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VIA: ELECTRONIC FILING

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In re: Examine Regulatory Policies and Practices in the Water and Wastewater Industries in Florida.

On September 11, 2023, the Florida Public Service Commission (Commission) issued a Notice of Development of Rulemaking and Workshop regarding several areas impacting water and wastewater companies. On September 25, 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 is submitting the following Comments.

A. Summary of Major Concerns with Proposed Rule

- I.** Removes the long-standing extraordinary circumstances policy without a sufficient and equitable surrogate customer safeguard for all future acquisitions, is contrary to Commission policy, and raises significant public interest concerns.
- II.** Replaces the cost-based approach with a market-based approach.
- III.** Creates an incentive for acquiring utilities to willfully grow rate base to enrich utility shareholders by increasing customers' bills without adding value to the aging water and/or wastewater systems.
- IV.** Results in disparate treatment that enables acquiring utilities to out earn existing-regulated utilities at the expense of customers.
- V.** Rewards existing-regulated utility owners with profits unrelated to the maintenance or actual condition of these systems.
- VI.** Impacts customers adversely when future improvements are made because bill impacts will not only include the improvements but the premium above original cost as well.

B. Comments on Proposed Rule

Public Interest

A mere change in ownership should not cause or give rise to a future increase in rates. The objective standard of a five-year CPVRR analysis in the proposed rule must be applicable for all positive acquisition adjustments in order to demonstrate offsetting economic customer savings in the public interest. It would be impossible to demonstrate that any qualitative benefits outweigh the potential rate impact to the customers, and therefore, whether it is in the public interest.

Section 367.011(3), Florida Statutes (F.S.), states:

The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

In making a determination of public interest, the Florida Supreme Court stated that “[t]he regulatory agency must evaluate the interests of both the utility and the public in any situation.”¹ Further, with regard to public interest in a 1992 docket, the Commission stated the following:

As the agency regulating this public utility, the Commission is not in the same posture as an adversarial party in a civil court proceeding against this utility. In this administrative context, the relationship of the Commission with this regulated utility is different because public utilities are granted the privilege to operate on the basis that they will do so within the public interest. The Commission must regulate such utilities to assure that they continue to do so.

(Emphasis added)²

Consistent with the above and under the regulatory compact, utilities are given the monopoly right to serve a captive customer base by the Commission. Section 367.111, F.S., requires a utility to provide each person under its authorized service territory safe, efficient, and sufficient service within a reasonable time. In exchange for the safe, efficient, and sufficient service, customers are made captive under the grant of legal monopoly with no option for another service provider and must pay the utility’s authorized rates that are deemed by the Commission to be just, reasonable, compensatory, and not unfairly discriminatory. As a further part of this regulatory compact, in exchange for fulfilling the statutorily-mandated service obligation, a utility is entitled to recover through rates its reasonable operating expenses and earn a fair return on the investment of the utility in property used and useful in the public service. Under this statutory framework, the Commission’s policing oversight role in the public interest could be characterized as acting as a surrogate for competition in this regulated monopolistic setting, by enforcing all provisions of the compact fairly and in the public interest.

Consistent with previous workshop comments, OPC does not object to applying a fair and equitable modification to the Acquisition Adjustment. The current rule draft removes the long-standing extraordinary circumstances and negative acquisition adjustment policies, which were designed to balance all of the provisions of the public interest. If those previous lines of safeguard

¹ *City of Margate v. King*, 167 So. 2d 852 at 857 (Fla. 1964)

² Order No. PSC-93-0043-PCO-WU, p. 2, issued January 11, 1993, in Docket No. 920118-WU, In re: Request for review of service availability charges in Highlands County by PLACID LAKES UTILITIES, INC.

protections for the customers are removed, the rule must be modified in a way that places fair and equitable surrogate safeguards for customers of both viable and non-viable utilities purchased by acquiring utilities.

