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October 15, 2001

Ms. Blanca Bayo
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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Re: Docket No. 001502-WS, Proposed Rule 25-30.0371, Acquisition Adjustments

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of the following documents:

1. Comments and suggested changes to Staff's draft rules filed with the Staff recommendation as attachments "A" and "B".

This matter will be considered as item #3 on the agenda for October 16.

Thank you for your assistance.

Sincerely yours,

Ben E. Girtman

Encl.

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DOCKET NO. 001502-WS
 PROPOSED RULE 25-30.0371, ACQUISITION ADJUSTMENT
 PSC AGENDA CONFERENCE - OCTOBER 17, 2001
 COMMENTS OF UTILITIES, INC. (UINC) ON THE STAFF RECOMMENDATION

I. UTILITIES, INC. SUPPORTS STAFF'S ALTERNATIVE
 RECOMMENDATION, WITH CLARIFICATION REGARDING FINALITY

UINC strongly supports the Staff's alternative recommendation (Staff's Attachment "B"), dependent on clarification of proposed subsection (6) with regard to finality. As the Commissioners may recall, finality of the process was a major concern of UINC and of several other utilities which participated in the Commission workshop held on February 7, 2001. We would, therefore, like Staff to clarify that the intent of paragraph (6) is as we interpret it. That interpretation is as follows:

First, if there is a finding that extraordinary circumstances do not exist at the time of transfer, and, therefore, no acquisition adjustment to rate base is made at the time of transfer, the issue cannot be revisited for modification at a later time.

Second, if there is a finding that extraordinary circumstances do exist, and, therefore, an acquisition adjustment to rate base is made at the time of transfer, the issue can be revisited only during the approved amortization period following the transfer order, as indicated in draft "B" of rule 25-30.0371(5).

The revisions UINC has proposed to subsection (6) of draft "B" will satisfy its concerns regarding finality.

II. UINC'S UNDERSTANDING OF STAFF'S PRIMARY RECOMMENDATION,
 DRAFT "A"

UINC understands Staff's primary recommendation to be a compromise regarding the treatment of purchases at less than book value. The purpose of that compromise appears to be to reduce the cost of future proceedings by diminishing controversy over acquisition adjustments, and apparently to mollify what Staff describes as concerns regarding increases in rates in the early years following a purchase at less than book value - potential "rate shock", if you will. If an increase in rates to fully compensable rates is to be considered "rate shock", then the customers have obviously been benefitting from rates that are less than fully compensable.

Furthermore, although Staff's alternative "A" is presented as a "compromise" for the purpose of mollifying so-called "rate shock", we understand

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that it is not Staff's intent for this to be a compromise of historical precedent. Nowhere in the recommendation is there any indication that there is a disagreement with, or suggestion to overturn, the previous, clear and unequivocal Commission findings that form the basis for current acquisition adjustment policy. These findings include,

- (1) absent extraordinary circumstances, the purchase of a utility at a premium or discount shall not affect rate base [92 FPSC 2:409], that is, the buyer steps into the shoes of the seller [82 FPSC 10:180];
- (2) the buyer earns on the rate base of the seller, and the customers are not harmed by this policy because rates do not change from what they otherwise would be, if the utility had not changed hands [92 FPSC 2:411]; and
- (3) the acquisition adjustment issue does not depend on price differential [98 FPSC 8:249]. This price differential is the essence of the problems of finality which are inherent with the primary recommendation, draft A”.

III. UINC'S COMMENTS ON STAFF'S PRIMARY RECOMMENDATION

With reduction in the cost of future proceedings as the goal, UINC see that there can be a benefit in the Staff's primary recommendation, even though UINC prefer's Staff's alternative recommendation. That being said, UINC has comments with regard to three issues of the primary recommendation. The first is the baseline differential for earnings review. The second is the length of the amortization period. The third is the need for finality in the process.

