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May 4, 2023
via efiling

Adam Teitzman, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Undocketed: In re: Proposed Amendment of Rule 25-30.0371, F.A.C., Acquisition Adjustments

Dear Mr. Teitzman:

Attached are the comments of Sunshine Water Services ("SWS") to the staff's proposed amendments to the Acquisition Adjustment Rule. I have also attached another copy of SWS's changes to those proposed Rule amendments. Nothing that occurred at the April 13 workshop changes SWS's proposed amendments. We look forward to working with the staff to bring needed regulatory changes to fruition.

Should you or Staff have any questions regarding these comments please do not hesitate to contact me.

Very truly yours,

/s/ Martin S. Friedman
Martin Friedman

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FLORIDA PUBLIC SERVICE COMMISSION WORKSHOP

SUNSHINE WATER SERVICES ACQUISITION ADJUSTMENT COMMENTS

REGULATORY POLICIES IN THE WATER & WASTEWATER INDUSTRIES

Acquisition Adjustments (Rule 25-30.0371, Florida Administrative Code)

A. Summary of Position and Focus of Rule

a. Sunshine Water Services (SWS or the Company) believes any acquisition adjustment rule should identify broadly applicable considerations, but not be overly prescriptive, quantitative, or "cookie cutter". Every acquisition is unique and brings forth a distinct set of facts and evidence. Therefore, allowing each acquisition to be assessed on a case-by-case basis according to a well-defined list of considerations makes for sound policy and affords the Commission sufficient discretion in each situation.

b. Setting formulaic, quantitative, or strictly objective measures or timelines as the determining criteria would unnecessarily restrict the relevant practical considerations for an acquisition and thus limit the Commission's ability to make a reasonable determination based on the evidence applicable to each acquisition.

c. The Company believes its modifications to the proposed Rule allow for a broadly applicable method for acquisition adjustment approval. Importantly, it does so while maintaining focus on customer benefit and appropriate prioritization of non-viable systems.

B. Comments on Staff Proposed Rule

a. The definitions for Non-Viable Utility largely mirror the definitions from Missouri, Mo. Code Regs. tit. 20 § 4240-10.085. However, the Missouri Code uses a customer count threshold as an overarching factor, foregoing embedding criteria #3 into #'s 1 and 2. This means that smaller utilities that have current violations are deemed non-viable, regardless of their potential to provide safe and adequate service in the future.

b. In addition to primary water quality standards, the Commission should consider secondary water quality standards as required or ordered by the Commission or an appropriate agency, and applicable wastewater or other environmental and safety standards. This treatment aligns with the treatment of water utilities during a rate case.

c. Subsection (2) retains the current considerations for the Commission in approving an acquisition adjustment. However, they are tied, in this case, only to "non-viable" utilities, and do not appear to apply to "viable" utilities. The

Company sees no reason these considerations should not be relevant for analysis of any acquisition, whether the seller is viable or not. Even if a system does not meet a standard or criteria for "non-viable" status, the acquiring utility may be able to demonstrate that it can provide benefits such as cost efficiencies, capital access, and compliance or reliability improvements. The seller may be viable, but unwilling or unable to make certain improvements that support long-term adequate service. Sellers may also not have the resources or administrative support to offer enhanced customer services, such as prompt service order and call center response, alternative payment options, and access to customer assistance programs. These possibilities are generally accounted for in acquisition approval standards as the enhanced managerial, operational, and technical capabilities of the acquirer, and should be considered by the Commission as relevant in proposed transfers.

d. It is also not common for commissions to set separate criteria for non-viable and viable systems. Instead, states will set broadly relevant factors, and include the viability of the system as one consideration among the group. For example, Kentucky, Indiana, Texas, Oregon, and Iowa are states that set broad criteria, but identify "troubled", "small", distressed", or "non-viable" status as an additional consideration for approval of the acquisition adjustment, or otherwise incorporate the non-viable definition into the broader considerations.
e. In addition, the Cumulative Present Value of the Revenue Requirements (CPVRR) presents a formulaic, limited calculation of benefits to customers that omits relevant and valuable qualitative benefits that the acquirer can bring to the acquired customers. The Commission's considerations or criteria to approve a transaction, and any applicable acquisition adjustment, should consider all relevant aspects of the acquisition, and subsection (3) as written does not account for the potential array of scenarios that may be presented.
f. The CPVRR also limits the calculation of benefits to a 5-year window. In many acquisitions, perhaps especially of "viable" systems, the cost efficiency opportunities that come from integration of the utilities may take time, and costs to effectuate the integration will likely come before benefits. For example, severance costs incurred are upfront, one-time costs but the benefits of the resulting cost efficiency will accrue over time. This reality does not appear to be properly accounted for in the CPVRR calculation, as Present Value (PV) calculations tend to weight short-term impacts higher than medium or long-term (the latter of which is better aligned with utility ownership timelines). Therefore, the utility should have the ability to present its case as relevant for the specific acquisition being proposed, and not be constrained into a purely quantitative, "cookie cutter" demonstration of anticipated impacts.
g. The initial post-workshop comments of Central States Water Resources (CSWR) are helpful here, as they recommend the Commission allow time after the acquisition for the utility to integrate the new system, and make its case in a future proceeding based on the best evidence available.