Unfortunately, the proposed revisions fall short of this mark, as the proposal as a whole creates an incentive for acquiring utilities to willfully grow their rate base through acquisitions via premium purchase prices above net book values (NBV) that would serve to economically enrich utility shareholders on the backs of captive utility customers through increased rates in the future, despite the purported non-economic qualitative benefits that customers would be receiving from the acquiring utility. This kind of behavior was demonstrated in the 1930's and 1940's particularly in the electric industry, which gave rise to the Florida's original cost rate regulation for such essential services – in 1951 for electric investor-owned utilities (IOUs), in 1952 for gas IOUs, and in 1959 for water and wastewater IOUs. Florida is an original cost state,³ and any deviation through the approval of a positive acquisition adjustment warrants an objective public interest standard as to the offsetting economic benefits to the captive ratepayers. To do otherwise would result in moving from cost-based regulation to the slippery slope of a form of market-based regulation, without any discernable guidelines, solely for the benefit of acquiring utilities. This would unfairly discriminate against existing regulated utilities who are fulfilling their part of the compact and already providing satisfactory quality of service to their customers.

If the Commission's goal is to have a more proactive approach to addressing troubled water and wastewater systems (e.g. infrastructure replacement, etc.), the OPC recommends that it open a rulemaking for Rule 25-30.037, F.A.C. to provide for a more stringent financial ability standard when approving transfers, such as a demonstration of the acquiring utility's financial ability to replace, at a minimum, either the transmission and distribution system for water or the collection system for wastewater. In addition, in such a rulemaking, the Commission could consider the numerous possible incentives discussed at the February 1, 2023 Workshop, in which OPC indicated its willingness to continue an open dialogue on with staff and participating utility representatives. Based on all of the above, the Commission should consider a multifaceted approach in a fair and equitable manner to both the utilities and its customers to address troubled

³ Section 367.0811, Florida Statutes, creates a limited exception to this principle in certain acquisition scenarios not the subject of this rule. It can be argued that the specific exceptions to the original cost concept actually strengthen the original cost principle as it applies to acquisitions that do not meet the test of this new statute.

water and wastewater systems, rather than attempting to achieve an as-yet poorly delineated goal solely or primarily through the adoption of the currently drafted proposed positive acquisition adjustment policy.

Disparate Treatment of Acquiring Utilities versus Existing Regulated Utilities

As Commission staff finalizes its recommended proposed rule for the Commission's consideration, the OPC has a concern over the potential disparate treatments of the acquiring utilities and existing regulated utilities.

First, an existing regulated utility can reap only the benefit of cost savings up to its maximum return on equity (ROE) limit. However, under the proposed rule amendments for acquiring utilities, all quantified cost savings can be converted to the shareholders' benefit and utilized to justify an entire or partial positive acquisition adjustment. To illustrate this point, Sunshine Water's Mid-County wastewater system was reconfigured at some point in the past, producing significant savings to its sludge removal costs. This in turn placed the system in an overearnings posture, resulting in Commission-ordered refunds and rate reductions for customers. Under this proposal, these benefits would inure to the benefit of the owners and skew the balance of the regulatory compact bargain discussed above.

Second, existing regulated utilities can earn a return on the original cost of its utility investment devoted for the provision of water and/or wastewater service. However, under the draft proposal, the acquiring utility would not only recover the new plant investment at original cost, but it also would recover the full or partial amount of the premium paid above the acquired utility's NBV. Disparate treatment would occur if the Commission rightfully would not allow an existing regulated utility to double recover its used and useful plant investment devoted to public use. Equitable treatment would mean that the latter double recovery should be allowed. Instead, any rule revision should provide that an acquiring utility should not be allowed the recovery of any positive acquisition adjustment unless it clearly and convincingly demonstrates with a five-year CPVRR analysis that there are offsetting economic customer savings.

Secondary Water Quality Standards

There are no Commission orders actually revoking a utility's certificate due to secondary water quality standards. Section 367.111(3), F.S., states:

The commission may, on its own motion or based on complaints of customers of a water utility subject to its jurisdiction, review water quality as it pertains to secondary drinking water standards established by the Department of Environmental Protection.

In addition, Section 367.0812(1), F.S., entitled Rate fixing; quality of water service as criterion, in pertinent part, states:

In fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory, the commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection.