A. UINC's comments regarding baseline differential for earnings review

The Staff recommendation proposes that a differential between purchase price and net book value in excess of 20% be recognized as a negative acquisition adjustment for rate cases filed within the amortization period. That means, that even though this Commission has historically recognized that price differential is not an extraordinary circumstance that warrants including an acquisition adjustment in rate base [98 FPSC 8:249], Staff is recommending that some amount of an acquisition adjustment shall be included in rate base for a period of time. UINC recognizes that this is an attempt to deter what has been mischaracterized as “rate shock”, even though such a rate increase, here characterized as “rate shock”, could have legitimately and legally been obtained if the original owner had sought fully compensable rates and no transfer had occurred. UINC is not adverse to that approach as a compromise, even though the price differential has been found by this Commission to not be a basis for including an acquisition adjustment in rate base.

B. UINC's recommendation regarding the amortization period

With regard to the amortization period, we believe that five years following that date of the transfer order is too long. During the workshop, a three-year period for staying out of a rate case was discussed. Even the statutory requirement for

amortizing rate case expenses is set at only four years, in an attempt to recognize that four years between rate increases is a reasonable goal. We believe three years following the date of the transfer order is a sufficient length of time. Since a transfer order is not issued for several months, or even a year, following a purchase and application for transfer, nearly four years time will have elapsed from the time a purchaser takes responsibility for a system and the end for a three-year amortization period. Therefore, we propose that the three years discussed at the workshop be adopted, making that three years after the issue of the transfer order. The five years after the Commission order in Staff's primary recommendation actually becomes six years after the purchase.

C. UINC's recommendation regarding finality

With regard to finality, we would like Staff to verify whether the intent of the paragraph is as we interpret it.

First, absent proof of extraordinary circumstances, and a differential less than the designated percentage between purchase price and net book value, there will be no acquisition adjustment. None at all. The issue cannot be revisited for modification.

Second, absent proof of extraordinary circumstances but with a differential of more than the designated percentage between purchase price and net book value, there will be a negative acquisition adjustment equal to the differential in excess of that percentage, to be amortized over the set number of years. The issue cannot be revisited for modification.

Third, only an acquisition adjustment based on extraordinary circumstances can be revised for modification, and then only up to the end of the approved amortization period.

If Staff can verify these interpretations, and we can reach a compromise with regard to the amortization period, UINC may be in a position to not take issue with the primary recommendation. UINC's revisions to Staff's proposed attachment "A" will satisfy its concerns regarding finality.

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25-30.0371 Acquisition Adjustment.

(1) Definition. For purposes of this rule, an acquisition adjustment is defined as the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the utility assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. A negative acquisition adjustment exists when the net book value is greater than the purchase price.

(2) Positive Acquisition Adjustments. A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any entity that believes a full or partial positive acquisition adjustment should be made has the burden to prove the existence of those extraordinary circumstances. In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, and anticipated cost efficiencies.

(3) Negative Acquisition Adjustments. A negative acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances unless the difference between the net

1 book value and the purchase priced exceeds 20 percent of net book
2 value. If the difference does exceed 20 percent of net book value
3 then the inclusion of a negative acquisition adjustment shall be
4 calculated pursuant to section (b) below.

5 (a) Any entity that believes a full or partial negative
6 acquisition adjustment should be made has the burden to prove the
7 existence of those extraordinary circumstances. In determining
8 whether extraordinary circumstances have been demonstrated, the
9 Commission will consider evidence provided to the Commission such
10 as the anticipated retirement of the acquired assets and the
11 condition of the assets acquired.

12 (b) If the difference between purchase price and net book
13 value exceeds 20 percent of net book value, then the amount in
14 excess of 20 percent shall be recognized for ratemaking purposes as
15 a negative acquisition adjustment, but not used for any earnings
16 review unless the purchaser files for a rate increase pursuant to
17 section 367.081(2), 367.0814, 367.0817 or 367.0822, F.S. based on
18 a test year that ends within three years after the date of the
19 order approving the transfer of assets. The negative acquisition
20 adjustment shall be amortized over a 3-year ~~5-year~~ period unless a
21 shorter ~~or longer~~ period can be justified.