h. The Company is concerned that the timing of application for an acquisition adjustment in subsection (4), limited to three years from the date of order approving transfer, is an arbitrary and unnecessary structure that could add to the regulatory burden of the parties. That is, requiring a filing by a certain date, as opposed to the preferred timing of inclusion in a following base rate case, does not support administrative efficiency and the more natural demonstration of benefits based on evidence available and commonly presented in a ratemaking proceeding.

i. Subsection (7) appears to place an overly restrictive burden on acquiring utilities, in that it can be interpreted to allow removal or adjustment of an acquisition adjustment if forecasted benefits change, even if nominally so. For example, if O&M savings of 5% were forecasted, but only 4% materialize, even if the change was due to factors outside the utility's control, the previously approved amount can be decreased. Additionally, the flexibility of allowing acquisition adjustment applications and approvals to follow the transfer of the system in a subsequent proceeding should minimize variance in anticipated and realized benefits for customers, mitigating the need for this subsection.

j. Subsection (7) also utilizes a 5-year window for potential modification of the approved acquisition adjustment. However, if the original acquisition adjustment was set based on the 5-year CPVRR in subsection (3), the potential benefits included in the CPVRR analysis would not have had an opportunity to be fully realized and reconciled before being presented to the Commission and reviewed for any adjustment. Therefore, if the CPVRR process is used, an analysis for modification per this subsection should accommodate the full CPVRR or other forecasted impact period utilized.

k. SWS notes that the proposed rule does not appear to contemplate scenarios that include a seller with a negative book value (negative rate base). Uncertainty on the treatment of such acquisitions inevitably will limit the ability and incentive for well-managed utilities to acquire these systems, constraining the seller's market for buyers and resulting in missed opportunities for consolidation and regionalization of water and wastewater systems in the State.

l. Additional open questions regarding the CPVRR:
    i. Utilities generally will present a counter-factual scenario for acquisitions, i.e., what will the revenue requirements or rates be with and without acquisition, based on certain assumptions? The analysis needs to allow for customization for the specific relevant case, or potentially multiple scenarios that need to be considered, such as acquisition as a stand-alone system versus acquisition inclusion in a uniform rate group.
    ii. Do Interest and ROE line items need to use the same cost of capital assumptions as the Discount Factor, i.e., the authorized cost of capital?
    iii. Does this contemplate estimated costs presented as net of savings and re-allocations of fixed/overhead costs?

iv. Please give examples of System Impact items, as this line seems redundant with the other lines.
    1. The model doesn't seem to account for incremental capital that is added periodically over the 5-year window. (e.g., inputs are only for "Beginning Costs")
v. Calculations should be vertically dynamic, e.g., income taxes should be based on pre-tax operating income for the particular year.

