BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.	DOCKET NO. 20240068-WS FILED: March 14, 2025

POST-HEARING BRIEF OF THE FLORIDA OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), submit this Post-Hearing Brief pursuant to the Orders Establishing Procedure in this docket issued on July 23, 2024, and October 2, 2024.

STATEMENT OF BASIC POSITION

Sunshine Water Services Company ("Sunshine," "Company," or "Utility") has a problem distinguishing between needs and wants. The Company wants the Public Service Commission ("Commission") to approve recovery for a $20 million Advanced Meter Infrastructure ("AMI") project that feathers the Company's bed but has nothing to do with providing safe and reliable service. TR 393, 400-402. Sunshine also wants approval for the recovery of a laundry list of other pro forma projects adding up to $36 million. EXH 14-39. But what Sunshine really needs was contained in its test year letter: a $29 million pro forma project to replace the entire Mid-County treatment plant (TR 205) and a group of projects estimated at $8.7 million to address its LUSI Lake Groves plant. TR 202-204. Altogether, Sunshine's total ask in its test year letter would have been $93.7 million for a utility with 37,000 water and 30,000 wastewater customers. This would be an unconscionable nonstarter for Sunshine, considering that the Company had already incurred an incredible $40 million in capital costs in its 2023 test year alone! EXH 92 MPN E28623. Sunshine knew the Commission would never approve a package that large that included the unnecessary AMI project.

The solution turned out to be simple: push the "nice to have" AMI project (TR 200) to the foreground as the centerpiece of this rate case by removing the critical, higher-priority Mid-County and LUSI Lake Groves projects from the rate increase application (but keep working on them anyway and bring them back as soon as AMI gets approved). TR 202-204, 205. This misdirection secures Sunshine's recovery for all of its wants and needs, by severing the needs from its wants in the rate case and bringing them back for approval in a limited proceeding (with limited review).

TR 281-282. This way Sunshine could sidestep the rate shock issue – even if only temporarily – for its suffering customers and continue to gorge at the capital trough.

This kind of bureaucratic maneuvering is emblematic of a company that has chosen to prioritize its wants before its needs and investor profits ahead of customer service. Since Sunshine's last rate case, almost a third of its water systems and over half of its wastewater systems have fallen out of compliance with Florida Department of Environmental Protection ("DEP") regulations at least once.[1] Its Mid-County system, mentioned above and abruptly dropped from Sunshine's rate increase application, is unbelievably still subject to an open consent order. TR 297. Meanwhile, the Company's confessed "mismanagement" (TR 253) of its Wekiva Hunt Club wastewater plant was so egregious DEP fined the Company over $1 million and was forced to refer the matter for possible criminal prosecution – a referral that is still hanging over which Sunshine's head. TR 260.

Sunshine's plan to fleece its customers, who are already burdened with both very high water and wastewater costs, goes beyond mismanagement, poor maintenance, and recalcitrance while engaging in gold-plating. The Company seeks to deflect its professional and business failings to these same customers by requesting that they pay for inappropriate legal expenses related to defending civil and criminal liability associated with a "mismanaged" plant among other lawsuits that have nothing to do with providing customer service, undefined regulatory assets without cost categories, improperly calculated depreciation and CIAC, and hundreds of thousands of dollars intended to socialize fees across all customers. TR 45-46, 124-127, 150-152, 243-274.

Fortunately, this case presents this Commission with the opportunity to finally address Sunshine's ongoing lack of respect for DEP fines, a criminal referral, past Commission Orders penalizing the Company's return on equity ("ROE"),[2] and this Commission's Rules.[3] The customers respectfully suggest that now is the time to reign Sunshine in and effectively address the culture of mismanagement. Otherwise, the only lesson the Company will learn is that regulatory fines and penalties are just a cost of doing business that can be borne by customers instead of investors and that Sunshine need not conform its behavior to the rules designed to protect

[1] *See* Issue 2 *infra*.
[2] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, p. 19, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.
[3] See Issues 13 and 30 *infra*.

the health, safety, and environment of our state. The customers respectfully ask that the Commission send the message that will put an end to these abuses. The denial of all costs attributable to the unnecessary AMI project, in anticipation of Sunshine's imminent filing of the necessary Mid-County and LUSI projects, would be an excellent start.

STATEMENT OF FACTUAL ISSUES AND POSITIONS[4]

QUALITY OF SERVICE/INFRASTRUCTURE AND OPERATING CONDITIONS

ISSUE 1: Is the overall quality of service provided by the Utility satisfactory, and, if not, what systems have quality of service issues and what action should be taken by the Commission?

OPC: *At a minimum, Sanlando and Mid-County suffer quality of service issues. These systems were unsatisfactory in the company's last rate case,[5] so the Commission should reduce the return on equity by 50 basis points among other penalties and measures discussed below.*

ARGUMENT:

Deliberate Mismanagement Tanks Sunshine's Quality of Service

The deliberate substitution of expensive AMI meters,[6] that the parent company arranged to purchase at a "good deal" and have failed to unload on their other state systems,[7] in the place of much needed wastewater system upgrades to address over 657 recent Department of Environmental Protection ("DEP") violations which include a criminal referral, makes Sunshine a contender for worst performing Investor-Owned Utility in Florida in recent memory. Sunshine's performance is so bad that its own president admits that mismanagement occurred. TR 253. While its long-suffering customers endure the Company's brash indifference and as affordability concerns increase at an alarming rate, Sunshine has fast-tracked the installation of an unnecessary $20 million project that fails to address recurring sewage spills. Despite prior sanctions by DEP

[4] Where the OPC reflects a position on an issue but no argument, the OPC stands on its stated position as its argument.
[5] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, p. 20, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.
[6] See argument on issues 1A, 4, 4A, 41A.
[7] Kentucky Public Service Commission, Case No. 2022-00147, Order No. 20230412, issued April 12, 2023, In the Matter of: Electronic Application Of Water Service Corporation Of Kentucky For A General Adjustment In Existing Rates And A Certificate Of Public Convenience And Necessity To Deploy Advanced Metering Infrastructure.

and this Commission, the fundamental quality of service needs of Sunshine's customers go unmet. Specifically, the Company is rapidly installing the costliest method of measuring the rate at which its customers consume water, while practically ignoring its deeply troubled Sanlando (or "Wekiva Hunt Club") Wastewater Treatment Facility ("WWTF") (TR 150-151) and cutting out its request to replace the failing Mid-County plant altogether. TR 145, 205. The Company's prioritization of AMI is significant because Sanlando and Mid-County have been experiencing deficient service going back decades. Sunshine has at best a spotty record of addressing these problems. Instead, Sunshine's parent company has insisted upon gold-plating this system with unnecessary AMI to increase the revenue take from Sunshine's customers.

Just as soon as the ink is dry on this order, Sunshine intends to seek recovery of what Sunshine initially stated to be $29 million in costs to address what would have been the centerpiece of this rate case, Mid-County's troubled wastewater plant, had Sunshine followed through on its test year letter representation. TR 145. Though it was included in its prefiling letter, the Mid-County project was removed so that the Commission was not presented with an $85 million rate base ask[8] and the obvious choice to prioritize much needed repairs to its crumbling wastewater systems over promoting the immediate profits of AMI for investors. It seems like the Company would have this Commission believe that customers would rather know how many ounces of water they consume per minute, than have wastewater systems that are not chronically failing to comply with the requirements to protect health, safety, and the environment. The facts below establish that Sunshine's customer service performance during recent history continues to be poor and the primary needs of these systems and its customers are not being responsibly addressed by management.

The Law

Section 367.081(2)(a)1., Florida Statutes, requires the Commission to consider the value and quality of service in every water and wastewater rate proceeding. Section 367.0812, Florida Statutes, require the Commission to also consider the extent to which Sunshine provides service that meets secondary water quality standards as established by the DEP. In addition, Rule 25-30.433(1), Florida Administrative Code ("F.A.C."), specifies that the Commission shall make a determination of the quality of service provided by the utility by evaluating the quality of utility's

[8] This does not include approximately $8.7 million that was removed for LUSI Lake Groves. TR 202-203.

product (water) and the utility's efforts to address customer satisfaction (water and wastewater). In making this determination, the Commission shall consider any DEP and county health department citations, violations and provisions of consent orders that relate to quality of service.

Sanlando Wastewater

A historical perspective is required to fully grasp management's egregious indifference to the poor maintenance and condition of these systems. On April 2, 2015, Sunshine, then known as UIF, executed a Consent Order with DEP concerning failures at the Wekiva Hunt Club WWTF. TR 273. These failures resulted in an unauthorized discharge of an estimated 750,000 gallons of untreated domestic wastewater into Sweetwater Creek TR 273. Subsequently, on August 15, 2016, DEP identified two deficiencies at the same facility, and DEP then issued a Compliance Letter on November 17, 2016.[9] This set the tone for the Company's conduct going forward as amplified on March 7, 2018, when the Wekiva Hunt Club WWTF, through the Company, was forced to enter into DEP Consent Order No. 18-0103. EXH 126. This 2018 Consent Order should have resolved the following DEP findings:

- From September 11, 2017 through September 28, 2017, the Facility's surge tank overflowed daily, releasing an estimated 25,000 gallons of raw sewage to the ground surface in violation of section 403.161, Florida Statutes and 62-604.130, F.A.C.
- [Sunshine] failed to notify the DEP within 24 hours of discovering the surge tank overflows, as required.
- Reviews of the Discharge Monitoring Reports (DMRs) for July, August, September, and October 2017 demonstrated exceedances of the D-001 permit limit of 40 pounds per month (lb/mo) for Total Phosphorus of 42.3, 48.6, 99.3, and 98.4 lb/mo, respectively.

EXH 126 MPN F2-51. For these failures, Sunshine agreed to a lengthy list of remediations that included electing to either pay a $16,748 fine or implementing an in-kind penalty project valued at $24,372. EXH 126 MPN F2-51-55.

Despite the remediation agreed to by Sunshine, this 2018 Consent Order would not be the end of the woes for Sanlando wastewater customers. On September 24, 2020, Sunshine executed Consent Order OGC No. 20-0108 with DEP. EXH 113. This additional Consent Order was intended to resolve the following violation:

[9] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

> On October 8, 2019, the Wekiva Hunt Club WWTF committed an unauthorized discharge of approximately 1.2 million gallons of raw sewage which reportedly entered Sweetwater Creek, a Class III fresh water. The discharge was reported to the Public Notice of Pollution site under incident #3987 and to the State Watch Office as incident #2019-5704. E. coli samples were collected at locations upstream, downstream, and where the discharge entered Sweetwater Creek. The geometric mean results of the E. coli samples collected at the point where the discharge entered Sweetwater Creek was 205 colonies per 100 milliliters (colonies/100 ml). The acceptable water quality criteria for E. coli in Class III fresh water is a geometric mean of 126 colonies/100 ml.

EXH 113 MPN E42870. Once again, Sunshine agreed to a lengthy list of remediations, including electing between paying $16,452.06 or implementing an in-kind penalty project valued at least $23,928.09.

After the above two Consent Orders, the Commission issued Order No. PSC-2021-0206-FOF-WS on June 4, 2021, addressing the Company's then-latest application to increase its water and wastewater rates. With regards to Sanlando's wastewater system, the Commission found that "[w]hile the 2018 and 2020 Consent Orders were due to unauthorized discharges, the causes which led to the discharges differ."[10] The Commission found that "unauthorized discharges still occurred and resulted in the issuance of two DEP Consent Orders."[11] Therefore, the Commission concluded "the quality of service for Sanlando (Wekiva Hunt Club) wastewater system to be unsatisfactory."[12] This, along with other issues described below, resulted in the Commission imposing a reduction of 15 basis points to the Utility's overall return on equity ("ROE").[13]

This ROE penalty demonstrated just how seriously the Commission considered Sunshine's failures at its Wekiva Hunt Club WWTF. Disconcertingly, the Company appears to have cynically treated poor and unsafe service sanctions as merely a cost of doing business; as considered by Sunshine's third DEP Consent Order, OGC No. 21-1024, on February 2, 2022. EXH 113. This time DEP found that Sunshine committed the following violations:

> Unauthorized discharges of approximately 3,000 gallons of untreated wastewater on November 14, 2020 (SWO #2020-6379) and approximately 73,427 gallons of untreated wastewater on December 25, 2020 (SWO #2020-7101), in violation of Chapter 403.161(1)(a), Florida Statutes.

[10] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, p. 19, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.
[11] Id.
[12] Id. at 20.
[13] Id. at 20.

EXH 113 MPN E42322. The Department sought $12,252.21 in civil penalties to resolve these violations. EXH 113 MPN E42322.