By including secondary water quality standards in the draft proposal as justification for the departure for original cost results in the unintended consequence of classifying otherwise viable utilities as non-viable utilities, and thereby lowering the burden of proof for a positive acquisition adjustment under subsection (4)(a) than particularly the CPVRR analysis required by subsection (5)(a)3 for viable utilities. Thus, for subsection (2)(e)1.a. on Line 24, the words “or secondary” should be stricken, as well as subsection (4)(a)4 in its entirety.

Acquisition Adjustments Decision at the Time of Transfer

There is potential risk exposure to customers by not addressing an acquisition at the time of the transfer. If the acquiring utility is later denied a portion or all of its requested positive acquisition adjustment, it could result in a utility management decision to divest the acquired assets and/or delay planned plant improvements, leaving captive customers in limbo and creating the opposite effect of worsening service. To highlight this concern, equity investors have the expectation to earn a reasonable return on their investment. Pending a final Commission decision, equity investors are not earning a return on a positive acquisition adjustment or goodwill. If there is a final Commission decision to deny the entire requested positive acquisition adjustment, the equity investors will never earn a return on the premium they paid above the NBV of the acquired assets, which would become sunk costs unrecoverable from customers. If the amount of those

unrecoverable sunk costs are significant, equity investors could advise management to divest those associated acquired assets in order to recoup some of those sunk costs.⁴

Accounting Standards Codification (ASC) 350 includes guidance on the impairments indefinite-lived intangible assets, including goodwill. Under the generally accepted accounting principles (GAAP), a positive acquisition adjustment would be considered goodwill. Goodwill is tested for impairment using the guidance in ASC 350-20. If there is a subsequent final Commission order denying a requested positive acquisition adjustment, the acquiring utility would then need to write-off that amount to its current year's net operating income in accordance with ASC 350-20.⁵

Under this divestiture scenario, the result could be: 1) a subsequent sale to another investor-owned utility (IOU) or to a municipality; or 2) an abandonment situation wherein the court of competent jurisdiction appoints a receiver or the County takes over the abandoned utility system. Some of these scenarios would provide better outcomes than others. For example, where the County takes over in the abandonment scenario, OPC would submit that in most cases the County has greater economies of scale and ability to obtain lower cost debt to fund plant improvements through the issuance of bonds than the acquiring utility. OPC further notes that Counties do not pay property taxes like all IOUs and do not pay income taxes like some IOUs. Obviously, there have been non-governmental receivership scenarios that have been less than ideal where customers have suffered.

Not to rehash all of the OPC's prior workshop comments, the customers of the utility deserve to know how their rates will change due to a positive acquisition adjustment at the time of transfer, and that the customers' point of entry to object to a transfer is when the transfer is before the Commission for approval, not at a future time. As such, for Section (3), on Line 14, there should be period after the word "authorization" and the remainder of the wording beginning with "or within 3 years" through Line 16 should be stricken. Further, for Sections (4)(a) and (5)(a), the

⁴ For illustrative purposes only, the recent acquisition of Florida City Gas (FCG) by Chesapeake Utilities Corporation can illustrate how a subsequent divestiture can allow for the recouping of goodwill sunk costs. In 2018, NextEra Energy (NEE) purchased FCG \$231 million above the NBV of the acquired assets. FCG was transferred by NEE to Florida Power and Light Company (FPL or NEE regulated-electric subsidiary). The positive acquisition adjustment or goodwill of NEE's acquisition of FCG has been residing on the books of an unregulated, sister company of FPL. The positive acquisition adjustment from Chesapeake's acquisition of FCG is well in excess of the positive acquisition adjustment from NEE's acquisition of FCG which will NEE to recoup its positive acquisition adjustment or goodwill.

⁵ Pursuant to Document No. 00046-2023, p. 7, dated January 3, 2023, CSWR, LLC and its subsidiaries follow GAAP.

following wording should be included before the semicolon: “in conjunction with its transfer application pursuant to Rule 25-30.037, F.A.C.”

