BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC	Docket No.: 20250038-WS
In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC	Docket No.: 20250043-WS
In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC	Docket No.: 20250047-WS
In re: Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company, LLC	Docket No.: 20250052-WS

_____/

CSWR-FLORIDA's RESPONSE IN OPPOSITION TO CITIZENS' MOTION TO DISMISS WITH PREJUDICE OR ALTERNATIVE MOTION FOR SUMMARY FINAL ORDER AND TO HOLD DOCKET NO. 20250052-WS IN ABEYANCE

Between March 6, 2025 and March 18, 2025, CSWR-Florida Utility Operating Company, LLC ("CSWR-Florida") filed petitions for acquisition adjustments relating to its 2022 acquisitions of the North Peninsula Utilities Corporation wastewater system ("North Peninsula"), the Aquarina Utilities, Inc. water and wastewater systems ("Aquarina"), and the Sunshine Utilities of Central Florida, Inc. water systems ("Sunshine"). Dockets 20250038-WS, 20250043-WS, and 20250047-WS were opened respectively to address these petitions. On March 20, 2025, CSWR-Florida initiated a rate case by sending a test year approval request letter to the Chairman and Docket 20250052-WS was opened.

On April 17, 2025, the Office of Public Counsel ("OPC") filed an omnibus "Motion To Dismiss With Prejudice Or Alternative Motion For Summary Final Order And To Hold Docket

No. 20250052-WS In Abeyance" ("Motion"), asking the Commission to dismiss or enter summary final orders in the pending acquisition adjustment dockets and to hold the pending rate case docket in abeyance. The Motion suggests that the doctrine of administrative finality prohibits the Commission from deciding the acquisition adjustment petitions on their merits. The Motion then asks the Commission to hold the rate case in abeyance until the acquisition adjustment petitions are resolved. It cites no law or Commission precedent that supports its positions.

To the contrary, in past dockets OPC has itself taken the very position espoused here by CSWR-Florida, that an acquisition adjustment can be requested multiple times, and the Commission has agreed. The Commission has agreed with OPC that it is appropriate to raise the issue of an acquisition adjustment multiple times and that a past denial does not preclude the future issuance of an acquisition adjustment. The Commission has denied OPC's request for a negative acquisition adjustment during a transfer docket, then allowed OPC to raise the issue a second time in the subsequent rate case and then granted the negative acquisition adjustment sought by OPC. The Motion ignores this precedent, is otherwise without basis, and must be denied.

BACKGROUND

In the 2021 dockets to transfer the water and wastewater certificates of North Peninsula, Aquarina and Sunshine[1], CSWR-Florida requested positive acquisition adjustments under the version of the acquisition adjustment rule, 25-30.0371, F.A.C., that was in effect at the time. By Order PSC-2022-0116-PAA-SU, issued March 17, 2022, the Commission authorized the transfer of the North Peninsula wastewater system but denied CSWR-Florida's request for an acquisition adjustment, finding that despite numerous issues with the plant, "extraordinary circumstances"

[1] Docket Nos.: 20210133-SU (North Peninsula); 20210093-WS (Aquarina); 20210095-WU (Sunshine).

were not present. The Commission made similar decisions in the Aquarina and Sunshine transfer dockets.[2]

Between 2002 and 2024, "extraordinary circumstances" was the standard in the rule for granting a positive acquisition adjustment. Over those 22 years, no transfer of a water or wastewater system was found by the Commission to present "extraordinary circumstances" and no positive acquisition adjustment was allowed. The rule was in essence illusory.

The "extraordinary circumstances" standard was replaced with a new version of the acquisition adjustments rule that took effect on June 17, 2024. Under the new version of the rule, the Commission is to allow an acquisition adjustment if the system meets the rule's definition of a "non-viable" system, the acquisition was an arms-length transaction, and customers benefit from the acquisition. The new version of the rule allows for a petition for an acquisition adjustment at the time of the transfer application or within three years of the Commission's transfer order, which three year period can be extended for good cause. Rule 25-30.0371(2), F.A.C.

Between March 6, 2025, and March 18, 2025, under the new version of the rule, CSWR-Florida filed petitions for acquisition adjustments relating to its 2022 acquisitions of the North Peninsula, Aquarina, and Sunshine systems. The petitions were all timely filed under the new version of the rule because they were filed within three years after the Commission's transfer orders were issued.