DEP escalated sanctions on the recalcitrant company on May 24, 2024. On that date, Sunshine President Sean Twomey – the third President in 2023 after Gary Rudkin and Bryce Mendenhall (EXH 129 MPN F2-90) - executed Consent Order No. 23-0392 with the DEP. EXH 113. Running through presidents like a subway turnstile only means one thing – Corix Utilities ("Corix")/ Nexus Water Group, Inc. ("Nexus") upper management were not committed to, or invested in, doing the right thing. The breathtaking level of violations documented by DEP are too numerous to list here, but they include:

- A plant operational failure was not reported to the Department for 73 days in violation of Rule 62-620.610(20), F.A.C.
- Operator log book entries did not reflect operational issues occurring from January 1, 2022 through April 5, 2022, in violation of Rule 62-602.650(4), F.A.C.
- The EQ tank was crusted over with solids and vegetation and no active mixing was observed in violation of Rule 62-620.610(7), F.A.C.
- A sanitary sewer overflow of 500,000 gallons of partially treated wastewater occurred during Hurricane Ian on September 29, 2022, in violation of Rule 62-604.130(1), F.A.C.
- A sanitary sewer overflow of 250,000 gallons of partially treated wastewater occurred during Topical Storm Nicole on November 10, 2022, in violation of Rule 62-604.130(1), F.A.C.
- Permit limit exceedances for carbonaceous biochemical oxygen demand maximum and average, Total Phosphorous average and maximum, Total Phosphorous monthly load, Ammonia average and maximum, pH maximum, and total residual chlorine minimum, were reported on the September, October, November, and December 2022, and January 2023 DMRs, in violation of Permit Condition I.Al.

EXH 113 MPN 42390-42394. With regards to the EQ tank issue described above, DEP further found that the violation created an anoxic condition for the wastewater treatment plant, resulting in the production of substandard effluent being discharged to Sweetwater Creek. EXH 129 MPN F2-89. The facility (and thus the company) had failed to timely report and resolve this initial problem (believed to have begun in December 2021) which then mushroomed into a series of approximately 657 violations over the next several months. EXH 129 F2-89-90. In other words, from December 2021 to approximately August 2022 (EXH 129 MPN F2-90), Sunshine failed to adequately address the December violation until it had caused 657 additional violations and got

DEP's full attention. According to DEP, many of these violations involved "major potential for harm" and "major extent of deviation" from the applicable wastewater regulations. EXH 129, MPN F2-91. The evidence was overwhelming that Sunshine had stopped trying to follow the law and provide satisfactory service. Clearly mismanagement on an epic scale was occurring.

Sunshine's continued disregard for DEP sanctions resulted in a $1,217,604 civil penalty against Sunshine. EXH 113 MPN E42395. As part of this calculation, DEP adjusted the amount upwards by $556,395 due to finding a "history of noncompliance" relating to Consent Orders Nos. 21-1024, 20-0108, and 18-0103. EXH 129 MPN F2-96. The order also gave Sunshine the option to elect to perform an in-kind penalty project equivalent to at least $1,340,748. EXH 113 MPN E42395.

Most importantly, DEP took the extraordinarily rare step of referring the matter to its Environmental Crimes Unit for investigation. EXH 129 MPN F2-89. This investigation would result in Sunshine incurring hundreds of thousands of dollars in legal fees – that the company has the temerity to demand that customers pay – to defend itself and investors against criminal and civil liabilities of its own mismanagement. TR 253; EXH 169 MPN F2-2573. Even if Sunshine were to successfully comply with Consent Order No. 23-0392, the order notes that it is not a settlement of any criminal liabilities under Florida law, so Sunshine could still be criminally liable for the 657 violations DEP found that it committed. EXH 113 MPN E42398. Notably, Sunshine has not received official notification that this criminal proceeding has ended. TR 260-261. Sunshine's suggestion that these matters with DP have been successfully concluded are completely unsupported. This Company will never clean up its act if it could pass through the cost of its neglect and mismanagement to customers in the form of legal fees to address Consent Orders and to defend against criminal liability. Why would Sunshine bring itself into compliance if the customers, rather than the investors, are responsible for its mismanagement? The Commission must take additional actions to change the corporate culture at this utility.

Consent Order No. 23-0392 was a serious escalation by DEP as shown by its million-dollar fine/in-kind penalty project amounts and criminal case referral. Sunshine's claim of compliance with this order and commitment to safe and reliable service is undermined by a series of reported sewer overflows that occurred even after Mr. Twomey signed the Consent Order. TR 261-267; EXH 105 MPN E30421-33. These overflows are an indication that the Wekiva Hunt Club WWTF is <u>still</u> having customer service issues.

In addition to the above, customers themselves have also complained about their service from the Wekiva Hunt Club WWTF. The Company directly received 1,216 complaints about the Sanlando system in the 2023 test year alone, easily eclipsing every other system. EXH 78 MPN E1966. Of the 107 quality of service and billing complaints the Commission logged from July 1, 2020 to June 30, 2024 (TR 319), the majority concerned the Company's Seminole system, which includes Sanlando, of which the Wekiva Hunt Club WWTF is a part. EXH 44. Finally, multiple customers complained about the system at the Commission's customer service hearings held on December 17 and 19, 2024.[14] The facility has had 37 odor complaints since 2019: 1 in 2021, 33 in 2022, and 3 in 2023. EXH 113 MPN E42019. When some customers complained about the odor, they were told that the odors were merely "swamp gas."[15]

Despite the severe issues affecting the Sanlando wastewater system, including the overhanging threat of criminal prosecution, the Company only chose to include two projects in its application concerning the system: ST-17, totaling approximately $3.8 million, and ST-18, totaling approximately $139,854. TR 150-151. These projects are dwarfed by the Company's approximately $20 million requested cost recovery for its AMI project, which shows where the Company's true priority lies: cynical gold-plating through nice-to-have, rate base inflating investments. The Commission should find the service provided by the Company's Sanlando wastewater system to be unsatisfactory, penalize the Company accordingly, and institute an annual improvement and reporting requirement to be monitored by staff.

Mid-County Wastewater

Sunshine's Mid-County system has an even longer history than the Wekiva Hunt Club WWTF of delivering poor service and engaging in regulatory non-compliance. Emblematic of the Company's spotty service record, the Commission first found the system provided marginal quality service in 2007, almost two decades ago.[16] The Commission made the same finding again in 2017 based on numerous sewage spills and customer complaints.[17] Subsequently, in 2021, the Commission deemed the system unsatisfactory due to overflow issues in 2019 which resulted in a

[14] Document Nos. 00102-2025 and 00184-2025, in Docket 20240068-WS.
[15] Document No. 00184-2025, in Docket 20240068-WS, p. 14-15.
[16] Order No. PSC-2007-0134-PAA-SU, issued February 16, 2007, in Docket No. 060254-SU, In re: Application for increase in wastewater rates in Pinellas County by Mid-County Services, Inc.
[17] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, In Docket No. 20160101-WS, pp. 21-22, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

DEP Consent Order.[18] Specifically, the plant had a discharge of 85,350 gallons of untreated wastewater to a nearby stream known as Curlew Creek. EXH 113 MPN E42570.

Just like Wekiva, it appears a business-as-usual mindset prevailed regarding Mid-County because a little over two months after the Commission's 2021 order, the Company entered into Consent Order No. 21-0663 with DEP. EXH 113 MPN E42577. This Consent Order was intended to resolve DEP findings regarding unauthorized discharges of 1,143,600 gallons of partially treated wastewater that bypassed the denitrification filters on September 11, 2020, November 12, 2020, and July 6, 2021. EXH 113 MPN E42577. DEP sought $18,000 in civil penalties to resolve this matter, enhanced by $9,000 due to, as usual, the Company's history of non-compliance. EXH 113 MPN E42577.

Finally, on July 15, 2024, Mr. Twomey executed Consent Order No. 24-1932 with DEP. EXH 113. This Consent Order was supposed to resolve DEP findings that the Company had three unauthorized discharges of raw wastewater totaling 3,200 gallons, in violation of Rules 62-604 and 62-620, F.A.C. EXH 113 MPN E42587. DEP sought either $7,540 in civil penalties to resolve this issue with the option to implement an in-kind penalty project of at least $11,310. EXH 113, MPN E42588. Once again, DEP found that the Company had demonstrated a history of noncompliance, and so added $1,250 to the civil penalty. EXH 113, MPN E42587. As of the hearing, the Company is out of compliance with this order. TR 297.

The Company included a $29 million project to address Mid-County's woes in its test year letter, but ultimately chose to omit the project from its application. TR 145. The project was intended to replace the entire plant altogether, which is strong evidence of how bad things have become there. TR 206. The omission of such an expensive project to replace an entire facility that is the subject of an open Consent Order is glaring. One might easily conclude that the fundamental Mid-County rebuild had to go to create space in the customer bill for the nice-to-have AMI project. Despite claiming that the Mid-County pro forma project was not ready to be included in Sunshine's application, the Company plans on promptly returning to the Commission after the ink dries on this case's order to seek approval of the project in a limited proceeding later this year. TR 209.

[18] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

Mr. Twomey did claim that the project was ongoing despite being dropped from Sunshine's final application. TR 208. This assertion misses the point, however. At approximately $20 million, the AMI project is by far the biggest pro forma ask in Sunshine's application. If the application included another $29 million for Mid-County, then the issue of rate shock would have undoubtedly been forced on the Commission. It would have been perfectly logical under those circumstances for the Commission to deny the lower priority AMI and to consider a reasonable and prudent Mid-County plant replacement project instead. Further, due to the management choice between AMI or service quality, the Commission may now be hamstrung in conducting a full review of all the impacts of the Mid-County project if it is filed in a limited proceeding instead of a full rate case.[19] By deliberately elevating consideration of AMI over the Mid-County rebuild and by attempting to enrich investors by pushing AMI recovery first, the Company is trying to have its cake and eat it too. Sunshine promotes profits with "nice-to-have" eye candy while the customers of Mid-County wait and suffer interminably. The Commission should usher Sunshine onto the path of prioritizing the health and safety of these Florida customers and the that of other citizens who live in these areas. The Commission should deny AMI recovery, find the service provided by the Mid-County system is unsatisfactory, and penalize the Company accordingly.

What is wrong at Sunshine?

It is difficult to comprehend how the Company can just ignore recurring Consent Orders, negative PSC findings, million-dollar fines, criminal enforcement referral, and just keep operating like nothing wrong is happening. The issue is not a lack of capital; the company has massively increased capital spending since it had its rates consolidated in 2017. TR172-173; EXH 92 MPN E28623. The point of consolidating its rates was for Sunshine to spread the costs of repairs to make bills more affordable, and this is not what happened. With regards to the Wekiva Hunt Club WWTF specifically, Mr. Twomey candidly conceded that the facility was "mismanaged" at the time of the DEP investigations that led to the 2024 Consent Order that he signed. TR 253. With regards to Mid-County, employees failed to "stick to our plan as written" when they ignored requirements to take samples downstream after three sewage spills. TR 275-276. The Commission

[19] Compare information required in a full rate proceeding under Rule 25-30.436, F.A.C., to the information required in a limited proceeding under Rule 25-30.445, F.A.C.

has found that mismanagement is evidence of imprudence and subjects a company to a penalty for mismanagement.[20] Sunshine has earned the penalty and richly deserves no less.

Conclusion

Customers, who are trapped in a monopoly, should not have to pay for perpetually deficient service, persistent neglect, chronic mismanagement, and serious compliance failures. It is indisputable that such service provides customers with no value. DEP orders have not been enough to get this Company's attention. PSC orders have not been enough to get this Company's attention. Even the threat of criminal investigation has failed to get this Company's attention. The totality of circumstances rises to the level of willfulness and warrants an investigation and the opening of a show cause docket.[21] This case presents the best opportunity for this Commission to finally bring an uncaring and obstinate utility to heel. On top of imposing a recidivism-enhanced penalty reducing the leverage graph-determined return on equity for the Utility by 50 basis points (given that the Commission's 2021 15-basis point reductions was ineffective) and denying recovery of legal fees for defending self-inflicted civil and potential criminal liability through admitted mismanagement, this Commission should consider other measures, such as customer rebates and reducing the salaries of Sunshine's president and vice president, a penalty for mismanagement, and a show cause to finally get Sunshine's attention.[22] See also Issue 2.

ISSUE 1A: Is the overall value to a customer provided by the Utility satisfactory, and, if not, what systems have value issues and what action should be taken by the Commission?

OPC: *No. Pursuant to section 367.081(2)(a)1., Florida Statutes, the Commission shall consider the value of the service provided to customers. As customers have testified at the service hearings in this case, there are issues with the value of the Company's customer service and other service matters provided by certain Utility systems. The Commission should consider measures for customers of specific systems related to the value of service provided to them.*

[20] Order No. 23573, issued October 3, 1990, in Docket No. 19891345-EI, pp. 22-29, In re: Petition for Gulf Power Company for an increase in its rates and charges. (The Commission reduced Gulf's ROE by 50 basis points due to mismanagement associated with admitted mismanagement over a period of years.)
[21] Order No. PSC-93-0295-FOF-WS, issued February 2, 1993, in Docket No. Docket No.19910637-WS, at pp. 43-44, In Re: Application for a Rate Increase in Pasco County by MAD HATTER UTILITY, INC.
[22] See PSC Order No. PSC-2002-0593-FOF-WU for an example of how the PSC addressed another utility (Seven Springs/Aloha) characterized by poor quality of service and poor customer service.

ARGUMENT:

Sunshine claims that the determination of "value" is not subject to evaluation by the Commission. This is incorrect. The Florida Supreme Court has repeatedly recognized the broad legislative grant of authority afforded to the Commission.[23] Furthermore, the legislature has directed that "[i]n every such proceeding [setting rates], the commission shall consider the value and quality of the service and the cost of providing the service. . . ." § 367.081(2)(a)1, Florida Statutes (2024).

