

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 9, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *SML*
RE: Docket No. 20100338-WS

Please file the attached materials in the docket file listed above.

Thank you.

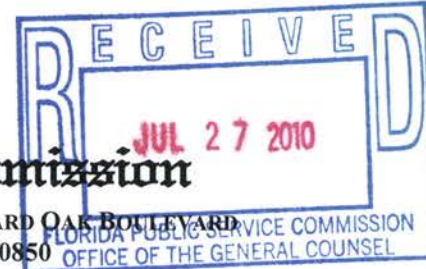
Attachment

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COMMISSION
CLERK



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850



-M-E-M-O-R-A-N-D-U-M-

DATE: July 26, 2010
TO: Office of General Counsel (Miller)
FROM: Division of Economic Regulation (Hewitt) *CBH CBB*
RE: Proposed Amendments to Rule 25-30.0371, Acquisition Adjustments, F.A.C.

DETAILED DESCRIPTION OF THE PROPOSED RULE AMENDMENTS

1. Why are the rule amendments being proposed?

The rule language for acquisition adjustments is complex. The proposed rule amendments are intended to eliminate some of the excessively complex language and provide the Commission the ability to modify the amortization schedule for negative acquisition adjustments in cases where extraordinary circumstances can be proven. The proposed rule amendments would not affect how positive acquisition adjustments are treated.

2. What does the rule do and how does it accomplish the goal?

The acquisition adjustments rule defines an acquisition adjustment to be the difference between the purchase price of a utility system and its net book value of the utility assets. The rule sets forth the accounting treatment of a system sale with an acquisition adjustment.

Under the current rule provisions, a negative acquisition adjustment is not 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. In determining whether extraordinary circumstances have been demonstrated, the Commission must consider evidence provided such as anticipated retirement of the acquired assets and the condition of the assets acquired. The purchaser shall not be required to record on its books more than 70 percent of a negative acquisition adjustment. The negative acquisition adjustment is amortized over a 5-year period.

IMPACT ON THE PSC

Incremental costs

There should be no incremental costs for the Commission.

Incremental benefits

There would be benefits from clarifying and streamlining the rule language. There could potentially be less workload for the commission staff.

WHO BESIDES THE PSC WILL BE AFFECTED BY ADOPTION OF THE PROPOSED AMENDMENTS

Utilities/Regulated Companies

Any water or wastewater utility regulated by the Commission could be affected if it acquires the assets of another utility system assets at a price different than book value. There were 179 certificated water and wastewater companies regulated by the Commission as of June 30, 2010. An unknown number of utilities may acquire the assets of another utility system at a price different than book value. Historically, there have been few cases in which a positive or negative acquisition adjustment has been recognized for ratemaking purposes.

Customers

Customers could be affected if their utility is acquired at a price different than book value, and the purchaser files for a rate increase during the amortization period.

Outside business and local governments

Small businesses that are regulated by the Commission could be affected if they purchase the assets of a utility system at a price different than book value. Small business utility customers could be affected if their utility is acquired at a price different than book value, and the purchaser files for a rate increase during the amortization period.

HOW ARE THE PARTIES ABOVE AFFECTED BY THE ADOPTION OF THE PROPOSED AMENDMENTS

Estimated transactional costs to individuals and entities

Utilities

Companies that purchase a system for less than net book value could be affected by the proposed rule changes. When the purchase price is greater than 50 percent of net book value, the negative acquisition adjustment would be amortized over a 7-year period. If the purchase price is 50 percent of net book value or less, the negative acquisition adjustment would be amortized as follows: (i) 50 percent of the negative acquisition adjustment would be amortized over 7 years; and (ii) 50 percent of the negative acquisition adjustment would be amortized over the remaining life of the assets. It would take longer for the negative acquisition adjustment in rate base to flow through the accounts.

Customers

Customers could be affected if the acquiring utility has a negative acquisition adjustment and files for a rate case during the amortization period. In a rate case, rates could be lower under the proposed amortization methodology than they would be if the five year amortized period in the current rule is used.

Memorandum to General Counsel
July 23, 2010
Page 3 of 3

Outside businesses including specifically small businesses

Outside businesses, including small businesses, would not be affected by the proposed rule amendments.

Local governments

Local governments would have no transactional costs from the rule changes unless they are a customer of an acquiring utility.