By its Motion, OPC suggests two alternative theories under which CSWR-Florida's petitions should be dismissed or subject to a summary final order. First, OPC says the petitions are precluded under the doctrine of administrative finality -- that because the Commission denied

[2] Order No.: PSC-2022-0115-PAA-WS, issued March 15, 2022 (Aquarina); Order No.: PSC-2022-0120-PAA-WU, issued March 18, 2022 (Sunshine).

acquisition adjustments to CSWR-Florida once, in the transfer dockets under the prior version of the rule, that the Commission is now barred as a matter of law from deciding these petitions on their merits under the new version of the rule. Second, OPC suggests that CSWR-Florida is applying the revised acquisition adjustments rule retroactively and that the Commission cannot apply the rule as revised in 2024 to transfers that occurred in 2022. The doctrine of administrative finality does not apply and CSWR-Florida is not attempting to impermissibly apply the new version of the rule retroactively.

MEMORANDUM OF LAW

Commission precedent, arising from prior positions of OPC, is that acquisition adjustments can be requested multiple times. This is the opposite of the positions taken by OPC in its Motion, in which it does not mention its history on this issue. In a 1992 rate case involving Jasmine Lakes, a water and wastewater utility, the Commission imposed a negative acquisition adjustment at OPC's request, after first denying OPC's request for a negative acquisition adjustment in the transfer docket years earlier:

> It is the utility's position that no negative acquisition adjustment should be included in rate base. The utility argues that this Commission previously disallowed inclusion of a negative acquisition adjustment for the utility in PAA Order No. 23728, issued November 7, 1990, which became final and effective without protest. The utility further argues that the record in this case is devoid of evidence that extraordinary circumstances existed at the time of transfer.
>
> OPC witness Dismukes testified that a negative acquisition adjustment of $17,753 should be included in rate base. To support this position, OPC cites utility witness Dreher's testimony that the utility was in bad shape prior to purchase, that the utility had not been maintained in seven years, and that the previous owner had neglected the utility for a long time. OPC witness Dismukes concluded that recognition of this cost/book value difference should be made. OPC further argues that recognition of this difference would insulate the ratepayers from failures or negligence by the prior utility management.
>
> We agree with OPC. The facts of this case are such that even though this Commission did not include an acquisition adjustment to rate base in the transfer docket, Docket No. 900291-WS, we find that it is patently unfair and unjust to the customers of this utility, for

> the investors to receive a return on that portion of the original purchase price that was less than rate base. . . . Based on the foregoing, we find it appropriate to adjust rate base to include a negative acquisition adjustment of $6,495 to water and $11,258 to wastewater.

In Re: Application for a Rate Increase in Pasco County by Jasmine Lakes Utilities Corp., Order No.: PSC-93-1675-FOF-WS, Docket No.: 920148-WS, 1993 WL 13649174 (Fla. P.S.C. Nov. 18, 1993).

In a 1999 rate case involving Wedgefield Utilities, Inc., OPC cited the *Jasmine Lakes* order and got the same result. OPC was allowed to litigate an acquisition adjustment twice, once in the transfer docket where it was denied, then again in a rate case. Twice the Commission denied Wedgefield's motions for summary final order or to strike OPC's pleading seeking a negative acquisition adjustment after one had been denied in the earlier transfer docket:

> Wedgefield further alleges that the negative acquisition adjustment issue, as well as the factual basis for OPC's Protest and Petition in this case, were fully litigated in the prior transfer proceeding.
> . . .
> OPC cites Commission precedent in support of their argument that we may change a prior decision on acquisition adjustment.
> . . .
> In this case, OPC has pending discovery on the issue of negative acquisition adjustment. OPC asserts that it intends to establish through its discovery a change in circumstances sufficient to overcome our previous decision in acquisition adjustment. Therefore, we find that it is premature to decide whether a genuine issue of material fact exists when OPC has not had the opportunity to complete discovery and file testimony.

In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc., Order No. PSC-00-2388-AS-W, Docket No.: 991437-WU (Fla. P.S.C. Dec. 13, 2000) (denying motion for summary final order). Then in a subsequent order:

> Finally, Wedgefield argues that because this issue was decided in the transfer docket, the doctrine of administrative finality applies. Wedgefield states that "an underlying purpose of the doctrine of administrative finality is to protect those who rely on a judgment or ruling." *Reedy Creek Utilities Co. v. FPSC*, 418 So. 2d 249, 253 (Fla. 1982). Decisions of the Commission must eventually pass from its control and become final and no longer subject to modification. Order No. 248989, issued August 29, 2992, in Docket No. 910004-EU.