Even the Company's own direct case recognized this. Prior to issue identification, Sunshine in prefiled written testimony related to its largest pro forma AMI project, stated, "[t]he company considered various benefits and limitations of the two options, including those not quantifiable but that have ***value*** for our customers, regulators, and [system] operations." (Emphasis added.) TR 559. While OPC rejects the notion that the company's pro forma request actually provides value to Sunshine's customers, the OPC agrees that value is not purely a quantifiable or economic term and should be an interrelated but independent factor in setting rates.

In 1969, Section 367.12 Florida Statutes, provided:

> With respect to all utilities coming under the jurisdiction of the commission after September 1, 1967, the commission shall investigate and determine the fair value of the utilities' property used and useful in the public service as of September 1, 1967, and shall further investigate and determine the actual legitimate costs to the company of all net additions thereto subsequent to September 1, 1967, and in all rate proceedings shall allow to the utility a fair return on the fair value of the utility's property used and useful in the public service as of September 1, 1967, together with a fair return on the utility's actual cost of all net additions thereto subsequent to September 1, 1967."

(Emphasis added.) Section 367.12(2)(a), Florida Statutes (1969).

In 1971, Chapter 367. Florida Statutes, went through a complete overhaul. The Legislature removed "fair" from the statute but retained the term "value," as is seen in the current statutory language.[24] This revision indicates the Legislature's intent that the Commission consider "value" apart from any previous economic purpose.

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[23] Floridians Against Increased Rates, Inc. v. Clark, 371 So. 3d 905, 910 (Fla. 2023).

[24] Compare § 367.081(2) Florida Statutes (1971) "In all such proceedings, the commission shall consider the value and quality of the service and the cost of providing the service. . . ."; with § 367.081(2)(a)1, Florida Statutes (2024). "In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service. . . ."

The value of a service is the perceived benefits and costs (of a service) to customers, regulators, and operations. TR 559. This includes the outcomes, experiences, and externalities that the service delivers to those above. Simply providing conclusory statements, such as "it saves customers money" or "things are working better" is not an adequate analysis for value. The Commission, with its broad grant of legislative authority, should scrutinize the value of the requested projects, the purposefully omitted projects, and the impacts they will have on the customers, regulators, and operations.

Most customers find no value in real time water consumption data, as there are no time-of-use options or benefits offered, nor is there a time-of-day differentiation in volumetric rates. TR 428. According to Mr. Twomey, customers like himself who are keeping track of the amount of water they are using to refill their pools might be interested in knowing when they pass certain usage/costs thresholds (TR 235), but that cannot be used to justify an otherwise unnecessary $20 million spend on an aging system with PFAS contamination concerns, other primary and secondary water quality issues, and failing wastewater systems. For these few customers, their financial exposure would only be a $2 charge per thousand gallons of water. TR 235. AMI is simply not something that today's monopoly customers would willingly choose to pay for in order to avoid running afoul of the $2 charge. Any customer who is concerned about going from the second water usage tier to the third tier and incurring the extra $2 per thousand gallons should be able to reach out to its IOU for assistance in reading their meter and when that fails, customers can conduct an online search to learn how to read their traditional water meters. TR 235, 429.

If Sunshine's customers had been concerned about seeing their real-time consumption, they would have requested AMI technology, just like Pluris' customers did. Mr. Twomey stated: "[l]ike other projects in my pro forma, we did not ask our customers if they wanted AMI. It's our infrastructure, our assets, and we made a prudent decision to replace the meter fleet..." TR 588. Again, the Commission has the responsibility to step in and shield vulnerable customers from Sunshine's misuse and abuse of powers granted to the Company by the state.

Sunshine also requested recompense for inappropriate legal expenses related to defending civil and criminal liability associated with a "mismanaged" plant, an affiliate company employee who failed to name beneficiaries, and legal expenses relating to a class action suit by a sister company. Sunshine has even requested undefined regulatory assets without cost categories and hundreds of thousands of dollars to socialize fees across all customers. TR 45-46, 124-127, 150-

152, 243-274. None provide value to customers, regulators, or operations. Instead, Sunshine chose to exclude value-producing projects, such as the $29 million Mid-County or $8.7 million LUSI Lake Groves projects. TR 206-207, 209. After the ink is dry on this order, the company plans to come right back in and request a limited proceeding for at least the $29 million Mid-County project. TR 209. There is no demonstrable value in forcing customers to pay for two proceedings. The current case to address Sunshine's gold-plated "nice to haves" is an attempt to tie the Commission's hands later in the year with projects that are actually needed to serve customers.

Sunshine's rate case request provides *de minimis* value at enormous costs to their 37,000 customers, without addressing longstanding DEP violations and related critical infrastructure needs. Sunshine's intent to immediately return to the Commission for recovery of yet another $29 million or more demonstrates complete indifference to customer service, their mission to provide adequate water and wastewater services, their responsibilities to responsibly manage the systems, prior and ongoing government sanctions, and the ongoing harm to its customers. TR 209-210. The excessive asks should be rejected as they do not provide value to the customers, regulators, and system operations. TR 140, 206, 250.

ISSUE 2: Are the infrastructure and operating conditions of the Utility's water and wastewater systems in compliance with Florida Department of Environmental Protection regulations?

OPC: *No. Sunshine has entered into at least two consent orders with DEP post-2023 test year and had other previously unresolved issues with the agency. Sunshine has a criminal referral that remains open. Sunshine's trend of numerous encounters with the DEP is indicative of ongoing compliance problems detailed in Issues 1, 25 and 26.*

ARGUMENT:

As of October 28, 2024, the following Sunshine water systems were out of compliance with DEP regulations on at least one occasion since Sunshine's last rate case order issued June 4, 2021:

- Lake Placid: wells were deemed out of compliance January 25, 2023, returned to compliance on September 20, 2024;
- LUSI North: DEP determined system failed to meet the locational running average maximum contaminant level for total trihalomethanes and Haloacetic Acids Five on November 16, 2021, returned to compliance on March 1, 2023; and on December 20, 2023, a sanitary survey of the system determined

noncompliance with the system exceeding its maximum design capacity at one of its water treatment plants, returned to compliance on September 16, 2024;

- LUSI South: On December 5, 2024, a sanitary survey of the system determined noncompliance with the system exceeding its maximum design capacity at one of its water treatment plants; returned to compliance on May 30, 2024;
- Seminole: On August 18, 2023, a sanitary survey of the system determined noncompliance with the inspections of the finished drinking water tank within a five-year period, returned to compliance on April 22, 2024;
- Ravenna Park: On February 8, 2023, a file review determined that the system failed to conduct annual sampling for inorganic nitrate and nitrite for one of its plants, returned to compliance March 10, 2023;
- Jansen: On March 10, 2022, a file review conducted determined that the system failed to timely perform triennial testing for asbestos, returned to compliance March 11, 2022; and
- Sanlando: An inspection of the system on February 11, 2022, determined the various components of the system were not functioning properly or were damaged, returned to compliance June 23, 2022.

EXH 113 MPN E42014-17. Based on the above, of the Company's 22 water systems (TR 141), seven, or just short of a third, were out of compliance with DEP regulations on at least one occasion since Sunshine's last rate case order issued June 4, 2021.

As of October 28, 2024, the following Sunshine wastewater systems were out of compliance with DEP regulations on at least one occasion since Sunshine's last rate case order issued June 4, 2021:

- Lake Placid: Compliance assistance offer issued July 7, 2023, Return to Compliance Letter issued on May 31, 2024. On August 9, 2024, the Department issued a Warning Letter in response to a sanitary sewer overflow from the facility. Returned to compliance "early December" in 2024. TR 297;
- Eagle Ridge: On February 8, 2019, a compliance assistance offer was issued to the facility for noncompliance with sampling and other permit conditions. On May 12, 2021, a warning letter was sent from a compliance evaluation inspection noted non-compliance with a series of operational requirements. On December 14, 2022, a Warning Letter was issued to the facility. A compliance assistance offer for a sanitary sewer overflow on March 21, 2023. A Return to Compliance letter was sent to the facility on May 24, 2024, following documentation that was submitted showing all deficiencies completed and a Compliance Assistance Site Visit was conducted;
- Cross Creek: A Warning Letter was issued to the facility on February 16, 2023, for an unpermitted discharge and sampling, and other permit violations. A Return to Compliance letter was sent to the facility on May 23, 2024;
- Labrador: On March 15, 2024, a compliance assistance offer was issued from a compliance evaluation inspection for permit violations. On March 25, 2024, a return to compliance letter was issued;

- Mid-County: On August 24, 2020, January 25, 2021, March 10, 2021, July 23, 2021, warning letters were issued for sanitary sewer overflows. These warning letters were resolved in an August 16, 2021, short form consent order. The facility had a compliance evaluation inspection on March 23, 2023, which resulted in a written compliance assistance offer that was resolved on June 16, 2023. On February 1, 2022, a warning letter was issued for a sanitary sewer overflow. The warning letter was closed on October 26, 2023, with a sanitary sewer overflow response plan. On November 13, 2022, and February 13, 2024, warning letters were issued for a series of sanitary sewer overflows. A short form consent order was executed August 1, 2024. On September 9, 2024, a warning letter was issued for a sanitary sewer overflow due to hurricane Debby. This facility remains out of compliance. TR 297; and
- Wekiva Hunt Club: Warning letters were issued on March 2 and 15, 2023 for sanitary sewer overflows. On December 18, 2019, a warning letter issued for record keeping violations found during an inspection. On April 1, 2022, a warning letter was issued for failure to report a facility upset. On March 27, 2023, a warning letter was issued for effluent limit exceedances. The Facility has entered into three consent orders, OGC #20-0108, OGC#2 l- l 024, and OGC#23-0392. Consent Orders OGC#20-0108 and OGC#21-1024, both have been closed. Facility is currently in compliance under Consent Order OGC#23-0392.

EXH 113 MPN E42017-19. Based on the above, of the Company's 11 (TR 141) wastewater systems, six, or over half, were out of compliance with DEP regulations on at least one occasion since Sunshine's last rate case order issued June 4, 2021. One of these, Mid-County, remains out of compliance. TR 297. As noted above, the Company remains subject to an open referral to the DEP Environmental Crimes Unit.

The above demonstrates Sunshine's pattern of chronically being dragged into, and then slipping back out, of compliance with DEP regulations, especially for its wastewater systems, at least one of which is currently out of compliance and one of which is subject to an open criminal referral. While Sunshine may claim to be in technical compliance with most of these latest orders, its trend of encounters with DEP continued from its last rate case is indicative of incessant compliance problems. This history should leave the Commission with no confidence that the Company has carried its burden to demonstrate that it is in compliance with DEP regulations. See also issue 1.

RATE BASE

ISSUE 3: Should any adjustments be made to test year plant-in service balances?

OPC: *Yes. The Commission should remove approximately $20 million in utility plant-in service by rejecting the Utility's proposed AMI Meter Installation Project. This will also necessitate an approximately $500,000 adjustment to increase rate base to account for reversing meter retirements.*

ARGUMENT:

See issue 4A for supporting argument.

ISSUE 4: Should any adjustments be made to the Utility's pro forma plant additions?

OPC: *Yes. For the reasons stated in OPC Witness Smith's testimony, the Commission should reject the Utility's proposed AMI Meter Installation Project. Any related operating expenses should not be included. In addition, OPC objects to the approval of the Orangewood PFAS Remediation Project (ST-24) absent certain conditions.*

ARGUMENT:

Sunshine has sought approval of pro forma pilot project ST-24 to remediate Well No. BV-3 in the Orangewood System. TR 153-154; EX 37 MPN C5-1889. The total cost of the project for this one well at this one water system is $1,837,292. Under the highly specific facts and circumstances of this project in this case, OPC does not oppose the recovery of the cost of this remediation project. A review of the available evidence convinces the OPC that the specific costs based on the specific configuration and type of facilities to be installed at the specific location as specifically proposed in the pilot and the purpose of the project can be deemed prudent by the Commission. As witness Twomey testified, Sunshine will be evaluating this pilot project, operating experience at other Nexus locations, and other locations throughout the industry before making a decision on how to proceed at other locations in Florida. TR 288-290. This is significant since Sunshine must be allowed to recover this type of environmental compliance cost, if reasonable and prudent. Section 367(2)(a)2., Florida Statutes, provides:

> Notwithstanding the provisions of this paragraph, the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs…. For purposes of this requirement, the term "environmental compliance costs" includes all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the

> United States Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction.

The record supports that the pilot program at this location is being undertaken pursuant to existing and proposed United States Environmental Protection Agency ("EPA") regulations limiting public drinking water discharges of PFAS to under thresholds of between 70 and four parts per trillion. TR 284; EXH 37 MPN C5-1889-90. It is precisely because of this mandatory provision of Chapter 367, Florida Statutes, and the fact that less than two weeks before the hearing on February 11-12, 2025, the new administration issued an executive order pulling back or cancelling many regulations including the one pursuant to which this project was undertaken[25] that the Commission should limit its approval to these highly specific facts.

