

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: March 1, 2019
TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 20001502-WS

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

Thank you.

Attachment

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STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
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Public Service Commission

June 25, 2002

Mr. Matthew Sirmans
Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.0371, Acquisition Adjustments

Dear Mr. Sirmans:

This letter is in response to your letter dated June 10, 2002, regarding the above rule. In order to respond to your comments, I think some background information might be helpful.

First, "rate base" is the investor-supplied plant facilities and other assets used in supplying utility service to the consumer. Expressed in dollars, rate base is the amount on which the utility may earn a return. When establishing the amount of the utility's investment, the Commission considers the original cost of the utility assets.

Under ordinary circumstances, the sale and purchase of a utility at a price that is either higher or lower than the original cost rate base valuation will not change the rate base amount. In some cases, however, where it has found that extraordinary circumstances exist, the Commission has approved an "acquisition adjustment." An acquisition adjustment is a regulatory accounting convention by which the books of the utility are adjusted to reflect changes in the original cost rate base valuation resulting from a purchase price that differs from original cost rate base valuation.

A positive acquisition adjustment, if approved by the Commission, may be recorded on the books when the purchase price of the transaction is above the original cost rate base valuation. For example, if the original cost rate base valuation was \$100, and an acquiring utility paid \$120 for the assets, a positive acquisition adjustment, if approved by the Commission, would increase the rate base valuation to \$120. The acquiring utility would then be permitted to earn a rate of return on the investment of \$120.

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A negative acquisition adjustment may be recorded when the purchase price of the utility is below the original cost rate base valuation. If approved, the negative acquisition adjustment reduces the rate base valuation to the level of the purchase price (or an amount in between the purchase price and original cost rate base valuation). In the above example with an original cost rate base valuation of \$100, but with a purchase price of \$80, a negative acquisition adjustment, if approved by the Commission, would reduce rate base to the \$80 purchase price. Either way, extraordinary circumstances must only be demonstrated in order to deviate from the norm—which is no acquisition adjustment.

The Commission's policy on acquisition adjustments for water and wastewater utilities for almost 20 years has been that absent extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect rate base. See, In re: Investigation of Acquisition Adjustment Policy, Order No. 25729, issued February 17, 1992. It is this longstanding policy that the rule codifies. An acquisition adjustment to rate base is not approved under ordinary circumstances and thus, the Commission has approved an acquisition adjustment in very few cases. That is why the Commission has listed evidence of certain things that it has found in past cases to be relevant, but by using the words "such as" to introduce the list, will allow a party to put forth any evidence it believes will justify its request, whether it be a negative or a positive acquisition adjustment. The language is not limiting, and should not be. Further determination of the existence of extraordinary circumstances will require an analysis of the evidence on a case-by-case basis.

You are correct that subsections (2) and (3)(a) contemplate different circumstances. That is because the circumstances that will justify a positive adjustment are likely to be different than those that will justify a negative adjustment. In addition, it will typically be a utility requesting a positive acquisition adjustment, but the Office of Public Counsel or customers requesting a negative adjustment. In either case, however, the party requesting an adjustment would typically have to show by a preponderance of the evidence that extraordinary circumstances exist.

In my opinion, further specificity or establishment of standards in this part of Rule 25-30.0371 is impossible outside of an adjudication in which evidence of individual circumstances and current economic circumstances may be presented and weighed. As such, including further criteria in the rule is not practicable, as that term is defined in section 120.54(1)(a)2, Florida Statutes.

In addition, whether or not the Commission adopts this rule, it will continue to have the responsibility to set utilities' rates, and in setting rates will determine the utility's rate base. The rule implements section 367.071(5), Florida Statutes, which authorizes the Commission to establish the rate base for a utility when it approves a sale, assignment, or transfer, and section 367.081(2)(a), Florida Statutes, requiring the Commission to fix rates and to consider the cost of providing service including a fair return on the investment of the utility in property used and useful in the public service. The statutes give the Commission very broad discretion in setting rates (which includes

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determining the amount of rate base) and, in numerous cases for almost 20 years, the Commission has approved or disapproved acquisition adjustments on the authority of the statutes alone. As such, the rule provides more notice and certainty to the utilities regulated by the Commission and to the customers of those utilities than exists without such a rule.

Like the rule at issue in Florida Public Service Commission v. Florida Waterworks Association, proposed Rule 25-30.0371 "articulates criteria that would channel the exercise of statutory authority formerly constrained only by what the record in an individual ratemaking case contained." 731 So. 2d 836, 844 (Fla. 1st DCA 1999). Moreover, with or without the rule, the Commission may not arbitrarily decide what to allow in rate base. Florida Statutes constrain the Commission to act in the public interest, to set rates that will give the utility the opportunity to earn a fair return on its investment and that are reasonable for the customers, and to base its decisions on competent and substantial evidence of record.

Finally, the correct specific authority for the rule is section 350.127(2), Florida Statutes, in addition to section 367.121(1).

I hope this response satisfactorily addresses your concerns. Please do not hesitate to call me if you have questions.

Sincerely,



Christiana T. Moore
Senior Attorney

JOHN M. McKAY
President

THOMAS FEENEY
Speaker



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June 10, 2002

Ms. Christina Moore
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2540 Shumard Oak Boulevard.
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FLA. PUBLIC SERVICE COM. /
OFFICE OF THE
GENERAL COUNSEL

Re: Public Service Commission Rule 25-30.0371

Dear Ms. Moore:

Please allow this to acknowledge receipt of the above-referenced rule, which was published in the June 7, 2002, edition of the Florida Administrative Weekly. I have completed my initial review and have the following comments:

25-30.0371(2),(3),(5): How does the Public Service Commission (PSC) define "extraordinary circumstances?" This phrase is used by the PSC as part of determining the rate base and this rule in part states, "A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances." This rule goes on further to state that in determining whether "extraordinary circumstances" have been demonstrated, the Commission shall consider, "[A]nticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, and anticipated cost efficiencies." Are these the only circumstances that the PSC would consider as "extraordinary?" Would the PSC consider other circumstances? By what weight of evidence would the entity have to demonstrate this?

It appears the PSC has different circumstances in mind when it mandates that an entity must prove these "extraordinary circumstances." In proposed rule 25-30.0371(3), it states that the PSC would only consider, "[A]nticipated retirement of the acquired assets and condition of the assets acquired," as evidence of "extraordinary circumstances," where an entity wants to include a negative acquisition adjustment as part of its proposed rate. Are these the only acceptable means of demonstrating "extraordinary circumstances?" Are there other ways for an entity to demonstrate a negative acquisition adjustment as part of its proposed rate?

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How is an entity to know if the evidence they present to the PSC sufficient enough to have it included their rate base? Without objective criteria, the PSC would have the ability to arbitrarily decide when certain evidence could be included in the rate and base, and when it would not. Under Section 120.52(8)(d), F.S., it states that, "A proposed or existing rule is an invalid exercise of delegated legislative authority if...the rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency." By not defining "extraordinary circumstances," this proposed rule does not establish adequate standards and would allow the PSC to arbitrarily decide what to allow to be included in a rate base.

Additionally, the PSC included "350.167(2)," as specific authority for this rule. This appears to be a typographical error; this statute does not exist.

Please do not hesitate to contact me if you have any questions or comments.

Sincerely yours,



Matthew Sirmans
Chief Attorney

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