> . . .
> OPC alleges that Commission precedent allows us to change our decision about an acquisition adjustment for a company.
> . . .
> Weighing the severity of the remedy sought in the summary final order against the diminutive avoided costs and delay available, we find that the better and more cautious course is to deny the summary final order.

In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc., Order No. PSC-01-1554-FOF-WU, Docket No.: 991437-WU (Fla. P.S.C. July 27, 2001).

In its Motion against CSWR-Florida, OPC inexplicably contradicts its prior positions on this issue and the Commission precedent finding in OPC's favor that acquisition adjustments can be raised and litigated multiple times and that a prior denial does not preclude the future grant of an acquisition adjustment.

I. ADMINISTRATIVE FINALITY DOES NOT APPLY

OPC's Motion begins with a partial quote from *Peoples Gas System, Inc. v. Mason*, the seminal case on administrative finality in Florida, with no discussion of its facts. 187 So. 2d 335 (Fla. 1966). Analysis of an administrative finality issue has to start there. In *Peoples Gas*, the Florida Supreme Court held that the Commission did not have the power to reconsider an order issued four and a half years earlier approving a territorial service area agreement, absent a finding that doing so was in the public interest. Peoples Gas and City Gas had entered into a territorial service area agreement, which was approved by the Commission in 1960. *Id.* at 336. In 1962, Peoples Gas filed a civil action claiming City Gas was in breach of the contract and seeking specific performance and an injunction against continued violation by City Gas. *Id.* at 337. One of the issues raised was whether the Commission in 1960 had the authority to validate the territorial service area agreement between them in the first place.

While this issue was being litigated in the courts, in 1965 the Commission issued an order to Peoples Gas and City Gas to show cause why the Commission should not withdraw its prior 1960 approval of the agreement because factual circumstances had changed. *Id.* at 337. After a hearing the Commission entered an order rescinding and withdrawing the 1960 order, its approval of the territorial service agreement from five years earlier. *Id.* Notably, the Commission did not find that factual circumstances had changed but instead concluded that the earlier order approving the agreement exceeded the Commission's authority. *Id.* The Florida Supreme Court held that after entering the order approving the service area agreement, the Commission could not go back four or five years later and modify its prior order on the ground that it lacked the authority to enter the order in the first place. *Id.*

The Court concluded that administrative agencies in Florida have inherent power to reconsider final orders which are still under their control but that "this inherent authority to modify is a limited one." *Id.* at 338. The Court first cited *State v. Seaboard Air Line Ry. Co.*, for the proposition that the Commission "may of its own motion or by request correct or amend any order still under its control without notice and hearing to parties interested, provided such parties cannot suffer by reason of the correction or amendment, or if the matters corrected and amended were embraced in testimony taken at a previous hearing." 111 So. 391 (Fla. 1927).

The Court then cited *Leonard Bros. Transfer & Storage Co. v. Douglass*, in which it had held that an order of the Commission could not be considered as amending an earlier order. 32 So. 2d 156 (Fla. 1947). *Leonard Bros. Transfer & Storage Co.* concerned two subsequent applications for authority to conduct certain hauling operations. The Commission considered the second application after its order on the first application had long been final. The Commission's order on the second application attempted to correct an error in its order on the first application.

The Court concluded that "at the time of the hearing on the second application the hearing on the first application had been concluded and all interested parties had accepted the [first Order] . . . it will be considered that the hearing on the first application had become final; that we need only consider the second application, the hearing thereon and [the second Order]." *Id.* at 158. The first order was final and would not be revisited, but it did not preclude a second application on the same subject from being filed and considered.

After discussing these two cases, *State v. Seaboard Air Line Ry. Co.* and *Leonard Bros. Transfer & Storage Co. v. Douglass*, the Florida Supreme Court in *Peoples Gas* continued:

> The effect of these decisions is that orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.
>
> We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. For one thing, although courts seldom, if ever, initiate proceedings on their own motion, regulatory agencies such as the commission often do so. Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.

187 So. 2d at 339 (underlining added).

The Commission's order withdrawing its order from five years prior approving the Peoples Gas-City Gas service area agreement "went far beyond any power it has to modify an order previously entered." 187 So. 2d at 339. The Court noted that there were no changed circumstances or demonstrated public need or interest. *Id.* That is, had changed circumstances been present, or

if modification of the prior order was in the public interest, then administrative finality would not apply: "the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public . . . after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified." *Id.*

Under *Peoples Gas*, administrative finality may apply when the Commission is asked to revisit a prior order, what the Supreme Court called a "kind of second-guessing" by the Commission. *Id.* at 340. It does not apply to a new application involving different facts and applying different law. Moreover, administrative finality requires reliance on the order by the parties or public. After the Commission approved their territorial agreement, Peoples Gas and City Gas performed under the agreement and litigated whether it had been breached. They acted in reliance on the Commission's approval so vacating that approval five years later would harm their interests. As detailed below, *Peoples Gas* and its progeny support the ability of CSWR-Florida to file new acquisition adjustment petitions under the new version of the acquisition adjustments rule.