To the extent that there is an urgent public health or safety concern such that the acquiring utility can demonstrate,⁶ it can file for a rule waiver.

Insolvent and Unable to Pay Debts

With regard to the “insolvent and unable to pay debts” language contained in subsections (2)(e)2 and (4)(a)9, there are several small utilities that reflect net operating losses on their annual reports on a standalone basis and/or their parent is the only reason the utilities are able to pay all their debts and make plant improvements. With that stated, these subsections should include after the word “utility” the following wording “or with the financial assistance of its parent company”. In addition, the rule should include an objective measure for determining whether the acquired utility is insolvent or unable to service its debt obligations, such as a debt service coverage ratio of less than 1 or some other certain level or measure. This change would ensure that financial distress to the owners of the acquired utility was real and not just a matter of the way books are kept.

Cost of All Improvements

With regard to subsections (4)(a)14 and (5)(a)8, it should be clear that the rate impact should include the cost of all improvements. With that stated, these subsections should insert the phrase “the cost of all improvements,” immediately preceding the words “and the impact of the acquisition adjustment.”

⁶ Order No. 24259, p. 3, issued March 20, 1991, in Docket No. 900928-WS, In re: Application for transfer of facilities and Certificate No. 229-S from PPW Sewer Company, Inc. and PPW Water Company to Utilities, Inc. of Florida, cancellation of Certificate No. 283-W and Amendment of Certificate No. 107-W in Pasco County. (“Rate base is usually established in cases involving the acquisition of existing facilities. However, there is a need to process this transfer as quickly as possible due to the urgent need for improvements to the system. Utilities, Inc. has agreed to make the improvements upon approval of the transfer. Therefore, Utilities, Inc.’s request that rate base be established in the forthcoming rate case is hereby granted. Utilities, Inc.’s request that a positive acquisition adjustment be included in rate base will also be addressed in the rate case.”)

Long-Standing Negative Acquisition Adjustment Policy

With regard to Section 8, the Commission should not change its long-standing policy for negative acquisition adjustments. Simply put, the current policy benefits the customers with a lower rate base if the purchase price is equal to or less than 80 percent of the NBV.

Time Horizon for CPVRR Analysis

If the long-standing extraordinary circumstances policy is removed from the rule, the time horizon for the CPVRR analysis should be five years in order to rightly place the burden of proof on the acquiring utility because of the potentially significant rate impact on customers in the future from a positive acquisition adjustment. "Burden of proof in a commission proceeding is always on a utility seeking a rate change, and upon other parties seeking to change established rates."⁷

At the workshop, there were utility objections to the five-year horizon for the CPVRR analysis. A staff member appropriately cautioned that to increase the time horizon for the CPVRR analysis would not be "feasible" and it would "start getting distorted." Another staff member stated that the time horizon for the CPVRR analysis should not be open-ended and inquired of a utility representative what the time horizon should be. The response was 20 years. At the workshop, OPC objected consistent with staff's concerns to the suggested 20-year time horizon for the CPVRR analysis. OPC further asserted that the analysis with a longer time horizon can be easily manipulated by front loading savings in the early years and back loading increase costs in the latter years to yield a net savings result. OPC also pointed out that the greater the time horizon, the more uncertain any results are. To illustrate this point as the CPVRR analysis will include the acquiring utility's anticipated capital improvements, the Chartered Investment & Management Accountant's website states, in pertinent part, the following: "[t]he time horizon is another important factor to consider in capital budgeting decisions. The longer the time horizon, the greater the uncertainty associated with the investment."⁸ Most significantly, such a long horizon creates the distinct possibility of intergenerational unfairness that would result from current customers never receiving the benefits of an acquisition.

