

STATE OF FLORIDA

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Public Service Commission

May 31, 2002

Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket No. 001502-WS - Proposed Rule 25-30.0371, F.A.C., Acquisition
Adjustment

Dear Mr. Webb:

Enclosed is an original copy of the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Christiana T. Moore
Senior Attorney

ADM300371.CTM
Enclosures

cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER - DATE

05778 JUN-30

FPSC-COMMISSION CLERK

1 25-30.0371 Acquisition Adjustments.

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

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

20 (3) Negative Acquisition Adjustments. A negative acquisition
21 adjustment shall not be included in rate base unless there is proof
22 of extraordinary circumstances or where the purchase price is less
23 than 80 percent of net book value. If the purchase price is less
24 than 80 percent of net book value then the inclusion of a negative
25 acquisition adjustment shall be calculated pursuant to paragraph

CODING: Words underlined are additions; words in ~~struck~~
~~through~~ type are deletions from existing law.

1 (b) below.

2 (a) Contested. Any entity that believes a full or partial
3 negative acquisition adjustment should be made has the burden to
4 prove the existence of extraordinary circumstances. Under no
5 circumstance, however, shall the purchaser be required to record on
6 its books more than 70 percent of a negative acquisition
7 adjustment. In determining whether extraordinary circumstances
8 have been demonstrated, the Commission shall consider evidence
9 provided to the Commission such as the anticipated retirement of
10 the acquired assets and the condition of the assets acquired.

11 (b) Uncontested. If the purchase price is less than 80
12 percent of net book value, then the amount of the difference in
13 excess of 20 percent of net book value shall be recognized for
14 ratemaking purposes as a negative acquisition adjustment. The
15 negative acquisition adjustment shall not be recorded on the books
16 for ratemaking purposes or used for any earnings review unless the
17 purchaser files for a rate increase pursuant to section 367.081(2),
18 367.0814, 367.0817 or 367.0822, F.S., that will be effective during
19 the amortization period. The negative acquisition adjustment shall
20 be amortized over a 5-year period from the date of issuance of the
21 order approving the transfer of assets.

22 (4) Amortization Period. In setting the amortization period
23 for a Commission approved acquisition adjustment pursuant to (2) or
24 (3)(a) above, the Commission shall consider evidence provided to
25 the Commission such as the composite remaining life of the assets

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1 purchased and the condition of the assets purchased. Amortization
2 of the acquisition adjustment shall begin on the date of issuance
3 of the order approving the transfer of assets.

4 (5) Subsequent Modification. Any full or partial acquisition
5 adjustment, once made by the Commission pursuant to (2) or (3)(a)
6 above, may be subsequently modified if the extraordinary
7 circumstances do not materialize or subsequently are eliminated or
8 changed within five years of the date of issuance of the order
9 approving the transfer of assets.

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

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

12 History: New .

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through type are deletions from existing law.

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001502-WS

RULE TITLE:

RULE NO.:

Acquisition Adjustment

25-30.0371

PURPOSE AND EFFECT: To adopt a rule governing acquisition adjustments for water and wastewater utilities, to provide an incentive for a utility to try to obtain the lowest price possible when negotiating a purchase price, and providing an incentive for a purchasing utility that pays less than net book value to refrain from filing a rate case for a five-year period subsequent to the purchase.

SUMMARY: Provides a definition of acquisition adjustment and the ratemaking treatment when the purchase price for a utility system differs from the net book value of the utility assets. Provides examples of the evidence the Commission will consider.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The proposed rule should not impose additional costs on water and wastewater utility acquisitions and there should be no cost to ratepayers.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.167(2), 367.121(1)(f), FS

LAW IMPLEMENTED: 367.071(5), 367.081(2)(a), 367.121(1)(a)(b), FS
WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE
SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND
ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS
NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING
WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT
REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 A.M., July 30, 2002.

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade
Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Christiana T. Moore, Florida Public Service Commission, 2540
Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-
6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-30.0371 Acquisition Adjustments.

(1) Definition. For the purpose 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
purchase price is less than the net book value.

(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 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 improvements in 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 unless there is proof of extraordinary circumstances or where the purchase price is less than 80 percent of net book value. If the purchase price is less than 80 percent of net book value then the inclusion of a negative acquisition adjustment shall be calculated pursuant to paragraph (b) below.

(a) Contested. Any entity that believes a full or partial negative acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. Under no circumstance, however, shall the purchaser be required to record on its books more than 70 percent of a negative acquisition adjustment. In determining whether extraordinary circumstances

have been demonstrated, the Commission shall consider evidence provided to the Commission such as the anticipated retirement of the acquired assets and the condition of the assets acquired.

(b) Uncontested. If the purchase price is less than 80 percent of net book value, then the amount of the difference in excess of 20 percent of net book value shall be recognized for ratemaking purposes as a negative acquisition adjustment. The negative acquisition adjustment shall not be recorded on the books for ratemaking purposes or used for any earnings review unless the purchaser files for a rate increase pursuant to section 367.081(2), 367.0814, 367.0817 or 367.0822, F.S., that will be effective during the amortization period. The negative acquisition adjustment shall be amortized over a 5-year period from the date of issuance of the order approving the transfer of assets.