A. CSWR-Florida is not asking the Commission to reconsider its prior decisions under the prior version of the rule.

By Order PSC-2022-0116-PAA-SU, issued March 17, 2022, the Commission denied CSWR-Florida's request for an acquisition adjustment in the North Peninsula transfer docket, finding:

> [CSWR's] anticipated improvements in quality of service and compliance with regulatory mandates do not illustrate extraordinary circumstances, but instead demonstrate CSWR-North Peninsula's intentions to responsibly execute its obligations as a utility owner.

The Commission reached similar conclusions in the Aquarina and Sunshine transfer dockets. Those decisions are final. By this docket, CSWR-Florida is not asking the Commission to revisit those decisions or "second-guess" itself in the words of the Court in *Peoples Gas*.

Instead of seeking reconsideration, CSWR-Florida has timely filed new petitions under the new version of the rule. Administrative finality does not prohibit an applicant or petitioner from applying for a license or a permit or an acquisition adjustment a second time just because it was denied once in the past. While OPC refers to administrative finality, it is essentially arguing res judicata, that because CSWR-Florida requested acquisition adjustments once, it cannot do so a second time. This is not the law. *Matthews v. State ex rel. St. Andrews Bay Transp. Co.*, 149 So. 648, 649 (Fla. 1933) (holding that "[a]n order of the railroad commission . . . while quasi judicial in character, is not res adjudicata of another application of exactly the same nature subsequently filed" and that "[e]very promulgated order of . . . the railroad commission, may be superseded by another order"); *Thomson v. Dept. of Envtl. Reg.*, 511 So. 2d 989, 991 (Fla. 1987) (holding that the department improperly denied a second permit application where the facts had changed from the first application and stating that "[t]he proper rule in a case where a previous permit application has been denied is that res judicata will apply only if the second application is not supported by new facts, changed conditions, or additional submissions by the applicant"); *Felder v. State, Dept. of Mgt. Services, Div. of Ret.*, 993 So. 2d 1031, 1035 (Fla. 1st DCA 2008) (noting "the doctrine of administrative finality is based on principles similar to those supporting collateral estoppel and res judicata, except that its emphasis is on litigants' need to have confidence in the authority of an administrative order").

B. The facts and circumstances have changed since the 2022 transfer of the North Peninsula, Aquarina, and Sunshine systems to CSWR-Florida.

As the Florida Supreme Court held in *Peoples Gas*, "the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time." 187 So. 2d at 339. In its Motion, OPC says "CSWR has not provided any facts or circumstances, almost three years after the initial decision, that the Commission did not already consider." This is flat false.

The North Peninsula transfer application was filed on August 9, 2021.[3] When it requested an acquisition adjustment as part of the transfer docket, CSWR-Florida did not own the system. The limited information that it had came only from pre-acquisition due diligence. CSWR-Florida's purchase of the North Peninsula system closed on May 26, 2022. It has since had close to three (3) years of experience in owning and operating the system. On March 6, 2025, CSWR-Florida filed its Petition for an acquisition adjustment under the new version of the rule.[4] The 684-page 2025 Petition details significant facts about North Peninsula that had not yet occurred or were not known at the time of transfer in 2022 and it addresses prospective issues, like expense and revenue projections, that were not issues under the prior version of the rule. These include:

- the extreme level of deterioration of the wastewater treatment facility;
- the former owner's insolvency and how that impacted operation of the system;
- expansion of the CSWR affiliate group and the company resources that benefit customers;
- the post-closing status of FDEP compliance issues that arose from the conduct of the prior owner and CSWR-Florida's work with FDEP towards bringing the system back into environmental compliance;
- CSWR-Florida's extensive actions to repair and upgrade the system;
- CSWR-Florida's plans for the ultimate decommissioning of the wastewater treatment facility;
- the 5-year projected impact of CSWR-Florida's acquisition of the system on the cost of providing service to customers, operation and maintenance cost savings and economies of

[3] Docket No.: 20210133.
[4] Docket No.: 20250038.

scale, the impact of plant infrastructure additions, along with the minimal projected rate impact if the Commission allowed an acquisition adjustment; and

- a comprehensive wastewater treatment system assessment.

