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VIA: ELECTRONIC FILING

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Room 390R – Gerald L. Gunter Bldg.
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In re: Examine Regulatory Policies and Practices in the Water and Wastewater Industries in Florida.

On December 21, 2022, the Florida Public Service Commission (“Commission”) issued a Notice of Development of Rulemaking and Workshop regarding several areas impacting water and wastewater companies. On February 1, 2023, Commission staff held its workshop at which the Office of Public Counsel (“OPC”) participated and offered comments. Pursuant to Commission staff’s invitation to file written comments on the workshop issues, the OPC submitted Post-Workshop Comments on March 1, 2022. At the conclusion of the workshop, Commission Staff and stakeholders agreed that participants would have the opportunity reply to any proposals and comments in the other stakeholder’s Post-Workshop comments. OPC is filing comments on two proposals raised in stakeholder’s comments related to Acquisition Adjustment and Used and Useful Rules. All other positions of the OPC contained in the March 1, 2023 comments are maintained and reasserted.

I. Acquisition Adjustments, Rule 25-30.0371, Florida Administrative Code (“Rule”)

In Sunshine Water Services comments, they suggest that the Commission should incentivize acquisitions before “extraordinary circumstances” come to pass. They contend that struggling systems that lack long-term viability should have an incentive to divest to a utility with more competent management, operation, and finances. The National Association of Water Companies (“NAWC”) comments focus on urging setting a broader policy which focuses on forward-looking planning that creates environments where it is less likely to have a distressed system.

The OPC continues to advocate that the recognition of a positive acquisition adjustment as an exception to the original cost principles that apply to determination of rate base in Florida should be used sparingly and in situations where there is a real and imminent threat of non-viability that would harm customers. We do not object to applying the Acquisition Adjustment Rule in a more forward-looking manner. OPC is not opposed to the Commission giving greater consideration to the imminent and long-term non-viability of a utility when determining whether “extraordinary circumstances” have been proven to exist. It is all really a matter of the utility meeting its burden of proof. In other words, a purchasing utility should have to demonstrate by clear and convincing, verifiable evidence that over a five year horizon, for example, that the utility to be acquired is in distress or is non-viable such that the seller cannot provide adequate service or maintain its facilities to provide safe and adequate service to customers (“likely case”). Once (and if) this demonstration is made, the acquiring utility would need to further demonstrate by clear and convincing, verifiable evidence that within the same five-year horizon, the utility’s operating conditions would be improved such that the utility would be able to provide safe and adequate service at a lower cost --including the return on and return of (amortization) the acquisition adjustment -- to customers (“proposed case”). If this demonstration shows that the proposed case was accordingly better for customers than the likely case, then the “extraordinary circumstances” criteria would have been sufficiently met for the Commission to weigh and consider the other criteria in the Rule. Such a determination of improvement and cost-effectiveness would need to be verified immediately after the expiration of the five-year period. Failure to demonstrate that the operational improvements and lower cost would negate the continued recognition of the acquisition adjustment.

OPC does not support changing the Rule to encourage consolidation of smaller utilities for the sake of consolidation only. While a larger utility would hopefully be able to lower rates due to economies of scale and ability to attract lower cost financing, once a positive acquisition adjustment is including in rate base these advantages would likely disappear. If, however, a purchasing utility can demonstrate that a utility is non-viable and that the purchaser can acquire a utility and, through consolidation and economies of scope and scale, can (as described above) demonstrate it will restore viability and provide service at a lower cost when a positive acquisition adjustment is included within a five year period, then inclusion of a positive acquisition adjustment may be considered at the time of transfer. If a consolidating utility is granted a positive acquisition adjustment the continuation of savings should be evaluated as is currently outlined in the Rule.

II. Used and Useful Adjustments (Rules 25-30.431, 25-30.432, and 25-30.4325, Florida Administrative Code)

The water and wastewater utilities and NAWC complain that the current Used and Useful Rule may result in a regulatory penalty that does not support the replacement of aging infrastructure. Sunshine Water Services agreed with OPC's observation that most collection and distribution are 100% used and useful, but noted that where they are not, considering infrastructure replacement as 100% used and useful may give some incentive or relief to the utility to timely replace its aging assets.

OPC agrees that there may be some situations where a current system is not already considered 100% used and useful, where aged infrastructure is mandated to be replaced by a third party agency that such replacement should be considered 100% used and useful. However, an example of a situation where such a replacement should not be considered 100% used and useful is Sunny Hills. There the prior developer installed all of the distribution and transmission lines needed for the entire development, but the expected development did not take place, and future further development may not occur. Sunny Hills is an old Deltona system. In the last case, the water lines were only 10% used and useful. In a situation such as this, the Commission would have to evaluate how much of the replacement cost should actually be placed on current customers.

It would be important that the utility demonstrate prudence in cases where it is under a mandate to replace the infrastructure and that the circumstances related to the required replacement were not attributable to the utility management's imprudence. A utility should not be given a

perverse incentive to neglect the maintenance of its equipment so it can be mandated to replace that infrastructure.

The OPC generally maintains its positions and stands by its comments contained in the March 1 filing, except as modified in these reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE
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I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 22nd day of March 2023, to the following:

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