine
Douglas D. Sunshine, B.C.S.
Senior Attorney

Enclosures

cc: Office of the Commission Clerk (Docket No. 20240022-WS)

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the ombudsman in the Executive Office of the Governor.

The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-30.0371	
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Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective Date: _____

(month) (day) (year)



Signature, Person Authorized to Certify Rules

Commission Clerk

Title

6

Number of Pages Certified

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rule covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No. 25-30.0371

Rule covered by this certification:

Rule No. 25-30.0371



Signature of Agency Head

Mike La Rosa
Name of Agency Head

Chairman, Florida Public Service Commission
Title

Substantial rewording of Rule 25-30.0371, F.A.C., follows. See Florida Administrative Code for present text.

25-30.0371 Acquisition Adjustments.

(1) Definitions. For the purpose of this rule, the following definitions apply:

(a) "Acquisition adjustment" means the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the acquired utility's assets.

(b) "Good cause" means a showing of financial hardship, unforeseen events, or other events outside the utility's control.

(c) "Positive acquisition adjustment" means the purchase price is greater than the net book value.

(d) "Negative acquisition adjustment" means the purchase price is less than the net book value.

(e) "Non-viable utility" means a utility that meets either of the following subparagraphs:

1. A utility that is currently unable or is projected to be unable to provide and maintain safe, adequate, and reliable service and facilities to its customers over the 5-year period following the date of acquisition due to:

a. Failure to comply with or history of enforcement or compliance actions by federal, state, or local regulatory agencies based on violations of primary or exceedance of secondary water quality standards or other health, safety, and environmental standards; and

b. Insufficient investment, repair, maintenance of assets or an inability to acquire and maintain adequate managerial, operational, financial, or technical capabilities to ensure safe and reliable service to its customers; or

2. A utility that is insolvent, i.e., unable to pay debts.

(f) "Viable utility" means all utilities that are not non-viable as defined in paragraph (1)(e) of this rule.

(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. In determining whether the acquired utility customers benefit, 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.

(b) Contents of Petition. The acquiring utility must file the following information in its petition:

1. The amount of the acquisition adjustment requested;
2. The amortization period requested;
3. An explanation of how the acquisition was made as part of an arms-length transaction;
4. The contract of sale, including the estimated cost of the fees and transaction closing costs to be incurred by the acquiring utility;
5. A calculation of the net book value of the acquired utility including the composite remaining life of the assets purchased;
6. A statement as to whether the acquired utility is insolvent or unable to service its debt obligations;
7. A description of the acquiring utility's managerial, operational, financial, or technical capabilities to furnish

and maintain safe and adequate service and facilities over the next 5 years from the date of acquisition;

8. Any notices of violation, consent decrees or other regulatory actions issued by a federal, state, regional, or local agency regarding the provision of the acquired utility's water or wastewater service over the past 5 years from the date of acquisition, including any notices of violation of primary or notices of exceedances of secondary water quality standards;

9. The acquired utility's annual capital investments and operations and maintenance expenses over the past 5 years from the date of acquisition, if existing;

10. Any planned infrastructure additions and maintenance by the acquiring utility to improve the acquired utility's quality of service or compliance with environmental regulations;

11. Any engineering studies or appraisals the acquiring utility procured pertaining to the purchase of the acquired utility;

12. The 5-year projected impact on the cost of providing service to the customers of the utility system being acquired, including the impact of any operation and maintenance cost savings and economies of scale expected to result from the acquisition transaction, the impact of the cost of any plant infrastructure additions, and the impact of the acquisition adjustment; and

13. An explanation as to how the acquiring utility has greater access to capital than the acquired utility, if applicable.

(4) Positive Acquisition Adjustments for Viable Utility.

(a) A full or partial positive acquisition adjustment will be allowed if the acquiring utility demonstrates that the purchase was made as part of an arms-length transaction and the transaction incorporating the full or partial positive acquisition adjustment is projected to provide a positive cumulative present value of the revenue requirements (CPVRR) customer benefit 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, the Commission will consider the following factors in determining whether to allow a full or partial acquisition adjustment:

1. Anticipated improvements in quality of service and compliance with any regulatory requirements;
2. Anticipated rate reductions or rate stability over the next 5 years from the date of acquisition;
3. Anticipated cost savings;
4. Increased ability to attract capital at reasonable cost;
5. Lower overall cost of capital; and
6. Additional professional and experienced managerial, financial, technical, and operational resources.

(b) Contents of Petition. The acquiring utility must file the following information in its petition:

1. The amount of the acquisition adjustment requested;
2. The amortization period requested;
3. An explanation of how the acquisition was made as part of an arms-length transaction;
4. The contract of sale, including the estimated cost of fees and transaction closing costs to be incurred by the

acquiring utility;

5. A calculation of the net book value of the acquired utility including the composite remaining life of the assets purchased;

6. A CPVRR in the form of a spreadsheet, Form PSC 1034 (3/24), entitled "Water and/or Wastewater Utilities Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment Worksheet," which is incorporated by reference in this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-16619>, is an example CPVRR that may be completed and included in the acquiring utility's petition to comply with this subparagraph. The form may also be obtained from the Commission's website, www.floridapsc.com;

7. An Excel spreadsheet with the data and information included in the CPVRR analysis with the spreadsheet formulas intact;

8. All supporting data and assumptions used in the CPVRR spreadsheet;

9. A description of any anticipated improvements or planned infrastructure additions and maintenance by the acquiring utility;

10. A description, including any supporting data, of any anticipated cost savings resulting from the acquisition;

11. The 5-year projected rate impact on the customers of the utility system being acquired, including the rate impact of any cost efficiencies and economies of scale expected to result from the acquisition transaction, the rate impact of the cost of any plant infrastructure additions, and the rate impact of the acquisition adjustment; and

12. Any engineering studies or appraisals the acquiring utility procured pertaining to the purchase of the acquired utility.