Similar changed circumstances are shown in the Aquarina and Sunshine petitions. A reason the acquisition adjustment rule was revised to allow petitions to be filed for at least three years post-closing was the recognition that at the time of transfer all the relevant facts and circumstances relating to the system may not be known or knowable. Because of these "new facts, changed conditions, or additional submissions," administrative finality cannot apply and the petitions must be considered on their merits. *Thomson*, 511 So. 2d at 991.

C. The revisions to the acquisition adjustments rule since the transfer of the systems to CSWR-Florida constitute changed circumstances that preclude the application of administrative finality.

The acquisition adjustment rule was rewritten in 2024, deleting the prior "extraordinary circumstances" standard for a new standard based on whether the acquired system is non-viable, the sale was at arms-length, and customers benefit from the acquisition. This change in the rule constitutes changed circumstances precluding the application of administrative finality to CSWR-Florida's current petitions.

In *Delray Medical Center, Inc. v. State, Agency for Health Care Admin.*, the Fourth District held that the ensuing repeal of an administrative rule constituted changed circumstances such that administrative finality did not apply to a hospital's second application for a certificate of need. 5 So. 3d 26 (Fla. 4th DCA 2009). In *Delray Medical Center, Inc.*, a hospital applied for a certificate of need in 2003, which was denied. *Id.* at 28. In 2005, the hospital reapplied, the certificate was granted, and challengers took an appeal. *Id.* The challengers' primary argument was that the second application was subject to administrative finality arising from the denial of the first

application. The Court disagreed, first noting that "Florida favors administrative hearings to develop and flesh out the differences between successive administrative applications." *Id.* at 30.

Between the first and second applications, an administrative rule setting forth the agency's methodology for determining need for new acute care beds was repealed and so need was evaluated differently with the second application. *Id.* The Court said this repeal "altered the legal and evidentiary framework for assessing need for acute care hospital projects" and held that because of this change in the rule by its deletion, and changed factual circumstances, administrative finality did not apply. *Id.* at 30-31. Just as need was evaluated differently with the second application in *Delray Medical Center, Inc.*, acquisition adjustments are now evaluated differently under the new version of the acquisition adjustments rule, constituting a change of circumstances that precludes administrative finality.

D. No person has taken any action in reliance on the Commission's prior denials of acquisition adjustments to CSWR-Florida.

A key element of administrative finality is that parties or the public have taken action in reliance on the prior decision following the "terminal point in every proceeding at which the parties and the public may rely on a decision." *Peoples Gas*, 187 So. 2d at 339. In *Peoples Gas*, it was two gas companies that had acted in reliance on the Commission's approval of a territorial agreement between them by performing under the contract. Second-guessing that approval five years later would have prejudiced and harmed the parties to that contract, therefore administrative finality applied.

Reedy Creek Utilities Co. v. Fla. Pub. Serv. Comm'n, cited by OPC in its Motion, involved a docket opened by the Commission to investigate the effect of a change in federal law that reduced the tax rates paid by utility companies and other corporations from 48% to 46%. 418 So. 2d 249 (Fla. 1982) This tax reduction could cause utilities to exceed a fair and reasonable return upon

their investment and the utilities could be required to refund these revenues to their customers. *Id.* at 251. The Commission ordered Reedy Creek Utilities to refund $47,833, which order became final, then three (3) months later issued a "supplementary order" increasing the refund amount to $93,281. *Id.*

In challenging the increased amount, Reedy Creek argued the earlier lower refund amount was subject to administrative finality and could not be subsequently increased. The Florida Supreme Court disagreed, concluding there had been no action by Reedy Creek in reliance on the first order with the lower refund amount:

> An underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling. We find that Reedy Creek did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence.

Id. at 254.

No person has taken any action in reliance on the Commission's 2022 denials of acquisition adjustments relating to the North Peninsula, Aquarina and Sunshine systems under the former version of the rule. On page 4 of the Motion, OPC says the denials "were the terminal point in which the parties and the public relied on as the final and dispositive decision of all material issues of law and fact" but cites no action OPC or anyone else took in reliance on the denials. This alone is a sufficient basis to deny the Motion.