As a result, any approval in this case should not be a "green-light" to additional PFAS remediation projects by bootstrapping them to this limited pilot project. Mr. Twomey testified that the circumstances at other well sites may be different given that the regulations address multiple chemicals. TR 289. Although the desire to use the pilot project results as a "blueprint" exists, he conceded that he would "love to say you can plug and play everywhere, but it's just not possible." TR 291-293. He also acknowledged that for the company and industry "[t]he challenge is trying to understand what the best treatment is to deal with this PFAS." TR 285. Mr. Twomey agreed that the selected solution (ion exchange) was chosen "for this particular site." TR 286. The company president also acknowledged that the pilot process would be looking at O&M costs and disposal issues. He further agreed that the more effective solution at other sites might be different. TR 288-289. His detailed explanation is highly instructive:

> Specifically, I would say North Carolina has a lot of wells that need this treatment. So we will work with them as they bring their systems on-line to determine which is the best solution. And does that vary from well to well? I don't know, from how

[25] https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/. The OPC submits this official public record information that demonstrates that the regulation has changed (been frozen or paused) and due to interdiction by counsel, the Commission was unable to hear the answer that may have revealed the impending demise of the regulation. When Mr. Twomey was being cross-examined by OPC, the following occurred:

> Q. Given that there has been a recent change of administration in Washington, isn't it at least possible that the EPA regulations could change with respect to the timing and levels of required PFAS removal?
>
> A. I have –
>
> MR. WHARTON: Objection. I just think that's grossly speculative.
>
> CHAIRMAN LA ROSA: Yeah, sustained.

TR 290. Rather than be "gross speculation," the regulation of PFAS had actually changed 20 days earlier. The OPC is not suggesting that the rollback or freeze of the EPA regulation should invalidate the pilot. It is clear that the investment was made in good faith reliance of the regulations or proposed regulations.

> the contaminants show up. It's not just one contaminant and you are good to go. There is options to blend. There is six different contaminants that go into this health index calculation that, in turn, will tell us whether we need more treatment or less. **So it's not just a simple plug and play.**

(Emphasis added.) TR 289.

Therefore, this pilot program approval should not form the basis for a "reasonable and prudent" decision to use as a blueprint for future PFAS remediation projects. Accordingly, the OPC requests that the final order reflect the highly specific, non-precedential, pilot nature of any approval of Orangewood PFAS Remediation Project (ST-24).

ISSUE 4A: Should the Commission approve the Utility's Advanced Metering Infrastructure (AMI) project?

OPC: *No. The Company admits that AMI is a "nice-to-have" project. It was improperly prioritized over seriously needed projects, has nothing to do with providing safe and reliable service, and never should have replaced the identified top-tier infrastructure needs of this utility. The Utility has further failed to demonstrate need for the program or that customers will benefit.*

ARGUMENT:

The iPhone of Pro Forma Projects

Mr. Twomey likened the company replacing manually-read water meters ("manual meters") with AMI meters to buying a new iPhone. TR 237. During the first day of this case's technical hearing, Mr. Twomey further elaborated that he was not going to go back to a "flip phone." TR 238. What Mr. Twomey apparently fails to appreciate is that this sentiment is not appropriate when he is asking to spend his customers' hard-earned money while providing monopoly services, especially when there are significant needs of a higher priority that the utility has failed to address. Mr. Twomey's comments are emblematic of the Company's approach to capital spending as a whole: inflating rate base and gold-plating with the new iPhone is always better, even when existing wastewater service is deficient, as described extensively above. AMI is therefore the iPhone of pro forma projects. The project fails to meet any demonstrated need for the Company's mission of providing safe and reliable water service, while simultaneously failing to provide value to Sunshine's customers. Customers don't want it. Customers don't need it. The Company doesn't care.

Project Summary

The goal of the AMI project is to replace approximately 37,000 perfectly good and manufacturer-supported manual meters with AMI meters. TR 211-212; 221. Manual meters require a reader to manually review the meter to document water usage. TR 212. In contrast, the AMI meters that the Company is proposing to scrap fully-functional manual meters with gold-plated meters which operate through a combination of Long-Range Wide-Area Network and cellular to automate meter reading. TR 552-553. The articulated need to replace these meters was that the billing through these meters was labor intensive. So what were the manpower savings the Company expects to experience from implementation? It's a negative number as discussed below. For example, of the six current full-time meter readers, the Company expects to retain and retrain at least four of them and assign them to other duties while still retaining one part-time meter reader. EXH 76 MPN E1926-7. The rollout itself was heavily delayed until December 11 2024, at which time only 1050 meters were installed. TR 568. This number only increased to 7,000 as of the hearing. TR 585. According to one customer, the rollout was flawed and his new meter sent sediment throughout his home.[26]

Project Timeline

In or about 2020 or 2021, Sunshine's then-parent company, Corix commissioned a business case analysis ("BCA") of AMI meters by Black & Veatch Management Consulting, LLC, ("B&V") that was completed January 12, 2021. EXH 108 MPN E30806, E30821. The BCA assumed total capital cost of the project to be $8.289 million over 20 years. TR 396; EXH 108 MPN E30809. After securing the BCA, Corix entered into a Product Purchase Agreement with Neptune Technology Group Inc. ("Neptune") on October 4, 2022. TR 227-228; EXH 33 MPN C5-1498. The contract was negotiated by Corix at the parent level. TR 231. Sunshine itself would not begin implementing AMI until it entered into a Task Order agreement with B&V, effective April 26, 2023. TR 229. EXH 33 MPN C5-1440. The Task Order was signed by Sunshine's then-president J. Bryce Mendenhall on Sunshine's behalf. EXH 33 MPN C5-1440. Despite this lengthy history, it would not be until December 11, 2024, in the middle of a case in which Sunshine seeks to extract $20 million from customers' wallets, that the Company made any real progress on installing the meters, installing only 1,050 by that point. TR 568.

[26] Document No. 00184-2025, Docket 20240068-WS, pp. 39-40.

No demonstrated need

The Company, in its own internal documentation, tacitly admits that AMI is not a necessary project by assigning it a priority level of 3. EXH 101 MPN E29596. This is a lower priority level than the Mid-County and LUSI projects which were included in the Company's test year letter as needed but were AWOL from the final application. TR 204, 207-208; EXH 101 MPN E29596. Mr. Twomey aptly described priority level 3 as the "nice to have" category. TR 200. Mr. Twomey attempted to defend this categorization by asserting, without evidence, that the Company simply failed to update the level in the prioritization spreadsheet as the years went by. TR 201. This assertion is directly contradicted by Mr. Destefano who, in describing the discovery response that produced the Company's prioritization spreadsheet, proudly noted that "[t]he priority levels are reviewed and updated with each budget cycle." EXH 93 MPN E28636. Mr. Destefano further described the projects as not being ranked for funding, and that the priority ratings focused on "assessment of the level of safety, environmental, service disruption, contractual, regulatory, or other risk impacts relevant to the project." EXH 93 MPN E28636-7. This description further details just how low stakes and unnecessary the AMI project is for Sunshine.

Despite the Company's unwitting concession of AMI's uselessness, its application abjectly fails to demonstrate any need for the gold-plated meters. Unlike many of the Company's other post-test year plant additions, the AMI project is not required to comply with federal, state, or local government requirements. TR 400. Mr. Twomey acknowledged that the Company has been able to provide safe and reliable water service while using the traditional manual meters. TR 215-216, 400-41. To the extent that the Commission disagrees with that assessment, clearly there's no connection between any Company failure and the traditional meters.

Sunshine presented no evidence that these traditional meters were not functional. Mr. Twomey's direct testimony failed to demonstrate the inadequacy of Sunshine's traditional manual readers. TR 216. Under cross-examination, Mr. Twomey also failed to provide any evidence as to how many, if any, of the Company's meters fail to comply with various Commission rules concerning water meters. TR 216-220. Before hatching the AMI project, the Company would replace faulty meters with a new meter of the same technology (meaning manual meter for manual meter). TR 221. The Company is still able to acquire manual meters, so it's not as though the Company has to upgrade because it has no other choice in terms of meter selection. TR 221. Obsolescence is not the issue. To the extent they have not been replaced yet, the Company is even

still using its reliable traditional manually read meters with no apparent problems. TR 215. The Company has also failed to demonstrate that a less costly alternative could not satisfy its needs. TR 401.

The Company's failure to demonstrate that there is a need for AMI could perhaps be excused if it could be demonstrated that the customers want AMI. To the contrary, there's no evidence of that. TR 401. The Company opted not to do any kind of polling or other surveying method to demonstrate such demand. TR 565. While Sunshine also may not conduct a survey to see if a customer wants a new force main or to replace aging pipe (TR 566), no such survey would be warranted as those things are actually necessary for Sunshine to provide safe and reliable service. AMI meters accomplish no such objectives. While AMI meters may offer some functions manual readers do not, the company has not shown either demand for that type of information or that the company's current meters are producing inaccurate readings. TR 431.

Benefits mismatch

The Commission should deny AMI because of the mismatch of costs and benefits. TR 401. The BCA enumerated the following company and investor-centric key benefits:

- Meter Reading: Elimination of manual meter reading - $656K/year (65% of benefits);
- Billing: Reduction in billing exceptions and manual bill processing - $112K/year (11% of benefits);
- Operations: Reduced field trips to connect/disconnect service by using virtual disconnect - $75K/year (7% of benefits); and
- Revenue Assurance: Reduction in System/Customer Leaks and Consumption on Inactive Accounts - $56K/year (5% of benefits)

EXH 108 MPN E30808. In total, the BCA predicted a 20-year total benefit of $22 million. EXH 108 MPN E30808. None of the benefits quantified by the BCA are reflected in either the 2023 test year or in pro forma adjustments in the Company's proposed revenue requirement. TR 226, 396. The Company failed its burden to demonstrate that the purported benefits inure to the customers at all.

To the extent that there are speculative benefits, Sunshine expects that these will be effectively cancelled out due to the curious blanket reassignment of its current meter reading workforce to other areas of the Company – whether they are trained, certified, qualified or not. TR 401, 434-435. AMI, therefore, is simply a big, nice-to-have $20 million-plus investment vehicle

that the Company desires to include in rate base with no offsetting savings reflected anywhere in this rate case. TR 226, 435.

Denying Customers Value

According to the company, replacement of its entire fleet of traditional manual meters is necessary due to the specious comment that over 90 percent of the current meter fleet are past their depreciation life. TR 163. The Company's own MFRs contradict this claim. The Company's test year average balance for Meters & Meter Installations is $7,382,912. EXH 195 MPN J9. The ending balance for Meters & Meter Installations is $5,382,898. EXH 195 MPN J16. Subtracting these numbers yields approximately $2 million of depreciable life remaining on these meters. To further demonstrate this, the test year expense for Meters & Meter Installations was $369,581. EXH 198 MPN J76. Dividing $2 million by that amount results in a remaining life of approximately 5.4 years. In any event there is no functionality, obsolescence, or supply chain issue regardless of the depreciation state. TR 221. The aging of the meters may have more to do with the level of neglect that is like that seen in the environmental compliance area.

If the Company is allowed to replace its entire current fleet with AMI meters, the customers who paid for that initial outlay will not getting the value of the benefit of that investment. There is no evidence in the record that the currently existing replacement schedule was inadequate. The program robs customers of value that's already bought and paid for. The Company can meet its obligation to provide safe and reliable service by making like-for-like replacements, not gold-plated ones for which the Company has failed to demonstrate any value, justification, or demand for.

Orders

OPC witness Ralph Smith testified that he was not aware of installation of AMI meters being common in the water industry, or at least as far as he was aware for Commission-regulated Florida water utilities. TR 401. In response, Mr. Twomey noted that the Commission had issued orders in Docket Nos. 20170166-WS, 20220026-WU, and 20230071-WU approving AMI. TR 558. Rather than supporting the Company's position, these orders demonstrate why OPC witness Smith is correct in asserting that AMI meters are rare for Commission-regulated water utilities.

In Docket No. 20170166-WS, Pluris Wedgefield, Inc., ("Pluris") requested recovery of the costs associated with installing AMI meters in a PAA rate case.[27] In contrast to the $20 million ask to replace approximately 37,000 meters in this case, Pluris requested $594,648 to recover costs associated with installing approximately 1,641 AMI water meters.[28] In addition the Commission noted in the PAA order:

- Pluris explained that meter reading related customer concerns have been an on-going issue. From January 1, 2013, to September 30, 2016, the Utility received 481 requests for meters to be re-read or tested. Many of the requests were generated due to customer usage concerns. Since the installation of the AMI meters, Pluris has received 68 requests for the meters to be re-read.[29]

This level of demonstrated need is completely absent from the instant docket.