C. Comments on OPC Proposed Rule

a. OPC adds an arbitrary limit of "the next five years" to the definition or criteria for no-viability, as well as requiring "competent, substantial evidence that constitutes a demonstrable, verifiable, and quantifiable showing" of same. First, there is no identifiable reason to limit the demonstration of non-viability to a five-year window, as any number of reasons can be presented to demonstrate long-term non-viability of a system, many of which may not be "quantifiable". These could include: 1) statements from the seller that they no longer desire to operate the system, 2) the lack of desire or ability of the seller to expand the scale of the system, to improve economies or efficiencies, or 3) the lack of desire or ability of the seller to modernize the assets or services provided to customers. Each of these examples would support the non-viability of the system on a long-term basis under the current owner, and an acquirer could make the case that their ownership would improve these areas and thus benefit customers. Each of these examples also may not surface or cause customer harm within the next five years, but addressing the concerns proactively is in the best interest of customers. Findings in administrative proceedings must be supported by competent, substantial evidence. Substantial evidence is defined as such relevant evidence as a reasonable mind would accept to support a finding. The addition of the "demonstrable, verifiable and quantifiable showing" misdefines that standard and could be construed as creating a different standard of evidence.
b. OPC also incorporates the CPVRR analysis template into the presentation requirements for a non-viable system acquisition. As detailed above, there are several concerns with the limitations of the CPVRR analysis, and broader, more comprehensive considerations that incorporate both quantitative and qualitative factors should be able to be presented for Commission consideration.
c. OPC also heightens the standard that currently exists by reiterating the "competent, substantial evidence that constitutes a demonstrable, verifiable, and quantifiable showing" language from (1)(d) into (2) and (3). This is unnecessary, duplicative, and further limits the Commission's ability to properly consider the potentially relevant factors in scenarios or situations that may be presented.
d. OPC's changes to (3) also seem to require that the "benefits, synergies, and cost savings" be equal to or greater than the revenue requirement that includes the

Acquisition Adjustment. This seems an impossible standard to reach, and may be an attempt to enact a standard that requires a "net financial benefit" be demonstrated for a viable utility acquisition. As described above, this again limits the Commission's considerations to quantifiable benefits and impacts, and discounts the very real and valuable qualitative, as well as strategic, impacts of certain acquisitions.

e. OPC requires the Acquisition Adjustment application to coincide with the transfer of ownership, while at the same time requiring that the improvements not be "anticipated" but be "demonstratable, verifiable and quantifiable". Since the improvements do not occur until after the transfer has been completed and the acquiring utility takes ownership and control it create a virtually impossible standard to meet. How can you "demonstrate, verify and quantify" something that has not occurred?. As described above and by other utilities in this series of workshops, the Commission should retain the flexibility to defer determination of an Acquisition Adjustment until the acquirer is able to best represent and reflect the impacts of the acquisition. The acquirer will generally have much better information on operating conditions, capital needs, and more relevant factors post-closing.
f. OPC appears to desire retaining the Negative Acquisition Adjustment protocols, approximately as they currently exist. As demonstrated by the utilities in these workshops, there are serious concerns with maintaining Negative Acquisition Adjustments and the Company does not recommend continuing the practice.
g. As the Company has previously stated, the Commission's default position on amortization of an Acquisition Adjustment should be tied to the estimated remaining life of the existing assets, to allow recovery of the Adjustment consistent with the assets which were acquired. Reasonable evidence can be presented to recommend an alternative timeline in certain cases.
h. The Company has described above its concerns with the language and framing of (7), where flexibility should be available to the Commission to account for impacts of external factors, "unknowns" at the time of acquisition, and natural variability from estimates to actual results.

D. SWS Proposed Rule

a. The Company has prepared revisions to 25-30.0371, attached as Appendix A. This proposed Rule is presented as modifications to the Staff proposal.
b. SWS's modifications incorporate the above pertinent points in the following forms:
    i. Defining Non-Viable Utility remains a useful addition, as it is a worthwhile consideration for the Commission amongst others. The Company has modified the definition to cover the variety of key indicators of non-viability, drawing from CSWR's initial comments and

established standards in multiple states, including Florida's framework in gas utility acquisitions.

ii. The Company removed the explicit differentiation of approval standards between viable and non-viable utilities. As stated above, while non-viability is a worthy consideration for the Commission, the broad general considerations are relevant for all acquisitions and should allow for demonstrations of qualitative and/or quantitative benefits as applicable for the acquisition.

iii. SWS modified the timing of application for acquisition adjustments to align with a following rate case instead of a firm cutoff, to allow the utility to make an efficient showing that can readily flow through an ongoing ratemaking process.

iv. SWS adjusted the conditions for modification of an approved acquisition adjustment to allow for anticipated impacts outside of the acquiring utility's control as well as a reasonable variance of actual results compared to expectations.