E. An acquisition adjustment is a decision relating to ratemaking, which is never final.

Under the new version of the rule, a petition for an acquisition adjustment is a request "to include some or all of a positive acquisition adjustment in the acquired utility's rate base." Rule 25-30.0371(2), F.A.C. As such, whether to grant an acquisition adjustment is a decision directly relating to ratemaking, which can never be final. *Sunshine Utilities v. Florida Public Service Comm'n*, 577 So. 2d 663 (Fla. 1st DCA 1991) (holding "the issue of prospective rate-making is

never truly capable of finality"). *Sunshine Utilities* concerned a situation where the Commission issued an order setting the utility's initial rate base, then four years later noticed that the order contained an incorrect assumption and required the utility to make a refund to customers. *Id.* at 664. The First District held the Commission could go back four years later and correct its error:

> *Peoples Gas* . . . and *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679 (Fla. 1979), recognize an exception to the doctrine of administrative finality where there is a demonstrated public interest. Unlike the issues raised in those cases (authority to approve territorial agreements and the dormancy of transportation certificates), the issue of prospective rate-making is never truly capable of finality.

Id. at 666. As an issue relating to ratemaking, whether to grant an acquisition adjustment is not an issue capable of finality. Denial once does not preclude approval in the future.

F. The public interest favors considering the petitions on their merits as the purpose of the rule is to encourage consolidation and acquisition of failing water and wastewater systems.

CSWR-Florida is not asking the Commission to revisit or second-guess its orders from 2022 denying acquisition adjustments under the former version of the rule. Accordingly, administrative finality cannot apply. Nonetheless, even if it did, there is a recognized exception "where there is a demonstrated public interest." *Sunshine Utilities*, 577 So. 2d at 666. The public interest favors consideration of CSWR-Florida's petitions on their merits. The acquisition adjustments rule was revised in 2024 to encourage the acquisition and consolidation of smaller water and wastewater systems, especially failing systems in need of rehabilitation. The staff recommendation to approve the revised rule noted that "[i]t was identified at the workshop that [the rule], last amended in 2010, was outdated and in need of modernization in order to prioritize the acquisition of smaller, troubled systems" and that "regulatory requirements [under the revised rule] for a 'non-viable' utility mimic the traditional purpose of the rule, to incentivize the

acquisition of 'troubled systems' that are in financial distress or unable to provide safe service."[5] Throughout the history of the former version of the rule, no positive acquisition adjustment was ever granted. The customers of failing systems need to have those systems acquired and rehabilitated. Hearing acquisition adjustment cases, and granting a positive acquisition adjustment when the standard of the new rule is met, furthers that public interest.

II. CSWR-FLORIDA IS NOT APPLYING THE NEW VERSION OF THE ACQUISITION ADJUSTMENTS RULE RETROACTIVELY

Granting CSWR-Florida acquisition adjustments under the new version of the rule, 25-30.0371, F.A.C., would not involve retroactive application of a rule. CSWR-Florida's petitions relating to the North Peninsula, Aquarina, and Sunshine systems are based on facts relating to the systems as of when the petitions were filed in March, 2025, which petitions include cost and revenue projections for the next five (5) years. They are not based on a single static event that occurred before the new version of the rule became effective. The new version of the rule allows for petitions to be filed within three (3) years after the transfer order, or longer for good cause shown. This recognizes that the facts relating to the condition of the transferred systems and the impact of the transfer on customers take time to become fully developed and may have changed since the date of the transfer itself.

The fundamental test for retroactivity is whether applying a rule or statute "attaches new legal consequences to events completed before its enactment." *Love v. State*, 286 So. 3d 177, 187 (Fla. 2019) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269–70 (1994)). A rule or statute "does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment." *Id.* Applying the new June 17, 2024, version of the

[5] Document No.: 00875-2024, Docket No.: 20240022-WS (Feb. 22, 2024).

acquisition adjustments rule to CSWR-Florida's current petitions does not attach new consequences to a completed event but rather applies the current procedural standards to petitions properly brought before the Commission.

Moreover, the new version of the rule is procedural in nature. Whether a rule or statute may be applied retroactively is determined by whether it is substantive or procedural. "Statutes relating to remedies or modes of *procedure,* which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes." *Smiley v. State*, 966 So. 2d 330, 334 (Fla. 2007) (alterations in original). "Substantive law has been described as that which defines, creates, or regulates rights -- 'those existing for their own sake and constituting the normal legal order of society, i.e., the rights of life, liberty, property, and reputation.'" *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1224 (Fla. 2018). "Procedural law . . . is the form, manner, or means by which substantive law is implemented. . . . [and] 'includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.'" *Id.* at 1224–25.

Here, the substantive rights are shown by the statutes implemented by the acquisition adjustments rule: § 367.071(5) ("The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof . . . ."); § 367.081(2)(a) ("The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. . . ."); § 367.121(1)(a) (". . . the commission shall have power . . . [t]o prescribe fair and reasonable rates and charges . . . .").