In Docket No. 20220026-WU, Leighton Estates Utilities, LLC. requested to transition all of its existing standard 5/8 x 3/4" meters to AMI meters.[30] The program consisted of upgrading the Utility's existing 80 meters, plus two additional meters, to AMI, for a total of 82 meters.[31] For this the Commission approved a cost of $377.10 and $433.10 to retrofit or replace, respectively, a meter in this Staff Assisted Rate Case ("SARC") PAA order .[32] Finally, in Docket No. 20230071-WU, Pinecrest Utilities, LLC. sought to replace 82 and retrofit 62 traditional manual residential meters with AMI meters.[33] The pro forma amount for these meter replacements and retrofits was $2,368 in this SARC PAA order.[34]

While each of these orders involve a situation where the Commission has approved AMI for a water utility, each order is also easily distinguishable from the instant case. The highest amount of meters approved was 1,641 for $594,648, a fraction of both the 37,000 replacements and approximately $20 million requested by Sunshine in this case. Further, the utility that was granted 1,641 AMI meters (Pluris) demonstrated that it actually had a need for them because it

[27] Order No. PSC-2018-0311-PAA-WS, issued June 13, 2018, in Docket No. 20170166-WS, In re: Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.
[28] Id. at 3.
[29] Id.
[30] Order No. PSC-2022-0435-PAA-WU, issued December 22, 2022, in Docket No. 20220026-WU, In re: Application for staff-assisted rate case in Docket No. 20220026-WU Marion County, and request for interim rate Order No. PSC-2022-0435-PAA-WU increase, by Leighton Estates Utilities, LLC.
[31] Id. at 6.
[32] Id.
[33] Order No. PSC-2024-0100-PAA-WU, issued April 17, 2024, in Docket No. 20230071-WU, In re: Application for staff-assisted rate case in Polk County by Pinecrest Utilities, LLC.
[34] Id.

was having issues with its existing water meters, unlike Sunshine's total lack of justification in this matter.

Sunshine attempts to deflect from the above issues by alleging that OPC was involved in these matters but did not oppose AMI. This diversionary, burden-shifting attempt ignores the fact that all three cases were much smaller utilities, the orders were issued as PAAs and for the largest, a genuine need was demonstrated. However, whether or not OPC took a position on an issue has no bearing on whether that issue was appropriately disposed of by the Commission. Further, impact of OPC intervention on customers is an issue OPC must consider in cases involving small utilities such as the ones in the Orders at issue. TR 480-481. The approval of AMI replacements in two small SARCs does not create a policy, a mandate, precedent, or eliminate the Company's burden of proof in this docket. SARC cases should not be looked at for industry-wide precedent given the fact that the OPC cannot effectively intervene or challenge issues at hearings in these cases. Finally, the Public Counsel is authorized to take any position which he or she deems to be in the public interest pursuant to Section 350.0611(1), Florida Statutes. In any event it is of no legal significance what level of activity the OPC engages in as the burden of proof is always on the utility to demonstrate the prudence of its costs.[35]

While Sunshine is happy to supply Florida orders approving AMI, it has remained mum an order from another state involving Sunshine's sister company where AMI meters were denied. Sunshine's sister, Water Service Corporation of Kentucky ("WSK"), filed an application requesting, in relevant part, a Certificate of Public Convenience and Necessity approving AMI meters from the Kentucky Public Service Commission ("Kentucky Commission").[36] Just like in this case, WSK parent company Corix performed the market analysis and the selection of Neptune to deliver the meters.[37] WSK was also providing safe and reliable service with its current meters, failed to quantify any cost savings from AMI meters, failed to present an acceptable review of all reasonable alternatives to AMI, and failed to show that providing the data enabled by AMI to customers would result in inadequate service. The Kentucky Commission therefore denied WSK's

[35] Fla. Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982).
[36] Kentucky Public Service Commission, Case No. 2022-00147, Order No. 20230412, issued April 12, 2023, In the Matter of: Electronic Application Of Water Service Corporation Of Kentucky For A General Adjustment In Existing Rates And A Certificate Of Public Convenience And Necessity To Deploy Advanced Metering Infrastructure.
[37] Id. at 58.

request. Again, all of these issues parallel the ones in this matter and support a decision by this Commission to deny AMI.[38]

Finally, a recent Florida Commission in the electric sphere also provides precedent for this Commission to deny AMI. Tampa Electric Company ("TECO") recently requested approval for a Customer Experience Enhancement Project ("CEEP").[39] TECO claimed a goal similar to that of AMI: providing customers more choice and flexibility in how they use TECO's services.[40] However, the Commission found there was no need for CEEP at that time as CEEP was not needed in order for TECO to provide reliable service to its customers.[41] The Commission should follow this recent precedent and deem Sunshine's AMI request unneeded to provide reliable service.

Conclusion

Mr. Twomey might appear earnest when he testifies about how he wants to turn a new leaf for Sunshine and rectify prior "mismanagement." TR 253. However, his words are at odds with Sunshine's decision to push AMI in its application while abandoning the Mid-County and LUSI projects which were shown as needed in the Company's test year letter but removed from the final application. TR 204, 207-208; EXH 101 MPN E29596. Just as the Commission has a chance to send Sunshine a message over its customer service and DEP compliance issues, the Commission has a chance to send a message in rejecting AMI. Sunshine must reorient itself away from gorging on capital for the sake of its investors by promoting projects like AMI that have big ticket dollar values while not related to any demonstrated need, have wildly mismatched costs and benefits, provide no value to customers, and are driven by parent corporate priorities. The Commission should deny cost recovery for AMI.

ISSUE 5: What are the appropriate plant retirements to be made in this docket?

OPC: *This issue is effectively a fallout of AMI Meter Installation Project issue. Retirements should be adjusted to reflect the reversal of the assumed test year

[38] The Commission has relied on and cited to out of state orders in the past. *See, e.g.,* Order No. PSC-2019-0225-FOF-EI, issued June 10, 2019, in Docket No. 20180046-EI, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.

[39] Order No. PSC-2025-0038-FOF-EI, issued February 3, 2025, in Docket Nos. 20240026-EI, 20230139-EI, 20230090-EI, pp. 48-50, In re: Petition for rate increase by Tampa Electric Company. In re: Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company. In re: Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

[40] Id. at 49.

[41] Id. at 50.

retirements of existing meters upon the rejection of the proposed uninstalled AMI meters.*

ISSUE 13: Should any adjustments be made to test year accumulated depreciation?

OPC: *Yes. Depreciation on test year plant should be at the 13-month average test year amounts, not on year-end annualized amounts. Otherwise, a mismatch is created. OPC's adjustment decreases water utility depreciation expense by at least $187,796 and decreases wastewater utility depreciation expense by at least $330,459 for the impact of test year annualization. Company net salvage percentage-driven depreciation rates violate of Rule 25-30.140, F.A.C. This issue also contains fallout from other issues.*

ARGUMENT:

Sunshine's MFRs were submitted in violation of rule 25-30.433(5), F.A.C. as they overstated the revenue requirements of water by $187,796 and of wastewater by $330,459 by improperly annualizing depreciation expense and associated accumulated depreciation. TR 54, 58; 404, 415; EXH 41 MPN C6-2088; EXH 197 MPN J40.[42] The rule states as follows:

> (5) The averaging method used by the Commission to calculate rate base and cost of capital ***shall be*** a 13-month average for Class A utilities and the simple beginning and end-of-year average for Class B and C utilities.

(Emphasis added.) Sunshine ignored this rule with respect to depreciation when it calculated a full years' annualized depreciation expense and the associated accumulated depreciation component of rate base on test year additions reflected in rate base. The associated test year additions were recorded on a 13-month average basis. This was a mismatch of depreciation and plant and a violation of the rule. OPC expert Ralph Smith explained why annualizing test year plant is improper:

> For the test year itself, the rate base amount for utility plant and accumulated depreciation are based on a 13-month average, not on year-end amounts. Consequently, annualizing depreciation expense on test year utility plant creates a mismatch. For consistency with the test year rate base amounts of utility plant and accumulated depreciation, depreciation on test year plant should be at the 13-month average test year amounts, not on year-end annualized amounts.

[42] NOTE: MFR page A-3 – REVISED, Page 2 of 4 appears to have been inadvertently omitted from the record as contained on Case Center. The summary of the Water annualization adjustments are shown on Exhibit 197 at J40 on Line 43 and will suffice for supporting an adjustment to remove the unlawful amounts at this time. For appellate purposes, however, the Commission will need to ensure that the omitted page is included in the record so that the complete listing of elements of plant where depreciation is annualized can be shown.

The evidence is clear that the annualization approach is being trotted out by Sunshine to try to increase revenues. The company's basis for overstating revenue requirements and thus making water and wastewater service less affordable, hinges on its theory of creating an exception to the rule by being allowed to get away with using this process on at least four prior occasions, by its count. TR 504.

Sunshine claims that the fact that the procedure was used at least two more times after the initial times, indicates that a new Commission practice has emerged and that the company does not have to follow the averaging convention mandated by Rule 25-30.433(5), F.A.C. TR 510. Through witness Swain, the Company also suggests that the OPC's participation in the recent rate cases, and lack of specific objection to the methodology therein, somehow creates a basis for continuing to overstate revenues through a rule violation. TR 98, 516-517.

Sunshine's rationale is based on its claim that through these four cases[43] the Commission tossed aside Rule 25-30.433(5), F.A.C. and greenlighted its use of this revenue requirement enhancer. TR 504. In three of the orders cited (2007 Order, 2009 Order, and 2017 Order) there is no express recognition or affirmation of the annualization method. Something akin to a major forensic analysis is needed to tease out the spots where its witness Swain claims in vain that proof of the approved annualization policy can be found. Yet there is no mention of any such Commission approval in the body of the orders. Even in the 2021 Order there is no affirmative validation or approval of the so-called methodology. The Commission's discussion and analysis is shown below at pp. 69-70:

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> In addition, UIF made adjustments to annualize accumulated depreciation for test year additions. ***The Utility asserted that OPC did not dispute any test year changes.***
>
> 2. OPC

[43] Order No. PSC-2007-0130-SC-WU, issued February 15, 2007, in Docket No. 20060256, In re: Application for increase in wastewater rates in Seminole County by Alafaya Utilities, Inc. ("2007 Order"); Order No. PSC-2009-0372-PAA-SU, issued May 27, 2009, in Docket No. 2008028-SU, In re: Application for increase in wastewater rates in Pinellas County by Tierra Verde Utilities, Inc. ("2009 Order"); Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida. ("2017 Order"); and Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida. ("2021 Order").

> In its brief, OPC discussed adjustments related to pro forma plant projects; these are discussed in Section III.
>
> B. Analysis
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> ***
>
> The Utility also made adjustments to annualize accumulated depreciation for test year plant additions. Although it addressed adjustments corresponding to pro forma plant, ***OPC did not dispute these adjustments.*** Further, Commission ***staff witness Dobiac's testimony did not reflect any audit adjustments to the test year accumulated depreciation balances.***
>
> C. Conclusion
>
> Based on the above, ***we hereby find no further adjustments*** are appropriate to the adjusted test year accumulated depreciation balances.
>
> ***

(Emphasis added.) 2021 Order at pp. 69-70.

It is obvious in the 2021 order that even had the Commission *intended* to establish an asymmetrical test year additions depreciation annualization practice, it would have erroneously relied for justification on the OPC's absence of focus on the concept in so doing. The Commission established no such practice for Sunshine, nor could it have. To the contrary, it merely approved an undisputed adjustment that happened to conflict with the Commission's rule. In doing so, the agency showed no awareness of the rule. This was an oversight on the Commission's part. Given the dynamics of the case, it is somewhat understandable that the Commission's approach was to decide whether to make any adjustments to the filing and, absent an objection, the accumulated depreciation balances were approved.

What's more, and partially the reason that the OPC spent time cross-examining Staff witness Mouring, the Commission's order improperly reflected that the staff audit witness failed to take issue with the adjustment. In this case Mr. Mouring testified to his view of the Staff audit as follows:

> Q Yes. Are you -- are you asking the Commission to give the audit any special significance or consideration in this docket, or are you just presenting it for their consideration, whatever they want to make of it?
> A We are presenting it as a tool for staff and the Commissioners to use.

TR 327.

Clearly, the Staff Audit in the 2021 UIF case is not dispositive and does not indicate that the issue was even evaluated by Staff and has no bearing of the development of a claimed policy or effective waiver of a Commission rule. Silence does not mean that there was Staff support for the proposed revenue requirement enhancer, nor does silence mean that the Company met its burden of proof for increasing costs through mismatching plant and depreciation or that the Commission even established such a practice or policy.

In none of the four cited orders is there one word about creating a practice, policy or accounting methodology. In fact, in the 2021 UIF case there was no dispute in the issues for the Commission to resolve related to this matter.[44] Silence by the OPC does not mean that the Commission or the company are free to disregard its rules. It is undisputed that the Commission lacks the power to waive its rules. The Company's arrogant claim it had no need to seek a waiver and did not do so (TR 68-69, 516-517) since the Commission has established this so-called practice of allowing annualization of depreciation expense on test year additions falls flat.

The Commission is only authorized to grant a waiver to requirements of their rules consistent with section 120.542, Florida Statutes along with the rules adopted under the authority of the same section. Rule 28-104.101 through 28-104.106, F.A.C., sets out the requirements of a petition for waiver, pursuant to section 120.542, Florida Statutes. No such petition was filed. Furthermore, section 120.68(7)(e)2., Florida Statutes, requires a court to remand a case if its exercise of discretion is inconsistent with agency rule. Sunshine has no authority to ignore the Rule and pick and choose which portion of it to follow and which it will ignore.

See also issue 30.

ISSUE 14: Should any adjustments be made to test year CIAC balances?