Original Post-Workshop Comments for reference:

A. Should criteria other than extraordinary circumstances be considered for allowing positive acquisition adjustments? If so, what criteria should be considered; how can the Commission ensure customers benefit from a positive acquisition adjustment if allowed; and how are customers protected from utilities "swapping assets"?

i. The Commission has not granted a positive acquisition adjustment utilizing the "extraordinary circumstances" standard since 1995 and has only granted positive acquisition adjustments four times in its history. The perception from the water and wastewater industry is that it is impossible for a utility to meet this steep standard since, in spite of several other criteria, the single controlling criteria appears to be based upon the principle that, if rates are increased, there is no customer benefit. The other criteria - "anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipate rate ...stability over a long period, anticipated cost efficiencies, and whether the purchase was made in an arms-length transaction" have been largely ignored or overridden. In evaluating and weighing these "anticipated" benefits, the Commission has placed the burden so high as to render these valuable customer and system benefits meaningless.

ii. The reference to "extraordinary circumstances" should be removed - instead, the PSC should identify the demonstrations that can be made by the

acquirer, some of which are already listed. Considerations should also include the technical, managerial, or financial capabilities of an acquiring utility.

iii. The Commission should be incentivizing acquisitions before "extraordinary circumstances" come to pass – struggling systems that lack long-term viability should have an incentive to divest to a utility with more competent management, operations, and finances. The Commission's policies and Rules should reflect this and incentivize – for buyer and seller - acquisitions of non-viable systems. In Arizona, the Corporation Commission policy addresses both viable and non-viable small system acquisitions, providing standards for acquisition adjustment consideration and incentives for acquiring and consolidating small systems.[1]

iv. It is important to note that many potential sellers have poor recordkeeping for both asset management and financial records, and thus it may be difficult to interpret or implement the existing rules that rely on book value. An alternative or proxy methodology, as is used in certain other states such as New York[2], are helpful in this context.

v. Customers are protected from swapping assets by requiring a demonstration that the acquisition was an arm's length transaction. The Commission has the final determination that the acquisition is in the public interest and is therefore authorized.

B. Should acquisition adjustments be addressed only at the time of transfer, at the utility's next rate case, or at a limited time after the transfer of assets? What are the appropriate criteria and timing for addressing acquisition adjustments after the time of transfer? What conditions, if any, should be placed upon the approval of an acquisition adjustment that would be subject to review in a future rate proceeding?

i. The determination of the appropriate rate base to record at closing, including an acquisition adjustment, in the transfer proceeding is necessary in certain contexts. The granting of an acquisition adjustment may be a condition to closing the transaction at the negotiated purchase price. In this case, the acquisition adjustment should be recognized and begin amortization at the effective date of the transfer to avoid potentially large out of period bookkeeping adjustments or skewed earnings test results which may cause a conflict with adherence to Rule 25-30.110(5)(d), F.A.C.

[1] Decision 75626, Arizona Corporation Commission Docket No. W-W-00000C-16-0151, *Investigation into Potential Improvements to its Water Policies*, July 25, 2016.

[2] "Statement of Policy on Acquisition Incentive Mechanisms for Small Water Companies", page 3, New York Public Service Commission Case 93-W-0962, *Proceeding on Motion of the Commission to Establish a Policy to Provide Incentives for the Acquisition and Merger of Small Water Utilities*, August 8, 1994.

ii. There may be circumstances where benefits of the acquisition are not able to be shown at the time of purchase/transfer, and flexibility should be allowed at the discretion of the acquiring utility to make that showing in a subsequent proceeding, such as a limited proceeding or full rate case. Therefore, the timing for determination of the acquisition adjustment must be done on a case-by-case basis.

iii. The current Rule requires that the amortization of the acquisition adjustment begin on the date of issuance of the order approving the transfer. This Rule should be amended to provide for flexibility should the acquiring utility request a deferral of such determination, or the Commission were to only provisionally approve the acquisition adjustment at the time of acquisition approval. This amendment will avoid retroactively applying amortization, creating earnings aberrations. At no time should the utility begin amortization of an acquisition adjustment before the acquisition closes and ownership changes, as this would be inconsistent with the matching of amortization of the adjustment with the acquired system assets' depreciation.