The acquisition adjustments rule implements this statutory authority by establishing the specific process and standards for evaluating acquisition adjustments, a component of rate-setting. Rule 25-30.0371, F.A.C. The new 2024 version of rule 25-30.0371 altered the procedure by which the Commission evaluates eligibility for a positive acquisition adjustment. It changed the evaluative standards, replacing the former "extraordinary circumstances" test with analyses based on the acquired system's non-viability and customer benefits from the acquisition. Additionally, the new version of the rule permits utilities to petition the Commission for an acquisition adjustment within three years of transfer approval by the Commission. Rule 25-30.0371(2), F.A.C. These changes modify the "means and methods" the Commission uses, the "steps by which" the utility seeks cost recovery through the adjustment, and the "method of conducting" the decision-making process, not the underlying substantive right to seek fair rates. *See Love*, 286 So. 3d at 182, 186. Such modifications are a procedural change. *Id.* (concluding that altering the burden of proof standard was procedural); *Russell Corp. v. Jacobs*, 782 So. 2d 404, 405 (Fla. 1st DCA 2001) (finding that an amendment changing which entity decides an issue was procedural because it only altered the means of enforcement).

Moreover, the Florida Supreme Court has clarified that applying new procedural rules often depends on the posture of the case and is not considered impermissibly retroactive. *See Love*, 286 So. 3d at 187. "Because rules of procedure regulate secondary rather than primary conduct, the fact that a new procedural rule was instituted after the conduct giving rise to the suit does not make application of the rule at trial retroactive." *Id.* at 187 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 (1994)). The relevant "posture" here is CSWR-Florida's current 2025 petitions for acquisition adjustments. Rule 25-30.0371 permits CSWR-Florida to file petitions "anytime within 3 years of the issuance date of the Commission order approving the transfer." Rule 25-30.0371(2),

F.A.C. CSWR-Florida timely filed its pending petitions under the June 17, 2024, version of rule 25-30.0371. Applying the current procedural standard within the timeframe explicitly allowed by that standard constitutes a prospective application of the rule from its effective date. *See Pearlstein v. King*, 610 So. 2d 445, 446 (Fla. 1992) (applying a new procedural time limit from its effective date to pending cases was prospective, not retroactive).

Applying the new version of the rule to new petitions is not a prohibited retroactive application. The Commission should evaluate the petitions on their merits under the standards and procedures set forth in the new version of the rule.

III. THERE IS NO BASIS TO HOLD THE RATE CASE IN ABEYANCE

On March 20, 2025, CSWR-Florida initiated the rate case, Docket No.: 20250052-WS, by sending a test year approval request letter to the Chairman. On March 31, 2025, CSWR-Florida filed an amended test year letter, which was approved on April 8, 2025. OPC intervened on April 4, 2025 and filed its Motion on April 17, 2025, which asks the Commission to hold the rate case in abeyance pending resolution of the acquisition adjustment dockets.

The rate case is currently proceeding on a hearing track, with minimum filing requirements ("MFRs") to be filed by May 23, 2025. Other than CSWR-Florida working to complete its application, MFRs, and other supporting materials, there is no pending activity in this case. No hearing date has been set or procedural order issued. By the Motion, OPC seeks to deprive CSWR-Florida of its statutory and due process rights to file a rate case and seek just and compensatory rates. There is no basis to hold this rate case in abeyance and the Motion should be denied.

The prehearing officer may issue orders "necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding." Rule 28-106.211, F.A.C. Holding the rate case in abeyance

would be directly contrary to the rule. Rather than prevent delay, abeyance would itself be a delay of the rate case proceeding. Bringing this rate case to a full stop, especially while it is in this preliminary phase, would serve no purpose.

Abeyance would undermine the "just . . . determination" of this case and violate CSWR-Florida's due process rights. By statute, CSWR-Florida is entitled to file for rates that are "just, reasonable, compensatory, and not unfairly discriminatory." § 367.081(2), Fla. Stat. The Motion seeks to prevent CSWR-Florida from filing its rate case. The water and wastewater systems CSWR-Florida acquires are generally in very bad condition.[6] Plant repairs and maintenance have been deferred or ignored, planning for system updates has been nonexistent, environmental compliance actions have piled up, and the rates are inadequate. CSWR-Florida acquires failing systems and rehabilitates them. Since 2022, CSWR-Florida has acquired eleven (11) such systems in Florida. Between acquisitions, repairs and upgrades to water and wastewater facilities, CSWR has invested over $71 million in the state of Florida.