OPC: *Yes, All CIAC should be calculated using a 13-month average.*

ARGUMENT:

Pursuant to Rule 25-30.433(5), F.A.C., for class A utilities, rate base is to be calculated using a 13-month average. As part of rate base, plant-in-service, accumulated depreciation,

[44] Order No. PSC-2021-0064-PHO-WS, issued January 29, 2021, in Docket 20200139-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida. Nowhere does it reflect that the issue of whether to approve the methodology or the amounts given that no objection was voiced.

contributions in aid of construction (CIAC), and accumulated amortization of CIAC, should reflect 13-month average balances.[45]

Company witness DeStefano agreed with the Commission staff's audit, specifically finding #4, that miscellaneous service revenues were capitalized in the Test Year and therefore should be treated as CIAC. TR 532.

Because CIAC is a rate base component, it must be reflected as a 13-month average. The Commission should make an adjustment to reflect a 13-month average for the Miscellaneous Service Revenue in audit finding #4 and reject the company's proposed year-end method as it is inconsistent with the Commission's Rule and ratemaking. TR 532-545. See also argument under Issue 13 regarding Commission's lack of authority to waive its rules.

ISSUE 15: Should any adjustments be made to test year accumulated amortization of CIAC?

OPC: *Without waiving the OPC's right to appeal such an order: yes, but only if the Commission authorizes the Utility's annualized depreciation for test year plant additions contrary to Rule and OPC's objection. In that case 13-month average adjustments are necessary for accumulated amortization of CIAC for CIAC received during the test year.*

ARGUMENT:

Adjustments to accumulated amortization should be made consistent with the adjustment to CIAC balances as discussed in Issues 13 and 14.[46]

ISSUE 16: What is the appropriate working capital allowance?

OPC: *Apart from rate case expense, all expense items being amortized should have a corresponding miscellaneous deferred debit included in the working capital allowance.*

ISSUE 17: What is the appropriate rate base for the December 31, 2023 test year?

OPC: *This is a fallout issue pending the resolution of issues.*

[45] Order No. PSC-2009-0537-PCO-WU, issued August 4, 2009, in Docket No. 20080695-WU, p. 3, In re: Application for general rate increase by Peoples Water Service Company of Florida Inc. ("Plant-in-service, accumulated depreciation, contributions in aid of construction (CIAC), and accumulated amortization of CIAC should reflect 13-month average balances.")
[46] Id.

COST OF CAPITAL

ISSUE 18: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

OPC: *The appropriate amount of accumulated deferred taxes should be calculated in compliance with provision (4) of Rule 25-30.433, F.A.C.*

ARGUMENT:

Rule 25-30.433(4), F.A.C., states, in pertinent part:

> Used and useful debit deferred taxes shall be offset against used and useful credit deferred taxes in the capital structure. Any resulting net debit deferred taxes shall be included as a separate line item in the rate base calculation. Any resulting net credit deferred taxes shall be included in the capital structure calculation.

The Company made non-used and useful adjustments to wastewater rate base and non-used and useful adjustments for depreciation expense and property taxes. However, the Company's filing makes no adjustments to accumulated deferred taxes in order to reflect only used and useful deferred taxes in its capital structure. The appropriate amount of accumulated deferred taxes should be calculated in compliance with provision (4) of Rule 25-30.433, F.A.C.

ISSUE 23: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure?

OPC: *The appropriate weighted average cost of capital is as reflected in EXH 41 MPN C6-2135.*

NET OPERATING INCOME

ISSUE 24: What are the appropriate test year revenues?

OPC: *With the exception of revenues from AFPI charges, the Company's proposed test year revenues should be adjusted as reflected in EXH 41 MPN C6-2160-62. *

ISSUE 25: What is the appropriate amount of rate case expense?

OPC: *Any rate case expense associated with MFR deficiencies or other imprudent costs should be disallowed. Rate case expense for the irresponsible replacement of Mid-County and LUSI by the unnecessary AMI project should be eliminated by a percentage of the total ask reflected by the $20 Million ask for AMI.*

ARGUMENT:

Any legal expenses incurred relating to the Wekiva Wastewater Treatment plant should be disallowed. Expenses for continuous DEP violations should not be borne by the ratepayers. The Commission needs to satisfy itself there are no legal fees associated with responding to discovery (including depositions) related to the Wekiva criminal referral.

The Commission should deny recovery $902 from rate case expense pertaining to deficiencies on July 26, 27, 31 and August 1, 2024, on invoice no. 458825 dated August 19, 2024. The Commission should deny recovery $12,410 from rate case expenses related to Frank Seidman's rebuttal preparation and hearing. Mr. Seidman was excused from hearing and had a projected remaining expense of $12,750. OPC recommends adjusting this to $12,410 as Mr. Seidman responded to Interrogatory Nos. 90 (a-c) and 91 of Staff's Fifth Set of Interrogatories to Sunshine Water Services Company. It would be reasonable to allot 2 hours of time to responding to those two questions and their respective subparts.

The above are non-exhaustive findings. The Commission should satisfy itself that rate case expenses associated with any MFR deficiencies or other imprudent costs should be disallowed.

ISSUE 26: Should any adjustment be made to the Utility's proposed pro forma expenses?

OPC: *Yes. Several adjustments to the Company's expense claims should be made, as discussed in OPC witness Smith's testimony and his EXH 41. Fees for third-party payment convenience, Directors and Officers Liability insurance Premiums, and certain legal fees.*

ARGUMENT:

Fee Free Payment

The Commission should disallow the Company's proposed "fee-free" third party payment processing plan that socializes and subsidizes transaction fees across all customers, regardless of how the customer chose to pay. A fundamental principle of ratemaking is ensuring that the cost of providing service is recovered from the cost-causer, and the Commission's practice has been to place the burden of such charges on the cost-causer rather than the general body of ratepayers.[47]

[47] Order No. PSC-2016-0041-TRF-WU, issued January 25, 2016, in Docket No. 20150215-WU, p. 3, In re: Request for approval of tariff amendment to include miscellaneous service charges for the Earlene and Ray Keen Subdivisions,

The Commission has grappled with a subsidization question before in the UIF consolidation case, "[w]ith subsidies inherent in all utility ratemaking, the question was brought forth during the hearing of, 'where do we draw the line?"[48]

When asked about the cost-causer principle, Company witness DeStefano referenced the 2016 rate consolidation case for UIF as a reason to allow the "fee-free" payment plan. Witness DeStefano said that the general cost-causer principle in practice plays out differently because the principle is overridden by the benefits provided. TR 125. The consolidation of multiple water and wastewater systems is fundamentally different than a payment option chosen by a single customer. When systems consolidate, the customers are entitled to reasonably equal water and wastewater services, and therefore, are paying the same rates for the same services rendered. The Commission identified reasons and explained the value of consolidating systems, such as (1) encouragement of large utilities to acquire small utilities, (2) recognition of economies of scale attributable to large utilities with respect to combined operations, (3) cost savings associated with regulatory rate filings, and (4) resulting rate stability across all systems.[49]

The above-enumerated reasons emphasize the value provided to customers through consolidation,[50] where all systems will be paying the same rates for the same water and wastewater services. Subsidizing and socializing payment transaction fees incurred by an individual's choice does not provide any of those benefits, nor does that align with the Commission's policy goals. The Commission should "draw the line" when an individual (cost-causer) voluntarily decides to incur a cost for their own convenience.

Each customer has autonomy to choose how they wish to pay their utility bill, and the Company is not changing any of its payment options customers may utilize. TR 125. Some payment options have fees, and some do not. TR 125-26. Payment options selected by customers

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the Ellison Park Subdivision, and the Lake Region Paradise Island Subdivision in Polk County, by Keen Sales, Rentals and Utilities, Inc.

[48] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, p. 191. In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

[49] Id.

[50] Id. at 196 "[W]e find it appropriate to consolidate the water and wastewater rates and rate structure of all UIF systems because the highest water and wastewater subsidies provided by an individual system are less than the subsidy limits approved, and this would best achieve the benefits identified by witnesses Guastella and Daniel."

are for their own convenience, and the fees voluntarily incurred for that convenience are the individual cost-causer's responsibility, not the general body of ratepayers.[51] EXH 66, MPN E540.

The Commission should not depart from the fundamental ratemaking principle of cost causation, nor from its own practice and precedent. The Commission should reject this proposed project and reduce the company's requested revenue requirement increase by $186,418 for wastewater and $200,501 for water, amounting to $386,919.[52] TR 127.

Directors and Officers Liability Insurance

The Commission should disallow at a minimum 50% of the Directors and Officers liability insurance from the pro forma adjustment and test year expenses.

Directors and Officers liability insurance (DOL) protects the Company's officers and directors' personal assets from lawsuits that arise from their own questionable decisions. TR 128. For example, employment practices liability, fiduciary liability, and crime, which may or may not include environmental crimes, such as those relating to the Wekiva Wastewater treatment plant. TR 129, 529. While Nexus has no public shareholders, it does have private investors. TR 128, 466, 469. DOL insurance also helps investors by reimbursing the company for legal defense costs. TR 129. Since the ratepayers are not the primary receivers of the benefit, they should not bear the costs. TR 128. OPC historically recommends a complete disallowance of this cost since attribution of the cost should follow benefit.[53] However, recognizing that recovery of 50% has been allowed in prior dockets, OPC recommends that at a minimum 50% should be removed consistent with prior decisions.[54]

Tampa Electric Company has 844,000 customers.[55] For its water system Sunshine has 37,000 and for wastewater, 30,000. TR 141, 163, 445. 50% of the DOL premium cost for TEC is

[51] Order No. PSC-2017-0092-PAA-WU, issued March 13, 2017, Docket No. 160144-WU, p. 11. In re: Application for transfer of Certificate No. 288-W in Pasco County from Orangeland Water Supply to Orange Land Utilities, LLC. ("Furthermore, this fee will insure [*sic*] the Utility's remaining customers do not subsidize those customers who choose to pay using this option.")
[52] NARUC Accounts 636 and 736.
[53] Issue 26 "fee-free third party payment processing plan" as it relates to the cost causer principle. The costs should follow the individual who receives the benefits.
[54] Order No. PSC-2012-0179-FOF-EI, issued April 3, 2012, Docket No. 20110138-EI, p. 101, In re: Petition for increase in rates by Gulf Power Company; Order No. PSC-2010-0131-FOF-EI, issued March 5, 2010, in Docket No. 20090079-EI, p. 99, In re: Petition for increase in rates by Progress Energy Florida, Inc.
[55] Order No. PSC-2025-0038-FOF-EI, issued February 3, 2025, in Docket No. 20240026-EI, p. 11, In re: Petition for rate increase by Tampa Electric Company. In re: Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company. In re: Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

$151,000. 50% of the DOL cost for Sunshine is $22,427. When split $11,637 to water and $10,790 to wastewater, the cost per customer is approximately $0.32 for water and $0.36 for wastewater. For Tampa Electric Company the per customer is approximately half or $0.17 per customer. If anything, this comparison should call for a 100% disallowance of DOL costs for Sunshine. It also directionally supports the notion that mismanagement at Sunshine may be affecting the cost of protecting the investors from the actions of sunshine in Florida.

The evidence and precedent abundantly support at least an equal sharing between investors/company and customers. Based on the facts and circumstances that indicate that the Nexus board manages all DOL and functions as an arm of Nexus for the advancement of Nexus-benefiting actions, while pushing down to its subsidiaries a direct charge for DOL; therefore, disallowing 50% of the allocation costs is conservative. At a minimum $22,427 should be removed from operating expenses, $11,637 from water and $10,790 from wastewater should be disallowed.

Legal Expenses

Wekiva

The Commission should disallow all legal expenses related to the Wekiva Wastewater treatment plant.[56] Customers should not be forced to pay the legal defense costs for mismanagement of a system that led to the need to fend off possible criminal charges against management employees.[57] TR 253, 294-96. The 2022 costs for providing criminal defense legal services are especially problematic. If the 2022 amount is approved by the Commission, it would be approving retroactive ratemaking and allowing double recovery through the capitalization of previously expensed items, in violation of the matching principle and creating intergenerational inequity. Table 1 of Mr. DeStefano's rebuttal testimony lists the legal costs incurred for the Wekiva-related potential criminal proceedings. The amounts were updated in EXH 78 MPN E1964. The 2022 $320,657 expenditure was unchanged, and that amount was treated as an operating expense in 2022, an operating expense for book purposes in 2022, and in the earnings calculations for 2022 as well. TR 541-542. Because these criminal defense legal costs were previously expensed in 2022 the Commission should disallow recovery of the 2022 costs and prevent double recovery.

[56] § 367.111(2); § 367.0812(4); § 367.161; § 367.072, Florida Statutes (2024).
[57] Citizens of Fla. v. Fla. Pub. Serv. Comm'n, 294 So. 3d 961 (Fla. 1st DCA 2019).