ANY OTHER PERTINENT COMMENTS REGARDING THE APPLICATION OF THE PROPOSED RULE AMENDMENTS

No other pertinent comments are germane to the proposed rule amendments.

CH:kb

cc: Tim Devlin
Chuck Hill

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP
RONALD A. BRISÉ

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

November 22, 2010

Mr. Brian T. Moore
Chief Attorney
Joint Administrative Procedures Committee
Room 120 Holland building
Tallahassee, FL 32399-1300

RE: Public Service Commission Rule Section 25-30.0371

Dear Brian:

As requested in your November 18, 2010, letter, we have reviewed the proposed changes to Rule No. 25-30.0371, F.A.C., in light of Chapter 2010-279, Laws of Florida. In particular, we have reviewed whether the proposed rule:

1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

As you know, the agency previously prepared a Statement of Estimated Regulatory Costs on the proposed rule changes. We have now supplemented that with the above analysis.

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Mr. Brian T. Moore
Page 2
November 19, 2010

It is our opinion that the proposed rule changes are not likely to exceed any of the new criteria. As the new rule does not exceed any of the criteria, it does not need to be submitted to the Legislative for ratification.

Sincerely,



Cindy Miller
Senior Attorney

cc: Liz Cloud, Department of State
11-18 Moore Req.cm.doc

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

January 7, 2011

Ms. Vicky L. Baker
Small Business Regulatory Advisory Council
UWF - Building 38
11000 University Parkway
Pensacola, FL 32514-5750

Re: Rule 25-30.0371

Dear Ms. Baker:

We received your December 20, 2010 letter. By your letter, the Small Business Regulatory Advisory Council requests the Commission prepare a new SERC for Rule 25-30.0371 based on HB 1565. Commission staff conducted an additional review to meet the new requirements of HB 1565, pursuant to a request from the Joint Administrative Procedures Committee (JAPC). We are enclosing that analysis prepared in response to a letter from the JAPC. We believe our response to JAPC addresses the same analysis as a new SERC would require. We want to be fully responsive to your request and, thus, are also describing in greater detail the responses on each point in your letter.

- An agency must analyze the economic impact of a proposed rule to determine if the rule: (a) will have an adverse impact on small businesses; or (b) is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

The Commission prepared a Statement of Estimated Regulatory Costs (SERC) on this rule amendment, which was sent to your agency on September 23, 2010. The Commission prepares SERCs on all rulemakings.

- The SERC must contain an economic analysis of whether the rule directly or indirectly: (1) is likely to have an adverse impact on economic growth, private sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after implementation of the rule.

The rule revisions address the acquisition of water/wastewater companies. The rule is intended to incentivize such acquisition, especially the acquisition of distressed companies. The rule revisions created more of a sharing of the benefits with the acquiring company and ratepayers when the acquisition is of a non-distressed company at a significant discount. The rule revisions are designed to give more of a benefit to the ratepayers by increasing the amortization period of the negative acquisition adjustment. Thus, in a purchase involving a negative acquisition adjustment, the benefit to the purchasing utility is lessened somewhat due to

Ms. Vicky L. Baker

Page 2

January 7, 2011

the increased amortization period. We do not believe the changes to the rule will likely have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess for \$1 million within 5 years of implementation.

- The SERC must contain an economic impact on whether the rule directly or indirectly: (2) is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

While the rule revisions could impact water and wastewater utilities regulated by the agency in terms of competing for the purchase of other systems specifically exempt by statute from Commission regulation, we do not believe that any adverse impact would be in excess of \$1 million within 5 years of implementation.

- The SERC must contain an analysis of whether the rule directly or indirectly (3) is likely to increase regulatory costs, including any transaction costs, in excess of \$1 million in the aggregate within 5 years after implementation of the rule.

The rule revisions do not increase regulatory costs at all for any affected utilities. The purpose of the original rule was to reduce regulatory costs and increase certainty.

It is also important to mention the benefits to small businesses from the rule revisions. The rule revisions, as noted by the original Statement of Estimated Regulatory Costs, should put downward pressure on the water/wastewater rates in cases of acquisitions. While a small water/wastewater company may see some impact itself, the small business customers of the utility should see some benefit from the rule revisions.

Rule 25-30.0371 became effective November 22, 2010. All the rulemaking procedures required by Chapter 120, Florida Statutes, have been completed.