The rates of some of these systems have not been reviewed and revised for decades and at the time of their acquisitions some of the systems reflect negative net incomes -- i.e., their rates are not sufficient to cover day-to-day operating costs. Consequently, in addition to the investment required to repair and upgrade the systems CSWR-Florida must provide working capital to cover operating losses until it can put in place fully compensatory service rates. By this rate case, CSWR-Florida seeks statewide consolidation of the rates of these systems at an appropriate level. Until it gets new rates, CSWR-Florida is forced to operate them at a loss, on top of needing to invest millions of dollars in plant repairs and upgrades. Accordingly, abeyance is not "just" under

[6] See CSWR-Florida's Petition for an acquisition adjustment relating to the former North Peninsula wastewater system (Docket No.: 20250038) as an example.

these circumstances and would instead prejudice CSWR-Florida by delaying new, consolidated, and appropriate rates. There is no basis to deprive CSWR-Florida of its statutory right to appropriate rates through an indefinite delay.

Although CSWR-Florida intends to include the acquisition adjustments it seeks in its requested revenue requirement, the rate case docket is not dependent on a resolution of the pending acquisition adjustment dockets. If the Commission denies, in whole or in part, CSWR-Florida's requests for acquisition adjustments the revenue requirement can be appropriately adjusted in the Commission's final rate order.

Abeyance may be appropriate in other types of cases when it serves some practical purpose of the parties, the public and the Commission. *See, e.g., In Re: Petition for Modification of Territorial Order*, Order No.: PSC-2018-0036-PCO-EU, Docket No.: 20160049-EU, 2018 WL 401918, at *1 (Fla. P.S.C. Jan. 11, 2018) (holding docket in abeyance while the parties negotiated and consummated a sale that would resolve disputed issues); *In Re: Initiation of Show Cause Proceedings Against Kincaid Hills Water Co.*, Order No. PSC-2018-0166-PCO-WU, Docket No.: 20170200-WU, 2018 WL 1559961, at *1 (Fla. P.S.C. Mar. 27, 2018) (holding certificate revocation proceedings in abeyance in light of the system being acquired and pending resolution of the docket transferring away its certificate of authorization); *In Re: Application for Transfer of Facilities, Certificates Nos. 353-W, 309-S in Lee Cnty. from MHC Sys., Inc.*, Order No.: PSC-01-0540-PCO-WS, Docket No.: 000277-WS, 2001 WL 334007 (Fla. P.S.C. Mar. 7, 2001) (holding transfer docket in abeyance while reviewing settlement agreement which if approved would obviate the need for a hearing). However, these situations where abeyance was found to be appropriate did not deprive an applicant utility like CSWR-Florida of its statutory and

constitutional right to timely consideration of its request for rates that are just, reasonable, and compensatory.

CONCLUSION

WHEREFORE, CSWR-Florida requests that the OPC Motion be denied. As demonstrated above, the petitions for acquisition adjustments are not barred by administrative finality, and the petitions do not seek retroactive application of Rule 25-30.0371, F.A.C. Further, OPC's Motion provides no legitimate basis to hold the rate case in abeyance depriving CSWR-Florida of its statutory right to appropriate rates through an indefinite delay.

Respectfully submitted this 24th day of April, 2025.

/s/ Thomas A. Crabb
Susan F. Clark, FBN 179580
Thomas A. Crabb, FBN 25846
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, FL 32301
(850) 425-6654
sclark@radeylaw.com
tcrabb@radeylaw.com
Attorneys for CSWR-Florida UOC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail on this 24th day of April, 2025, to the following:

Walt Trierweiler
Austin Watrous
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee FL 32399-1400
(850) 488-9300
trierweiler.walt@leg.state.fl.us
watrous.austin@leg.state.fl.us

Daniel Dose
Jennifer Crawford
Jennifer Augspurger
Douglas Sunshine
Samantha Cibula
Ryan Sandy
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ddose@psc.state.fl.us
jcrawfor@psc.state.fl.us
jaugspur@psc.state.fl.us
dsunshin@psc.state.fl.us
scibula@psc.state.fl.us
rsandy@psc.state.fl.us

Aaron Silas
CSWR-Florida Utility Operating Company
1630 Des Peres Road, Suite 140
Des Peres, MO 63131
asilas@cswrgroup.com
regulatory@cswrgroup.com

/s/ Thomas A. Crabb
Thomas A. Crabb