The Commission should disallow all 2023 and 2024 legal expenses relating to the Wekiva Wastewater treatment plant as well. OPC agrees that a utility company should be able to incur reasonable and prudently incurred legal costs. No reasonable mind could conclude the Wekiva legal expenses were reasonable or prudent. There have been persistent DEP investigations, consent orders, and sewage overflows from Sunshine's last rate case, in which the Commission found it necessary to issue a 15-basis-point reduction ROE penalty in part due to Wekiva.[58] TR 243-274. The consistent failure to fix the Wekiva system and thus incur legal fees to defend the criminal proceedings should not be borne by the ratepayers of Sunshine. To allow the recovery of these costs would provide no value to Sunshine customers. EXH 100 MPN E28700-28736; EXH 106 MPN E30614-30659. The Commission should deny all the Wekiva criminal legal costs for the continuous and repetitive mismanagement for a total amount of $777,225. EXH 78 MPN F9164. The Commission should also deny $320,657 of the 2022 costs because they have already been expensed and deny $347,991 for the 2023 test year amount and preclude the Company from rolling the 2024 amount into the requested regulatory assets. See Issue 42.

Miscellaneous

Legal and operating expenses associated with the Corix beneficiary and *Lamelza* cases and PFAS litigation do not provide benefits to Florida customers and are inappropriate for ratemaking.

ISSUE 27: Should any adjustment be made to the Utility's proposed management expenses?

OPC: *Yes. Several adjustments to the Company's expense claims should be made, as discussed in OPC witness Smith's testimony and his EXH 41.*

ARGUMENT:

The Commission should reduce the Utilities proposed management expenses to reflect the savings identified in hearing.

The Company in April of 2024 finalized the merger between Corix and Southwest. TR 43. Because of the consolidation of the board of directors, the company already identified savings in the elimination of three executive leadership positions, the CEO, COO, and CFO of Corix. TR 46. The Company also eliminated the position of Corix general counsel, but those savings were not

[58] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, Docket No. 20200139-WS, p. 20, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

identified in the test year. TR 46. The Company also had savings associated with the assignment of an office lease, a single external auditor, and insurance cost reductions; however these identified savings were not during the test year, and the company did not update its filing to the Commission to reflect these cost savings. TR 46-7. These cost savings have materialized and the Commission should reflect them in this case.

ISSUE 28: Should any further adjustments be made to the Utility's test year O&M expenses?

OPC: *Yes. Several adjustments to the Company's expense claims should be made, as discussed in OPC witness Smith's testimony and his EXH 41.*

ARGUMENT:

Repurposing Meter Reader Employees

If the Commission allows recovery of the AMI installation project against OPC's objections, Sunshine failed to carry its burden of proof to demonstrate the need to retain Meter Readers. These jobs would become obsolete due to AMI and the cellular upgrade, and the $20 million AMI project will only generate operating expense savings for four out of seven-meter readers[59] at approximately $293,833 per annum. TR 561. The savings relating to the four meter readers and equipment will take over 68 years to break even, providing no rate relief for customers.[60]

The Commission should remove all costs associated with the repurposing of the meter readers, as the cost/benefit of the AMI project significantly increases costs while providing no relief to the customers. Sunshine has not demonstrated the need to keep the seven employees other than with statements of how they may repurpose those workers. This issue further drives home OPC's point concerning the illusory nature of any speculated benefits from AMI.

Lobbying Expenses

The Commission has a long, well-settled policy of disallowing lobbying expenses.[61] Through Sunshine, Nexus is attempting to recover from customers the costs of corporate-managed

[59] TR 586.
[60] $20,071,422 ÷ $293,833 = 68.30.
[61] *E.g.*, Gulf Power Co. v. Bevis, 296 So. 2d 482, 485 (Fla. 1974); Order No. PSC-2011-0547-FOF-EI, issued November 23, 2011, in Docket 20110009-EI, pp. 28-29, In re: Nuclear Cost Recovery Clause; Order No. PSC-2014-0025-PAA-WS, p. 33, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida; See also, Order No. PSC 2014-0714-FOF-EI, issued December

lobbying activities. Sunshine retained eight lobbyists in the 2023 test year. TR 494-495, EXH 143, MPN F2-616; TR 495-6, EXH, 144 MPN, F2-610. The Commission should satisfy itself that the costs associated with the lobbyists are removed from the revenue requirement. The Commission should also disallow a portion of the salary from Mr. Lubertozzi, Mr. Elicegui or other members of the legal team, and the Sunshine President's salary.

Sunshine contends decisions to engage lobbyists are made by the business unit presidents, and therefore the time spent interacting with the eight lobbyists during the test year should be reduced from the approved salary. TR 293-294, 493-494. Assuming the correctness of these contentions, Mr. Elicegui and members of the legal team review, approve, and present quarterly paid lobbying reports to the audit committee. TR 493, 593. This Nexus-driven expense should not be borne by the ratepayers of Florida.

The Commission should satisfy itself that an appropriate amount of salary is reduced for lobbying activities. Mr. Lubertozzi had apparently provided a report to Mr. Elicegui about his lobbying activities and time spent with lobbyists. This is not supported by the evidence in the record. Mr. Lubertozzi's title is "Senior Vice President of Rates, Regulatory and Legislative Affairs for Nexus Water Group, Inc." TR 35. Therefore, an estimate has been used, based on job responsibilities and title an estimation of one-third of the annual salary related to lobbying and legislative advocacy, which is a cost that should be borne by the investors, not ratepayers. The adjustment to Mr. Lubertozzi's salary results in a decrease of $8,331 from water and $7,725 from wastewater. TR 414.

ISSUE 29: Should any adjustments be made to test year taxes other than income?

OPC: *Yes, adjustments consistent with the removal of AMI Meter Installation Project and any other associated property taxes and along with fallout from any other pro forma investment should be made.*

ISSUE 30: Should any adjustments be made to test year depreciation expense?

OPC: *Yes. As reflected in EXH 41, adjustments should be made to depreciation expenses relating to the AMI Meter Installation Project, reversing meter retirements, and test year depreciation annualization. Also, adjustments should be

31, 2014, in Docket No. 20140007-EI, p. 6, In re: Environmental Cost Recovery Clause (declining to extend cost recovery to activities involved in shaping policies).

made for incorrect net salvage percentage-driven depreciation rates in violation of Rule 25-30.140, F.A.C.*

ARGUMENT:

Sunshine's MFRs were submitted in violation of rule 25-30.140, F.A.C. ("Depreciation Rule"), as they overstated the revenue requirements of water by $60,080 and of wastewater by $55,859. EXH 97. This violation occurred in at least two ways. The Company failed to apply the net salvage values at all. The Depreciation Rule mandates that Sunshine use the guideline rates and net salvage percentages to determine its costs when its rates are set. Sunshine appears to have purposefully failed to apply the net salvage percentages to the six accounts[62] where its application is mandated by the Depreciation Rule. TR 78; EXH 97. The only exceptions to the mandatory application of the net salvage portion of the Depreciation Rule is found in subsections 25-30.140(3)(a)(6)-(7), F.A.C.,[63] are not applicable here because Sunshine did not bother to take the required steps to effectuate them. TR 72-76. Additionally, in at least two instances Sunshine failed to apply the depreciation rate mandated by the Depreciation Rule.[64] TR 80-85, 351-352; EXH 97 MPN E-28672. Sunshine witness Swain, who sponsored the accounting and depreciation MFRs, was cavalier in her assertion that the company did not need to bother with such formalities. She asserted that, based on what she had observed, the Commission had in effect given the company the green light to both ignore and apply provisions of the Depreciation Rule as they saw fit. TR 74-76; EXH 97 MPN E28672. The staff should be directed to also adjust depreciation

[62] USOA accounts 341,345 and 346 (water) and accounts 391, 395, and 396 (wastewater).

[63] (3)(a) Average service life depreciation rates based on guideline lives and salvages ***shall be used*** in any Commission proceeding in which depreciation rates are addressed, except for those utilities using depreciation rates in accordance with the requirements listed in subsections (6) and (7) of this rule.
***
(6)(a) ***At the time a utility applies for a change in its revenue rates and charges***, it may also petition for average service life depreciation rates different from those in the above schedule if it can justify the service lives that the utility is proposing in lieu of the guideline lives.
***
(7)(a) A Class A, B, or C utility ***may apply for guidelines for a proposal for implementation of remaining life depreciation rates*** if the utility has maintained both plant activity data by account and accumulated provision for depreciation (reserve) data by account, function or total depreciable plant generally in accord with the Uniform System of Accounts for either at least ten years or since the inception of the utility, whichever is less. (Emphasis added.)

[64] In the accounts for accounts 391.7 and 395.7, the company utilized higher depreciation expense than allowed by the Depreciation Rule. TR 350-353; EXH 97, EXH 154 at p. F2-783. No waiver of the Depreciation Rule was requested for this departure either. TR 354-355. This failure to request and receive an exception or seek and receive a waiver when affirmatively ignoring certain elements of the Depreciation Rule is a violation of that rule and would subject any order allowing it to reversal and remand. § 120.68(7), Florida Statutes (2024).

expense for the unauthorized use of non-guideline rates for Power Operated Equipment (Accounts 341 and 391) and Transportation Equipment (345 and 395). The staff audit did not review the two water accounts (341 and 345) but the corresponding wastewater accounts (391 and 395) were reviewed by the auditors and showed unauthorized rates. TR 338-340; EXH 154 MPN F2-782-783.

Witness Swain was equally nonchalant about the fact that Sunshine did not seek a rule waiver. TR 76-77, 516-517. She said it was not needed. TR 76; EXH 97. Instead, through her, the company asserted that, given the selective research she had performed, and as she was unaware of the Commission actually applying the Depreciation Rule to incorporate the net salvage percentages in the six accounts, the Commission should conclude that it had effectively granted a rule waiver, or what she called "diversions" from the guidelines contained in this portion of the Depreciation Rule.[65] EXH 97 MPN E28672, E28681. The direct quote from her response to OPC's Sixth Set of Interrogatories, No. 105, was that, "[t]he Company has therefore effectively requested certain diversions from guideline rates and been approved for their implementation." To bolster this, she claimed alternately to have reviewed either Sunshine orders only (TR 86) or other company orders (TR 88; EXH 97 MPN E28672) to support her position. She did not admit to reviewing the most recent order that was issued on April 23, 2024[66] and well in advance of the MFR deficiencies being cured on August 12, 2024. TR 86.

There is no such thing as a constructive waiver or "diversion" from a Commission rule. Mistakes or oversights of the past cannot be cobbled together to invalidate a rule or substitute for the statutory rule waiver process and the company has not cited to any support for its belief that its *post hoc* and selective review of the past orders justifies its failure to follow the Depreciation Rule. More to the point is that a waiver can only be granted pursuant to the provisions of Section 120.542, Florida Statutes. Nothing in the law authorizes the Commission to grant so-called "diversions" from the Depreciation Rule guidelines, specifically, or rules in general.

[65] Staff witness Mouring noted that in the past, the net salvage percentage has not been applied. TR 334. He did acknowledge that it had recently been applied in the Pluris Wedgefield case.TR 346-347. He also acknowledged that the staff auditors should have checked for it and applied the Depreciation Rule in their audit work. He acknowledged that there was no directive that instructed the auditors to ignore the Depreciation Rule. TR 334.

[66] Order No. PSC-2024-0118-PAA-WS, issued April 23, 2024, in Docket No. 20230083-WS, In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, LLC, ("Pluris Order"). The order (at page 2) indicates that the Commission considered the matter on March 5, 2024, after voting to issue the proposed agency action order. Consummating Order No. PSC-2024-0156-CO-WS was issued on May 15, 2024, indicating the Pluris Order had not been protested.

The Commission is only authorized to grant a waiver to requirements of their rules consistent with Section 120.542, Florida Statutes, along with the rules adopted under the authority of the same section. Rule 28-104.101 through 28-104.106, F.A.C., sets out the requirements of a petition for waiver, pursuant to section 120.542, Florida Statutes. No such petition was filed and the only avenue for achieving a waiver was forfeited by Sunshine. Furthermore, section 120.68(7)(e)2., Florida Statutes requires a court to remand a case if its exercise of discretion is inconsistent with agency rule. Sunshine has no authority to ignore the Depreciation Rule and pick and choose which portion of it to follow and which it will ignore.

One final note, Ms. Swain seemed to contend -- again without support -- that the Commission could not change the depreciation parameters and (assumedly expenses) once it had been submitted in this filing, asserting that it would be retroactive. TR 86-87, 96. To be precise, she stated her position thus, while tacitly acknowledging existence of the Depreciation Rule requirements:

> Not to say it's not in the rule, but if the Commission made a determination that this rule should be applied, when there is a change in accounting depreciation method, it's done prospectively. It's not done by accounting; it's not done historically. It's not a correction to an error on the books. It's a change in accounting methodology.

TR 70-71. Clearly, this creative approach flies in the face of Chapter 120, Florida Statutes. The Commission is prohibited from "making a determination" whether to apply a rule. Absent a waiver granted pursuant to law, the Commission lacks the authority to pick and choose what rules it will and will not enforce. § 120.68(b)7(e)2.

From this mythical notion that enforcement of a rule constitutes a "change in accounting method or methodology," apparently springs a corollary assertion by Ms. Swain "that if the Commission makes a determination that the utility should change its accounting method for depreciation, that it should be prospectively and not retroactively." TR 86-87. Repeating this same notion, she responded to a question by a Commissioner that any order that would enforce the Depreciation Rule as "a change in accounting method." TR 96. Again, the Commission cannot "change its accounting method for depreciation." The agency can only follow and enforce the rule. The notion of retroactivity does not apply here. The only power the Commission has is to enforce the Depreciation Rule and make the ratemaking adjustment required by law. The only option is enforcement. §§ 120.68(7)(e)2. and 120.542, Florida Statutes.