Please do not hesitate to call me at 850-413-6082, if you have any additional questions.

Sincerely,



Cindy Miller
Associate General Counsel

CM/mrd

Attachments: November 19, 2010 letter from the Joint Administrative Procedures Committee
November 22, 2010, letter from Florida Public Service Commission attorney

cc: Scott Boyd, JAPC

JEFF ATWATER
President



Representative Marti Coley, Chair
Senator Arthenia L. Joyner, Vice-Chair
Senator Charles S. "Charlie" Dean, Sr.
Senator J. Alex Villalobos
Representative Oscar Braynon II
Representative Scott Plakon

LARRY CRETUL
Speaker



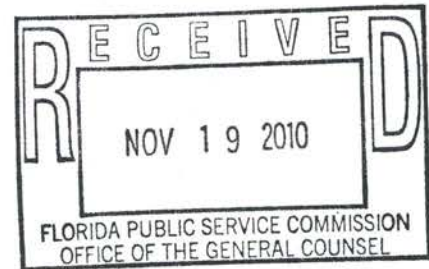
F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

November 18, 2010

Ms. Cindy Miller
Senior Attorney
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule Section 25-30.0371



Dear Cindy:

As you may know, on November 16, 2010, the Legislature enacted Council Substitute for Committee Substitute for House Bill 1565 over the Governor's veto. The new law, Chapter 2010-279, Laws of Florida, substantially changed portions of sections 120.54 and 120.541, Florida Statutes, and took effect on November 17, 2010.

On November 2, 2010, the Commission filed proposed changes to rule section 25-30.0371, F.A.C., for adoption, which means that the new rule had not yet taken effect as of November 17, 2010. Thus, it appears that at least some of the new rulemaking procedures apply to the Commission's rule.

Of particular concern in this case is section 120.541(3), Florida Statutes, which now provides:

If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

Section 120.54(2)(a), Florida Statutes, includes three subparagraphs that list seven different ways in which a rule may require legislative ratification before it can take effect. Ratification will be required if a rule directly or indirectly:

Ms. Cindy Miller
November 18, 2010
Page 2

1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

Please review Chapter 2010-279, Laws of Florida, and advise whether the recently proposed changes to rule section 25-30.0371, F.A.C., exceed any of the criteria established in paragraph (2)(a) of section 120.541, Florida Statutes. If the new rule does exceed any of the criteria, please also advise when the Commission intends to submit it to the Legislature for ratification.

If you have any questions, please let me know. Otherwise, I would appreciate a response by December 3, 2010.

Sincerely,



Brian T. Moore
Chief Attorney

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP
RONALD A. BRISÉ

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

November 22, 2010

Mr. Brian T. Moore
Chief Attorney
Joint Administrative Procedures Committee
Room 120 Holland building
Tallahassee, FL 32399-1300

RE: Public Service Commission Rule Section 25-30.0371

Dear Brian:

As requested in your November 18, 2010, letter, we have reviewed the proposed changes to Rule No. 25-30.0371, F.A.C., in light of Chapter 2010-279, Laws of Florida. In particular, we have reviewed whether the proposed rule:

1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

As you know, the agency previously prepared a Statement of Estimated Regulatory Costs on the proposed rule changes. We have now supplemented that with the above analysis.

Mr. Brian T. Moore
Page 2
November 19, 2010

It is our opinion that the proposed rule changes are not likely to exceed any of the new criteria. As the new rule does not exceed any of the criteria, it does not need to be submitted to the Legislative for ratification.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Miller".

Cindy Miller
Senior Attorney

cc: Liz Cloud, Department of State
11-18 Moore Req.cm.doc

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

February 22, 2011

Ms. Vicky Baker
Florida Small Business Regulatory Advisory Council
University of West Florida
Pensacola, FL 32514-5750

Dear Ms. Baker: *Vicky:*

At the last meeting of the Small Business Regulatory Advisory Council, the members discussed the economic impact of the revisions to Rule 25-30.0371, F.A.C., on small utilities which are also small businesses. We have listened to the discussion on the CD of the meeting and thought it might be helpful to provide some additional information. The rule itself has been in place for nine years and the new revisions only address a small subset of acquisitions, those called negative acquisitions. By this letter, we are providing additional information as to why we believe it is unlikely that the new statutory criteria could be triggered for the rule revisions, which took effect in November, 2010.