Reply Post-Workshop Comments for reference:

Acquisition Adjustments (Rule 25-30.0371, Florida Administrative Code)

iv. OPC is correct to say that rule changes for acquisition adjustments should focus on systems that are in need of improvement, but the Commission should not lose sight of the need to regulate in a way that supports continued supply of proper, reliable service, which entails identifying systems that do not have the managerial, technical, and financial resources to operate in this manner in the long term, but may not currently qualify as "troubled". It is just as important to be proactive in transferring potential troubled systems as it is to be reactive in facilitating transfers for systems that are already troubled.

v. OPC's contention that, in approving an acquisition adjustment, "customers effectively pay twice for plant cost" is not in fact correct. First, if a utility were to acquire a system based on its original cost NBV, this would merely establish a rate base for the acquirer that mirrors the existing rate base of the seller - no added or duplicative cost is created. Second, the establishment of an acquisition adjustment does not duplicate the cost of the acquired plant, and the utility indeed bears the burden of establishing that the increase in asset value is reasonable and benefits are generated for customers from the acquisition.

vi. OPC's claim that customers pay for plant assets twice when the new owner makes capital improvements to replace fully depreciated or contributed

infrastructure is also not well founded. If an asset is replaced when fully depreciated, the customers have received the benefit of that retired asset over its useful life, and a replacement asset is 1) warranted to continue provision of proper service, and 2) reasonable to include as an addition to rate base as it is now providing and will in the future provide benefit to customers.

vii. OPC's concern of rate base churn or swapping assets is straightforwardly mitigated by the PSC's authority to determine and carry out the process for authorizing acquisition adjustments, and the PSC can take all relevant evidence into consideration in each case. Note that the Utility Commenters consistently support the Commission having the final say on what is reasonable and in the public interest with regard to acquisition adjustments. In other words, if the PSC believes the acquiring utility is engaged in "swapping assets", the PSC has full authority to deny the acquisition adjustment.

viii. None of the articulated considerations for positive acquisition adjustments in 25-30.0371(2) F.A.C. would be "extraordinary circumstances" when it comes to acquisition of a small, struggling utility by a more capable utility. This highlights the issue with the existing extraordinary circumstances language - it doesn't appear to reflect the fact that, by a capable utility acquiring a non-viable utility, the ability of the owner of the system to fulfill "a utility's fundamental obligation as a responsible utility manager" is enhanced immediately. Therefore, it meets the first two considerations posed by the Rule. Simply put, a sufficiently stable and experienced acquiring utility can be expected to improve a struggling system, even if the acquirer is merely "engaging in activities that a reasonable utility manager would be doing anyway", by improving compliance, quality and other key service requirements due to its available resources. It is also important to note a positive acquisition adjustment under the "extraordinary circumstances" provision has not been approved in approximately 35 years, which palpably represents the lack of incentive inherent in the policy.

ix. The OPC's references to Section 367.071(5) and Rule 25-30.037(2)(o) are not sufficient to support OPC's conclusion that the acquisition adjustment "should be made at the time of transfer". The Statute says the "commission by order **may** establish" (emphasis added) rate base when a sale is approved, which allows for the flexibility to defer the decision until a later date when more information is known about the impact of the transfer to customers. The Rule requires the utility put forth a proposed rate base in its transfer application, but this does not require the Commission to rule on the final rate base for ratemaking in its order on the application. Instead, as noted above, the Commission **may** consider the facts brought by and presented in the application for transfer, provisionally approve the acquisition adjustment, and determine that the resolution of recovery of the acquisition

adjustment should be made at a later date. This process is also supported by subsection (5) of the Rule. As NAWC noted in their comments, the Commission has later found the acquiring utility did not conform to the terms of the original approval of an acquisition adjustment and removed the amount from rate base in a subsequent case[3].

x. OPC's expectation that "benefits should exist at the time of transfer" and "extraordinary circumstances will not magically appear six months, or a year, after the fact" undersells and mischaracterizes the practical considerations of acquiring a small, troubled system. While an acquiring utility will perform a level of due diligence before the agreement is signed and approval is sought, certain benefits may not be immediately realized and certain costs to remediate issues may not be known and measurable. For example, the acquiring utility may need to perform water quality or environmental testing, engineering analysis, leak detection or I&I investigation to establish the source and scope of an identified problem. This kind of work may not be able to be performed by the seller - due to cost or complexity - nor pre-acquisition by the acquiring utility - due to lack of ownership of the system and level of cost - and therefore remediation costs and benefits may not be fully estimable at the time of approval request. In addition, the criteria for consideration by the PSC in 25-30.071(2) implies that "anticipated" improvements can be cited in the application for transfer, but the satisfaction of those criteria will only and can only occur post-closing.

xi. Contrary to OPC's concern, customers will still know their rates at the time of transfer - there is not a ratemaking analysis performed in transfer proceedings, and the resolution of the acquisition adjustment would be done in a future rate case, if not in the transfer proceeding. Even if the acquiring utility requests the PSC adjust rates at the time of transfer due to the applicable circumstances, customers will have transparency and an ability to be heard in the transfer application proceeding.

xii. In OPC's comments, they do not address or provide practical solutions for the very real concern that struggling utilities are not incented to transfer their systems before or while experiencing service or financial issues. Allowing greater flexibility in the setting of acquisition adjustments will incentivize owners of non-viable systems to pursue a transfer, and for a reasonable transfer price to be attained. This is not only in the best interest of owners of the non-viable system, but it's also in the best interest of the customers of the non-viable system to be taken over by a capable utility operator for the long-term.