It is important to note that the Staff Assistant Director of Auditing and Performance Analysis Curt Mouring testified that the staff audit should have reviewed the filing for compliance with the Depreciation Rule. TR 349-350. He indicated that, while recognizing that he was not then the Assistant Director or audit manager, had he been in his current position at the time the audit planning was done he would have noted the departures from the Depreciation Rule. TR 353-354. He acknowledged that the sample selections process of designing the audit excluded even looking at the water accounts 341.7, 345.7 and 356.7. TR 340, 349-350, 352. Counsel for the company sought to undermine Mr. Mouring's testimony about application of the Depreciation Rule by focusing on whether he was aware of the application of the rule in other cases. Mr. Mouring said he identified at least two others (he recalled "Arredondo," but not the other name"), but he couldn't testify to the full extent of his research. TR 361-362. Given the evidence in this case that the sampling in the past may have been uneven and failed to effectively test the relevant accounts, the Commission cannot assume that a search of orders or selected staff audit workpapers, as Ms. Swain did, would reveal the full extent of the agency's failure to enforce the Depreciation Rule. In any event such an inquiry would be irrelevant since the agency has no discretion to not enforce its rules.

See also argument on Issue 13 for disallowance of unlawfully annualized depreciation expenses for test year additions.

ISSUE 31: Should any adjustments be made to test year amortization of CIAC expense?

OPC: *Without waiving the OPC's right to appeal such an order, if the Commission authorizes the Utility's annualized depreciation for test year plant additions, then matching adjustments are necessary for CIAC amortization expense for CIAC received during the test year. Further, any adjustments to test year amortization of CIAC expense should be made consistent with the adjustment to CIAC discussed in Issues 13, 14, and 15.[67]*

ISSUE 32: What is the appropriate amount of test year income taxes?

OPC: *Pending the resolution of other issues, the income taxes will depend upon the specific level of revenues authorized by the Commission.*

[67] Order No. PSC-09-0537-PCO-WU, issued August 4, 2009, in Docket No. 20080695-WU, p. 3, In re: Application for general rate increase by Peoples Water Service Company of Florida Inc. ("Plant-in-service, accumulated depreciation, contributions in aid of construction (CIAC), and accumulated amortization of CIAC should reflect 13-month average balances.")

REVENUE REQUIREMENT

ISSUE 33: What is the appropriate revenue requirement for the December 31, 2023 test year?

OPC: *The revenue requirement issue is a fallout issue and is subject to change based on the resolution of other issues.*

RATES AND RATE STRUCTURE

ISSUE 37: What are the appropriate reuse rates?

OPC: *The appropriate reuse rates are as reflected on EXH 41 MPN C6-2161.*

OTHER ISSUES

ISSUE 39: What are the appropriate miscellaneous service charges?

OPC: *The appropriate miscellaneous service charges should be calculated with OPC witness Smith's adjustments in EXH 41 MPN C6-2162.*

ISSUE 40: What are the appropriate guaranteed revenue charges?

OPC: *These charges are dependent on the resolution of other issues.*

ISSUE 41: What are the appropriate meter installation charges?

OPC: *The Utility has not justified its proposed 194% increase to its current meter installation charge increasing the present 5/8" x 3/4" Meter Installation Charge from $201.21 to a proposed $591.83.*

ARGUMENT:

The Commission should deny the entirety of the AMI meter installation project and thus decrease the amount of service availability charges on future customers and businesses in Florida.

Service availability charges are cash contributions new customers make to a utility prior to connecting to facilities; meter installation charges are a type of service availability charge.[68]

Company witness DeStefano attempted to support increasing the meter installation charge from $201.21 to $591.83. This amounts to a 194.14%[69] increase in cash that new customers, with no opt-out option, will be forced to contribute. The installation cost due to the AMI project is an unnecessary and expensive contribution to the utility. At a time in which the utility admits inflationary needs are already affecting customers, a 194.14% increase is well above the rate of inflation for new customers. TR 170.

The cost per meter was not included in the filing, therefore the disallowance of AMI would immediately remove the $144.45 "Cellular Connector" charge, a potential immediate savings of almost 25% for future businesses and customers.[70] EXH 6, MPN C1-43. At a minimum, this would help with affordability. Upon denial of the AMI project, the cost for the new meter installation charge would be significantly decreased. The Commission should disallow the AMI Installation project and, in doing so, decrease the AMI Service Availability Charge imposed on future Sunshine customers.

ISSUE 41A: Are the resulting rates affordable within the meaning of fair, just, and reasonable pursuant to Sections 367.081 and 367.121 Florida Statutes?

OPC: *The Commission should consider affordability in this proceeding, and all future water and wastewater utility base rate proceedings, in evaluating rate increase requests consistent with the trends in other U.S. regulatory jurisdictions.*

ARGUMENT:

The Commission is tasked with the police power of the state for the protection of public health, safety, and welfare. § 367.011, Florida Statutes. The Florida Supreme Court has repeatedly recognized the broad legislative grant of authority afforded to the Commission. With legislative and judicial authority, the Commission is authorized to consider affordability when fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory. § 367.081, Florida

[68] Order No. PSC-2022-0332-TRF-WS, issued September 27, 2022, in Docket No. 20220112-WS, p. 1. In re: Application for approval to establish a service availability charge for new radio frequency meter installations, by Southlake Utilities, Inc.

[69] Percentage increase $= \frac{Final\ Value - Starting\ Value}{|Starting\ Value|} \times 100$

[70] $Percentage\ off = \frac{(Original\ price - sales\ price)}{Original\ price} \times 100$

Statutes. It is the duty of the Commission to see that the approval of rates is "just" for both the utility and customers and, while on the surface reasonableness and affordability might seem to primarily benefit the consumer, the utility has a vested interest in rates being both reasonable and affordable over the long run. § 367.121, Florida Statutes. At the end of the day, the Commission must at least evaluate this rate request with affordability in mind. It can serve as the dividing point between essential and non-essential pro forma adjustments, for example.

The Company contends that the determination of "affordability" is not subject to evaluation by the Commission, nor is it in any of the testimony. TR 20. OPC respectfully disagrees with the Company's position and statement. Sunshine, by way of its business unit president, Sean Twomey, opened the door to "affordability" in his direct testimony. TR 155. Mr. Twomey stated that "[Sunshine] strives to provide safe and reliable service at affordable rates…." TR 155.

When asked during cross examination, about whether affordability should be a legitimate issue in setting the level of rates, Witness Twomey later said, "No." TR 170-171. He then agreed the Company limited its water revenue ask in part due to the inflationary needs of Sunshine's customers. TR 169-171. This self-imposition is recognition by the Utility that its rate increase application is creating affordability issues for its customers that the Utility is trying to mitigate.

A particular rate may be reasonable from the standpoint merely of cost, but if the rate is prohibitive because it is in excess of what the consumer can afford to pay, it is unreasonable. As seen throughout the issues in this brief, the Utility has requested a rate increase that is grossly exaggerated in its "requirements," such as a $20 million AMI project, hundreds of thousands of dollars in criminal legal expenses and non-compliance fees relating to a wastewater plant, regulatory assets without cost categories, hundreds of thousands of dollars to socialize fees across all customers, etc. TR 45-46, 124-127, 150-152, 243-274. All of which have nothing to do with the provision of water services for customers. Even the decision to remove Mid-County is calculated to make the rate increase application appear more affordable. TR 206-207, 209. However, the Company's plan is to bring back Mid-County in a limited proceeding this year for the $29 million dollar ask, belying any genuine affordability concerns. TR 209.

Sunshine's excessive asks will have significant impacts on customers' bills while Sunshine fails to address the safe, reliable, and adequate water and wastewater services as required by statute. The Commission should scrutinize each project and, with its broad grant of legislative

authority, ensure that the rates paid by the customers of Sunshine are affordable. That can be readily achieved by backing out the $20 Million AMI project and associated costs.

ISSUE 42: Should the Utility's request to establish deferral accounts related to the Corix Infrastructure Inc. and SW Merger Acquisition Corp. merger be approved?

OPC: *No.*

ARGUMENT:

The Commission should deny the Utility's request to establish deferral accounts related to the Corix and Southwest merger and review the costs at a time more appropriate when the company can provide more information. The merger between Corix and Southwest was a business decision in which the newly formed parent, Nexus, knew the complete integration of the merger would take place multiple years after closure on April 1, 2024. TR 43. Nexus knew there would be costs associated with the decision to merge. TR 43. The Utility agrees that it's allowed to recover prudently incurred costs; those costs are the capital invested for providing water and wastewater service, and the Utility is expected to manage its business in a manner that addresses changes in costs and sales. TR 43-4. When questioned about whether the Company believes lost revenue is an appropriate category to be included in a regulatory asset, Sunshine witness Elicegui stated, "[t]he company believed that when it made the request, yes." TR 46. The inclusion of lost revenues in a regulatory asset is not a prudent method of managing changes in costs and sales. The ratepayers should not be forced to pay for any maladministration through a regulatory asset.

Sunshine failed to identify any cost categories or accounts to be included in the requested regulatory asset deferral accounts. TR 45. Instead, the Company provided names for overall "general categories." TR 45. Those names are the euphemistically-named "Integration Customer Protection Deferral Mechanism" and the even-more-creatively named "Local Integration Customer Protection Deferral Mechanism" TR 39. It was considerate of the Utility to include "customer protection" in the name of the deferral accounts, however neither the Commission nor OPC knows what customer protections have been offered. The names of the deferral assets provide no substance for decision making, and there was no opportunity to determine what value may be achieved by creating these regulatory assets.

ASC 980 is the Accounting Standards Codification titled "Topic 980 Regulated Operations." This accounting standard identifies the requirements for the authorization of regulatory accounting treatment that would allow a public utility to defer and amortize eligible costs or revenue over a prescribed period. ASC 980 permits a public utility to book costs or revenue to an appropriate deferral account in lieu of booking the costs or revenue in the current year as would be required under Generally Accepted Accounting Principles. Under ASC 980-340-25-1, the recognition of regulatory assets provides that:

> [a]n entity shall capitalize[71] all or part of an incurred cost[72] that would otherwise be charged to expense if both of the following criteria are met:
>
> a. It is probable[73] that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs[74] for ratemaking purposes.
>
> b. Based on available evidence; the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulators intent clearly be to permit recovery of the previously incurred cost.
>
> A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The Company failed to provide any evidence of what costs, benefits, categories, or accounts are associated with these regulatory asset deferral accounts. TR 39, 45. The Commission should deny these deferral accounts as there has been no competent substantial evidence to support the Utility's request that can be cited to, except for the name of the regulatory asset, and that the Company "believes the proposed deferral accounts provide customer protection for unknown scale or timing of potential impacts of the merger." TR 39. The Company also failed to provide any evidence that it is probable that future revenue at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for ratemaking purposes as required by ASC-980.

[71] Capitalize: Capitalize is used to indicate that the cost would be recorded as the cost of an asset. That procedure is often referred to as deferring a cost, and the resulting asset is sometimes described as a deferred cost. ASC 980-340-25-1.

[72] Incurred Cost: A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. ASC 980-340-25-1.

[73] Probable: The future event or events are likely to occur. ASC 980-340-25-1.

[74] Allowable Costs: All costs for which revenue is intended to provide recovery. Those costs can be actual or estimated. In that context, allowable costs include interest cost and amounts provided for earnings on shareholders' investments. ASC 980-340-25-1.

According to Mr. Destefano, the deferrals also provide flexibility from a ratemaking perspective in the current rate case. In this regard. Mr. Destefano further claimed that, should:

> [T]he Merger's impacts not develop according to initial plans, or new/unplanned benefits be identified and achieved, there will be no risk with foregoing reflecting Merger impacts in the approved revenue requirement, as they will be accrued to the benefit of customers. [Sunshine] therefore, believes its approach is a reasonable and prudent method to managing the uncertainty of the potential impacts of the Merger that balances the interest of all parties, including the Company's customers.

TR 39-40. This fails to meet the "probable" standard as defined by the ASC.

The Commission should avoid being pulled into creating a guestimate out of thin air by denying the requested regulatory asset deferral accounts if and until a future proceeding, after complete integration, when the company has provided real numbers derived from a complete financial impact statement, cost categories, and accounts from the merger (that the utility willingly incurred) should the Commission review the costs and the reasonableness of those costs. TR 44-5.

ISSUE 43: What is the appropriate amount by which rates should be reduced after the established effective date to reflect the removal of the amortized rate case expense?

OPC: *This is a fallout issue pending the resolution of Issue 25.*

ISSUE 44: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

OPC: *Yes. The Utility should be required to notify the Commission in writing that it has adjusted its books in accordance with any Commission ordered adjustments. Sunshine should submit a letter within 90 days of the final order in this docket confirming that the adjustments to all applicable NARUC USOA accounts have been made to the Utility's books and records.*

ISSUE 45: Should this docket be closed?

OPC: *Not at this time.*

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CERTIFICATE OF SERVICE
DOCKET NO. 20240068-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 14th day of March 2025, to the following:

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