(4) Amortization Period. In setting the amortization period for a Commission approved acquisition adjustment pursuant to (2) or (3) (a) above, the Commission shall consider evidence provided to the Commission such as the composite remaining life of the assets purchased and the condition of the assets purchased. Amortization of the acquisition adjustment shall begin on the date of issuance of the order approving the transfer of assets.

(5) Subsequent Modification. Any full or partial acquisition adjustment, once made by the Commission pursuant to (2) or (3) (a)

above, may be subsequently modified if the extraordinary circumstances do not materialize or subsequently are eliminated or changed within five years of the date of issuance of the order approving the transfer of assets.

NAME OF PERSON ORIGINATING PROPOSED RULE: Marshall Willis

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: May 21, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 25, Number 45, November 12, 1999

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

The Commission has over the past years developed a policy on acquisition adjustments for water and wastewater utilities that, absent extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect rate base. Chapter 120, Florida Statutes, the Administrative Procedure Act, provides that “[e]ach agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.” § 120.54(1)(a), Fla. Stat. (2000). After Commission and staff workshops, the Commission determined that the policy should be modified to better take into account the concerns of consumers and the need to still provide an incentive for consolidation.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

M E M O R A N D U M

August 21, 2001

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FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

TO: DIVISION OF APPEALS (MOORE)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT) 

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 001502-WS, PROPOSED RULE 25-30.0371, F.A.C., ACQUISITION ADJUSTMENT

SUMMARY OF THE RULE

Proposed Rule 25-30.0371, F.A.C., Acquisition Adjustment, (primary recommendation) would modify existing Commission policy concerning the sale and purchase of jurisdictional water and wastewater utilities where the sale price is below book value. The primary rule would "fine tune" the current policy by recognizing a partial negative acquisition adjustment to preclude unjustified high rates of return on acquired utility assets. In the primary rule, if the difference between the book value and the lower purchase price is 20 percent or less, there would be no negative acquisition adjustment, just as in the alternative proposed rule. However, if the difference is greater than 20 percent then the amount which exceeds 20 percent would be booked as a negative acquisition adjustment. The rule would also establish an amortization period for the acquisition adjustment of five years unless another period is justified.

Staff's alternative recommendation would codify existing Commission policy which is to not allow a positive or negative adjustment to utility system asset values when purchased by a jurisdictional utility except with proof of extraordinary circumstances.

If, in either rule, when a full or partial acquisition adjustment is granted by the Commission and the extraordinary circumstances are not sustained, then the adjustment could be modified. Although this modification has not been past policy, eliminating an unsubstantiated benefit should not be considered a cost.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The only entities that would be affected by the proposed rule are jurisdictional water and wastewater utilities that acquire other water and wastewater utilities. Although there are hundreds of jurisdictional water and wastewater utilities, normally the larger size utilities do the acquiring.

There are 11 Class A utilities under Commission jurisdiction, 54 Class B utilities, and 171 active Class C utilities. The ratepayers of an acquired utility should not be affected since rates would likely not change after an acquisition, absent a rate case and no acquisition adjustment.

Under the primary rule, if the difference between the purchase price and net book value exceeds 20 percent of net book value, then the amount in excess of 20 percent shall be recorded on the company's books but rates would not be adjusted unless the utility files a rate case. If there is a rate case requested by a purchaser within five years, a negative acquisition adjustment would be made and rates paid by utility customers accordingly could be reduced. Thus the purchaser has a choice and can avoid the negative acquisition adjustment and loss of potential revenues by not filing a rate case for five years following the acquisition. The largest negative acquisition adjustment not approved since 1986 was -\$1,700,391 with a potential revenue impact of -\$255,059 for Wedgefield Utilities. One other acquisition was in excess of -\$100,000 of revenue impact, eight acquisitions between -\$100,000 and -\$10,000 and the most, 33, had less than -\$10,000 in potential revenue impact. The proposed primary rule should help avoid as much litigation as has been experienced in the past. The cost saving would depend on the lessened number and the complexity of avoided hearings.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Public Service Commission and other state entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule. Existing Commission staff would continue to handle monitoring of utility acquisitions. Local government entities should not be impacted.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Only utility acquiring entities would be directly affected by either of the proposed rules. The transaction costs could be less under the proposed primary rule because there would be less incentive to litigate the issue of a negative acquisition adjustment. Rates could stay the same although the purchase price was less than book value. If the purchase price was more than 20

percent less than book value, the amount exceeding 20 percent would be recognized for ratemaking purposes as a negative acquisition adjustment, but not used for any earnings review unless the purchaser files for a rate case. The alternative rule would codify current policy where there is no recognition of positive or negative acquisition adjustment without a showing of extraordinary circumstances.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be no significant impact on small businesses, small cities, and small counties since the proposed rule should only affect purchasing utilities.

ALTERNATIVE METHODS

The alternative recommendation would codify existing Commission policy. The other proposals to split the negative acquisition adjustment would be unsymmetrical if a positive acquisition adjustment is not treated the same way. Another suggestion was to make the amortization period three years instead of five. However, five years is the most appropriate time period to write off acquired properties because the interests of the purchaser and customers are best balanced.

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