(5) Amortization Period for a Positive Acquisition Adjustment. The Commission will set the amortization period in the order approving the positive acquisition adjustment. Amortization of the acquisition adjustment will begin on the date of issuance of the order approving the positive acquisition adjustment or on the date the sale closes, whichever occurs last.

(6) Nothing herein removes the Commission's existing authority to review a positive acquisition adjustment if the Commission finds that customer benefits did not materialize or subsequently changed within 5 years of the date of the order approving the positive acquisition adjustment.

(7) Negative Acquisition Adjustment. A negative acquisition adjustment will not be included in rate base.

(8) Notice. At the time the petition is filed with the Commission, the acquiring utility must provide a draft notice for review by Commission staff. Commission staff will review the draft notice within 7 days. Once staff has approved the notice, the acquiring utility must provide notice by regular mail to the Office of Public Counsel and by regular mail or personal service to each customer and owner of property located within the service area for both the acquiring utility and the utility being acquired, to the extent the utilities' customers are within the Commission's jurisdiction. The notice required by this rule may be combined with the notice of Application for Authority to Transfer issued pursuant to Rule 25-30.030, F.A.C., or for existing customers, the notice may be included in their next bill. The notice must contain:

(a) Title: Notice of Utility's Petition to Establish an Acquisition Adjustment;

(b) A statement that the utility has filed a petition with the Commission to establish an acquisition adjustment

for either a viable or a non-viable utility system;

(c) The date the petition was filed with the Commission;

(d) The docket number associated with the petition;

(e) A statement of the 5-year projected rate impact or the anticipated effect of the requested acquisition

adjustment on rates for the next five years;

(f) A statement that the utility's petition is available on the Commission's website;

(g) The acquiring utility's address, telephone number, and business hours; and

(h) A statement that any customer substantially affected by the petition may file a motion to intervene in

accordance with Rule 28-106.205, F.A.C.

Rulemaking Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.071(5), 367.081(2)(a),

367.121(1)(a), (b) FS. History—New 8-4-02, Amended 11-22-10, _____

SUMMARY OF THE RULE

Rule 25-30.0371, F.A.C., amends the existing rule to update and clarify the rule to set forth the Commission's policy on acquisition adjustments and to establish a process whereby a water or wastewater utility can petition for an acquisition adjustment for a non-viable or viable utility and what the Commission will consider when evaluating the utility's petition. The rule amendment substantially rewrites the current rule and provides revised and new definitions; general filing instructions; factors considered in determining whether to grant an acquisition adjustment; what must be included in the contents of the petition; establishment of when the amortization period begins; recognition of the Commission's authority to review an acquisition adjustment if customer benefits do not materialize or subsequently change; eliminate negative acquisition adjustments from being included in rate base; incorporating a form; and establishing a notice requirement.

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The rule is being amended to update and clarify the rule and to set forth the Commission's policy on acquisition adjustments.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

The Commission published its Notice of Proposed Rulemaking in Volume 50, No. 51, of the Florida Administrative Register, published on March 13, 2024. A request for public hearing on the rule was timely filed with the Commission on April 3, 2024, by the Office of Public Counsel.

Pursuant to notice published in Volume 50, No. 71, of the Florida Administrative Register, on April 10, 2024, a Section 120.54(3)(c)1., F.S., public hearing was held on May 7, 2024. The public hearing was conducted by all of the Commissioners of the Public Service Commission with agency staff present and available to answer questions about the proposed rule. The Commissioners heard arguments and were presented with evidence from affected persons. At the conclusion of the public hearing, the Commission voted to make no change to the proposed rule.

CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1-1.013, Florida Administrative Code, that materials incorporated by reference in Rule 25-30.0371, Florida Administrative Code, have been:

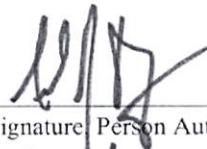
(1) Filed through the Department of State's e-rulemaking website at www.flrules.org.

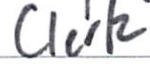
(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials as described in option (1) above, a true and complete copy of the incorporated materials has been provided to the Department of State as outlined in paragraph 1-1.013(5)(c), F.A.C. Copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form number and form title, or title of document below:

Form PSC 1034 (03/24) Water and Wastewater Utilities Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment Worksheet

Under the provisions of Section 120.54(3)(e)6., F.S., the attached materials take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.



Signature Person Authorized to Certify Rules


Title

Janet Cayson

From: FL-Rules@dos.state.fl.us
Sent: Wednesday, May 8, 2024 12:11 PM
To: Janet Cayson
Cc: flrules@dos.state.fl.us
Subject: 25-30.0371 Reference Material for Rule Adoption Approved

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear JCayson:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Register Staff.

The approved material is available in the [Review/Modify Agency Reference Material](#) list (Agency Main Menu page).

Rule Number: 25-30.0371

Reference Number: Ref-16619; Reference Name: PSC 1034 (3/24) Water and/or Wastewater Utilities Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment Worksheet

Click [here](#) to log in.

Administrative Code and Register Staff
Florida Department of State



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

May 28, 2024

Douglas D. Sunshine
Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Douglas D. Sunshine:

Your adoption package for Rule 25-30.0371, F.A.C. was received, electronically, by the Florida Department of State, Administrative Code and Register at 12:08 p.m. on May 28, 2024. After review, it appears that the package meets statutory requirements and those of Rule 1-1.010, F.A.C. and is deemed filed for adoption at the time received, as indicated above. The effective date is June 17, 2024.

Sincerely,

Matthew J. Hargreaves
Administrative Code and Register Director

MJH