An acquisition adjustment results when the purchase price of a utility differs from the net book value of the system. Net book value is the original cost of the assets less accumulated depreciation. A positive acquisition adjustment exists when the purchase price is greater than net book value; a negative acquisition adjustment exists when the purchase price is less than net book value. In utility regulation, an acquisition adjustment impacts the level of the rate base on which the purchasing utility will be permitted to earn a return. A positive acquisition adjustment serves to increase the rate base and a negative acquisition adjustment has the opposite effect.

In order to put into context the changes to Rule 25-30.0371, F.A.C., relating to acquisition adjustments for water and wastewater utilities, it is useful to explain the purpose of the original rule. Prior to the adoption of the rule, there was much litigation on cases involving acquisition adjustments which were lengthy and costly for all parties involved. The rulemaking process took over three years to complete, involving a series of workshops and thoughtful, protracted negotiations among the stakeholders, which included the utility industry, the Office of Public Counsel and PSC staff. Since its adoption in 2002, the rule has reduced controversies over acquisition adjustments in utility transfers, thus reducing administrative and legal costs for all stakeholders. It has afforded the industry the regulatory consistency and certainty it needs to negotiate the best possible purchase price, while providing a sensitivity to rate impacts on consumers.

Ms. Vicky Baker
Page 2
February 22, 2011

While the acquisition adjustment rule addresses both positive and negative acquisition adjustments, the recent revisions to the rule substantially affect only negative acquisition adjustments. The main impetus for the rule revisions was to increase the benefit of a negative acquisition adjustment for the customers of the system being purchased. To accomplish this, the rule amendments extend the amortization of the negative acquisition adjustment beyond the five years included in the original rule. This has the effect of keeping rate base lower for a longer period of time, thus putting downward pressure on rates.

Of 33 acquisitions since the rule became effective in 2002, there have been only four cases involving negative acquisition adjustments. In fact, of the four total cases involving negative acquisition adjustments, only two resulted in an actual adjustment recorded on the utility's books. In the other two cases, no acquisition adjustment was recognized because the purchase price was within 80 percent of net book value. Further, only the transfer of Springside Utilities to Par Utilities, Inc. involved a purchase by a small business. The other three acquisitions were by Aqua Utilities, Inc., which is not considered a small business since it has annual revenues greater than \$5 million.

Because there have been so few negative acquisition adjustments since the rule was effective in 2002, we believe that the recent changes to Rule 25-30.0371, F.A.C., will not have a significant economic impact on acquisitions. It is speculative as to what acquisitions might occur in the future. It is also worth noting that many small businesses are also customers of regulated water and wastewater utilities. These small businesses would benefit from the rule revisions due to the increased downward pressure on rates for service. We continue to believe it is highly unlikely that the new legislative standards for ratification could be triggered. We are also attaching the original Statement of Estimated Regulatory Costs in case the members did not know that the agency had completed this information. Please do not hesitate to call me at (850) 413-6082 if additional information would be helpful.

Sincerely,



Cindy Miller
Associate General Counsel

Attachments: Original Statement of Estimated Regulatory Costs
SBRAC letter.cm.doc

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 26, 2010
TO: Office of General Counsel (Miller)
FROM: Division of Economic Regulation (Hewitt) *COH CRB*
RE: Proposed Amendments to Rule 25-30.0371, Acquisition Adjustments, F.A.C.

DETAILED DESCRIPTION OF THE PROPOSED RULE AMENDMENTS

1. Why are the rule amendments being proposed?

The rule language for acquisition adjustments is complex. The proposed rule amendments are intended to eliminate some of the excessively complex language and provide the Commission the ability to modify the amortization schedule for negative acquisition adjustments in cases where extraordinary circumstances can be proven. The proposed rule amendments would not affect how positive acquisition adjustments are treated.

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IMPACT ON THE PSC

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Incremental benefits

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Estimated transactional costs to individuals and entities

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Memorandum to General Counsel
July 23, 2010
Page 3 of 3

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ANY OTHER PERTINENT COMMENTS REGARDING THE APPLICATION OF THE PROPOSED RULE AMENDMENTS

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CH:kb

cc: Tim Devlin
Chuck Hill