[3] See page 5 of NAWC comments, filed March 1, 2023, concerning Central Florida Gas Co.

25-30.0371 Acquisition Adjustments.

(1) Definitions.~~Definition. For the purpose of this rule, an acquisition adjustment is defined as the~~

(a) "Acquisition Adjustment" means 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.~~

(b) "Positive Acquisition Adjustment" means the purchase price is greater than the net book value.

(c) "Negative Acquisition Adjustment" means the purchase price is less than the net book value.

(d) "Non-Viable Utility" means a utility that:

1. demonstrates a lack of historical compliance with primary and/or secondary water quality standards or other health, safety, and environmental standards established by federal, state, or local agencies that affect the quality of service provided; or

2. demonstrates a lack of historical investment, repair, or adequate sustainable maintenance; or;

3. demonstrates an inability to acquire and maintain adequate managerial, operational, financial, or technical capabilities to ensure safe and reliable service to its customers in the long-term; or

4. is not reasonably expected to furnish and maintain safe and reliable service and facilities in the future; or

5. is insolvent, i.e., unable to pay debts owed or generate sufficient cash to fund operations in the long-term; or

6. Has a negative or zero rate base.

(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~~ A full or partial positive acquisition adjustment will be allowed for inclusion in rate base if it is demonstrated that customers will benefit if a full or partial positive acquisition adjustment is allowed ~~should be made has the burden to prove the existence of extraordinary circumstances~~. In determining whether customers benefit, ~~extraordinary circumstances have been demonstrated,~~ the Commission will ~~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, anticipated cost efficiencies, increased ability to attract capital at a reasonable cost, more professional and experienced managerial, financial, technical, and operational resources, if the selling utility is a Non-Viable Utility, and whether the purchase was made as part of an arms-length transaction. Amortization of a positive acquisition adjustment will ~~shall~~ be pursuant to subsection (6) ~~paragraph (4)(a)~~ below.

I~~Negative Acquisition Adjustments. If the purchase price is greater than 80 percent of net book value, a negative acquisition adjustment will not be included in rate base. When the purchase price is equal to or less than 80 percent of net book value, a negative acquisition adjustment shall be included in rate base and will be equal to 80 percent of net book value less the purchase price. Amortization of a negative acquisition adjustment shall be pursuant to subparagraph (4)(b)1. or (4)(b)2. below.~~

(4) Application. Application for a full or partial positive acquisition adjustment can be made at the time of transfer of ownership or at any time from the date of the order approving of the transfer of ownership and assets to the acquiring utility's next base rate case proceeding.

(5) Negative Acquisition Adjustment. A negative acquisition adjustment will not be included in rate base.

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

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

~~(b) The appropriate period over which to amortize a Commission approved negative acquisition adjustment pursuant to subsection (3) above, shall be determined as follows:~~

~~1. If the purchase price is greater than 50 percent of net book value, the negative acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the order approving the transfer of assets. In this case, 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.~~

~~2. If the purchase price is 50 percent of net book value or less, the negative acquisition adjustment shall be amortized from the date of issuance of the order approving the transfer of assets as follows:~~

~~a. 50 percent of the negative acquisition adjustment shall be amortized over a 7-year period; and~~

~~b. 50 percent of the negative acquisition adjustment shall be amortized over the remaining life of the assets.~~

(7) ~~(5)~~ Subsequent Modification. Any full or partial positive acquisition adjustment, once made by the Commission pursuant to subsections (2) or (3) above, may be subsequently modified if the anticipated customer benefits ~~extraordinary circumstances~~ do not materialize or subsequently are substantially changed due to factors within the acquiring utility's control.

Any subsequent modification by the Commission will be within five (5) years of the date of issuance of the order approving the acquisition adjustment. ~~transfer of assets.~~

Rulemaking Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.071(5), 367.081(2)(a), 367.121(1)(a), (b) FS. History–New 8-4-02, Amended 11-22-10,_____.