22 (4) Amortization Period. The Commission shall establish the
23 amortization period for any included acquisition adjustment,
24 excluding any acquisition adjustment booked under subsection (3) (b)
25 above, ~~on a case-by-case basis.~~ The Commission in setting the

1 amortization period will take into account the composite remaining
2 life of the assets purchased or the condition of the assets
3 purchased. Amortization of the acquisition adjustment shall begin
4 on the date of the order transferring the assets and may not be
5 extended past the period originally set in that order.

6 (5) Subsequent Modification. Any full or partial acquisition
7 adjustment, once made by the Commission, may be subsequently
8 modified if the extraordinary circumstances do not materialize, or
9 subsequently are eliminated or changed, and the request for such
10 modification is made within the amortization period established
11 pursuant to subsection (3) (b) of this rule five years after of the
12 date of the order approving the transfer of assets. If no
13 acquisition adjustment is approved by the Commission at the time of
14 transfer, that decision cannot be modified.

15 Specific Authority: 350.167.(2), 367.121(1)(f), FS.

16 Law Implemented: 367.071(5), 367.081(2)(a), 367.121(1)(a) and (b),
17 FS.

18 History: New _____.

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2 25-30.0371 Acquisition Adjustment.

3 (1) For purposes of this rule, an acquisition adjustment is
4 defined as the difference between the purchase price of utility
5 system assets to an acquiring utility and the net book value of the
6 utility assets. A positive acquisition adjustment exists when the
7 purchase price is greater than the net book value. A negative
8 acquisition adjustment exists when the net book value is greater
9 than the purchase price.

10 (2) An acquisition adjustment shall not be included in rate
11 base absent proof fo extraordinary circumstances.

12 (3) Any entity that believes a full or partial positive
13 acquisition adjustment should be made has the burden to prove the
14 existence of those extraordinary circumstances. In determining
15 whether extraordinary circumstances have been demonstrated, the
16 Commission will consider evidence provided to the Commission such
17 as anticipated improvements in quality of service, anticipated
18 compliance with regulatory mandates, anticipated rate reductions or
19 rate stability over a long-term period, and anticipated cost
20 efficiencies.

21 (4) Any entity that believes a full or partial negative
22 acquisition adjustment should be made has the burden to prove the
23 existence of those extraordinary circumstances. In determining
24
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1 whether extraordinary circumstances have been demonstrated, the
2 Commission will consider evidence provided to the Commission such
3 as the anticipated retirement of the acquired assets and the
4 condition of the assets acquired.

5 (5) The Commission shall establish the amortization period for
6 any ~~included~~ acquisition adjustment included in rate base. The
7 Commission in setting the amortization period will take into account
8 the composite remaining life of the assets purchased or the
9 condition of the assets purchased. Amortization of the acquisition
10 adjustment shall begin on the date of the order transferring the
11 assets. The negative acquisition adjustment shall be amortized over
12 a 3-year period unless a shorter period can be justified.

13 (6) Any full or partial acquisition adjustment, once made by
14 the Commission, may be subsequently modified if the extraordinary
15 circumstances do not materialize, or subsequently are eliminated or
16 changed, and the request for such modification is made within three
17 five years after of the date of the order approving the transfer of
18 assets. If no acquisition adjustment is approved by the Commission
19 at the time of transfer, that decision cannot be modified.

20 Specific Authority: 350.167.(2), 367.121(1)(f), FS.

21 Law Implemented: 367.071(5), 367.081(2)(a), 367.121(1)(a) and (b),
22 FS.

23 History: New _____.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by facsimile or hand deliver this 15th day of October, 2001.

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