

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-
30.0371, FAC, Acquisition Adjustments.

DOCKET NO. 20240022-WS
ORDER NO. PSC-2024-0176-FOF-WS
ISSUED: May 28, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO

NOTICE OF ADOPTION OF RULE

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted without changes Rule 25-30.0371, Florida Administrative Code.

The rule was filed with the Department of State on May 28, 2024, and will be effective on June 17, 2024. A copy of the rule as filed with the Department is attached to this Notice.

This docket is closed upon issuance of this Notice.

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By ORDER of the Florida Public Service Commission this 28th day of May, 2024.



ADAM J. TEITZMAN
Commission Clerk
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

DDS

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

25-30.0371 Acquisition Adjustments.

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

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

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

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

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

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

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

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

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

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

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

(2) Petition. A utility that acquires another utility may petition the Commission to establish an acquisition adjustment under either subsection (3) or subsection (4) of this rule to include some or all of a positive acquisition adjustment in the acquired utility’s rate base. A utility may seek approval of a positive acquisition adjustment at the time the utility seeks approval to transfer the certificate of authorization or anytime within 3 years of the issuance

date of the Commission order approving the transfer of the certificate of authorization. The utility may request an extension of the 3-year period, which must include a statement of good cause. The petition for a positive acquisition adjustment may be made as a separate filing or as part of a rate proceeding.

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

(a) A full or partial positive acquisition adjustment will be allowed if it is demonstrated that the acquired utility meets the definition of non-viable utility under paragraph (1)(e) of this rule; that the purchase was made as part of an arms-length transaction; and that customers from the acquired utility will benefit from the acquisition. In determining whether the acquired utility customers benefit, the Commission will consider the following factors:

1. Anticipated improvements in quality of service;

2. Anticipated improvements in compliance with water or wastewater regulatory requirements;

3. Anticipated impacts on the cost of providing service over the next 5 years from the date of acquisition;

4. Anticipated cost efficiencies, including any economies of scale;

5. Ability to attract capital at reasonable cost; and

6. The professional and experienced managerial, financial, technical, and operational resources of the acquiring

utility.

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

1. The amount of the acquisition adjustment requested;

2. The amortization period requested;

3. An explanation of how the acquisition was made as part of an arms-length transaction;

4. The contract of sale, including the estimated cost of the fees and transaction closing costs to be incurred by

the acquiring utility;

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

6. A statement as to whether the acquired utility is insolvent or unable to service its debt obligations;

7. A description of the acquiring utility's managerial, operational, financial, or technical capabilities to furnish and maintain safe and adequate service and facilities over the next 5 years from the date of acquisition;

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

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

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

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

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

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

(4) Positive Acquisition Adjustments for Viable Utility.

(a) A full or partial positive acquisition adjustment will be allowed if the acquiring utility demonstrates that the purchase was made as part of an arms-length transaction and the transaction incorporating the full or partial positive acquisition adjustment is projected to provide a positive cumulative present value of the revenue requirements

(CPVRR) customer benefit over a 5-year period from the date of acquisition. If the CPVRR does not result in a positive customer benefit over the 5-year period, the Commission will consider the following factors in determining whether to allow a full or partial acquisition adjustment:

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

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

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

acquiring utility;

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

purchased;

6. A CPVRR in the form of a spreadsheet. Form PSC 1034 (3/24), entitled “Water and/or Wastewater Utilities

Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment Worksheet,” which is

incorporated by reference in this rule and is available at [http://www.flrules.org/Gateway/reference.asp?No=Ref-](http://www.flrules.org/Gateway/reference.asp?No=Ref-16619)

16619, is an example CPVRR that may be completed and included in the acquiring utility’s petition to comply with

this subparagraph. The form may also be obtained from the Commission’s website, www.floridapsc.com;

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

formulas intact;

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

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

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

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

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

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

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

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

(8) Notice. At the time the petition is filed with the Commission, the acquiring utility must provide a draft notice for review by Commission staff. Commission staff will review the draft notice within 7 days. Once staff has approved the notice, the acquiring utility must provide notice by regular mail to the Office of Public Counsel and by regular mail or personal service to each customer and owner of property located within the service area for both the acquiring utility and the utility being acquired, to the extent the utilities' customers are within the Commission's

jurisdiction. The notice required by this rule may be combined with the notice of Application for Authority to Transfer issued pursuant to Rule 25-30.030, F.A.C., or for existing customers, the notice may be included in their next bill. The notice must contain:

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

(b) A statement that the utility has filed a petition with the Commission to establish an acquisition adjustment for either a viable or a non-viable utility system;

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

(d) The docket number associated with the petition;

(e) A statement of the 5-year projected rate impact or the anticipated effect of the requested acquisition adjustment on rates for the next five years;

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

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

(h) A statement that any customer substantially affected by the petition may file a motion to intervene in accordance with Rule 28-106.205, F.A.C.

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

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