⁷ *Florida Power Corp. v. Cresce*, 413 So. 2d 1187, 1191 (Fla. 1982)

⁸ <https://www.cima.institute/blog/maximizing-profits-mastering-the-art-of-capital-budgeting-techniques-with-examples>

Commencement of Acquisition Amortization

A utility representative raised a concern that the amortization of an acquisition adjustment should not commence until after the closing date of the acquisition, rather than commencing on the date of the order approving the transfer. At the workshop, OPC stated that no utility has raised this concern since 2002 when the rule became effective. The utility representative stated that the Commission has never approved a positive acquisition adjustment since the rule became effective in 2002, which is correct. However, the Commission has granted numerous negative acquisition adjustments since 2002 and has not waived the commencement of the amortization of those acquisition adjustments from the date of the transfer order to the date of closing. There has been no valid reason proffered by any utility representative of any harm or undue hardship that would result in keeping the commencement of any acquisition adjustment to the date of the transfer order.

C. Other Comments

At the workshop, a utility representative brought up the forthcoming increased requirements for per- and polyfluoroalkyl substances (PFAS). As discussed at the workshop, both the acquired/existing regulated and acquiring utilities can recover administratively without a Commission vote some O&M expenses associated with increased requirements for PFAS (e.g. chemicals via a price index application and additional testing expenses via a pass-through application). Further, the legislature has already given a statutory incentive for both the acquired/existing regulated and acquiring utilities to make any plant improvements associated with increased requirements for PFAS. Specifically, pursuant to Section 367.081, F.S., the Commission is required to “approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

Docket No.: Undocketed

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 9th day of October 2023, to the following:

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s/Charles J. Rehwinkel

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1 **25-30.0371 Acquisition Adjustments.**

2 (1) Purpose. The purpose of this rule is to establish the process by which utilities may
3 petition the Commission to determine whether to approve a positive acquisition adjustment for
4 inclusion in rate base and an amortization period.

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

10 (a) “Acquisition adjustment” means the difference between the purchase price of utility
11 system assets to an acquiring utility and the net book value of the utility’s assets.

12 (b) “Filing date” means the date the purchasing utility files a petition requesting
13 Commission approval of the transfer of the certificate of authorization from the acquired
14 utility to the purchasing utility.

15 (c) “Positive acquisition adjustment” means the purchase price is greater than the net book
16 value.

17 (d) “Negative acquisition adjustment” means the purchase price is less than the net book
18 value.

19 (e) “Non-viable utility” means a utility that meets the criteria in either of the following
20 subparagraphs:

21 1. A utility that is projected to be unable to provide and maintain safe and adequate service
22 and facilities to its customers over the 5-year period following the filing date due to:

23 a. An ongoing pattern of enforcement or compliance actions by federal, state, or local
24 regulatory agencies based on violations of primary ~~or secondary~~ water quality standards or
25 other health, safety, and environmental standard; and

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1 b. Insufficient investment, repair, or maintenance that has caused or resulted in an inability
 2 to acquire and maintain adequate managerial, operational, financial, or technical capabilities to
 3 ensure safe and reliable service to its customers; or

4 2. A utility that is insolvent, i.e., unable to pay debts as they become due in the regular
 5 course of business.

6 (f) “Viable utility” means all utilities that are not non-viable as defined in paragraph (2)(e)
 7 of this rule.

8 (g) “Good cause” means a showing of financial hardship, unforeseen events, or other
 9 events outside the utility’s control but does not include reasons such as management oversight.

10 (3) A utility that purchases another utility may petition the Commission to establish an
 11 acquisition adjustment under either subsection (4) or subsection (5) of this rule to include
 12 some or all of a positive acquisition adjustment in the purchasing utility’s rate base. A utility
 13 may seek approval of a positive acquisition adjustment at the time the utility seeks approval to
 14 transfer the certificate of authorization ~~or within 3 years of the issuance date of the~~
 15 ~~Commission order approving the transfer of the certificate of authorization. The utility may~~
 16 ~~request an extension of the 3-year period, which must include a statement of good cause.~~

17 (4)(2) Positive Acquisition Adjustments for Non-Viable Utility. A positive acquisition
 18 adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any
 19 entity that believes a full or partial positive acquisition adjustment should be made has the
 20 burden to prove the existence of extraordinary circumstances. In determining whether
 21 extraordinary circumstances have been demonstrated, the Commission shall consider evidence
 22 provided to the Commission such as anticipated improvements in quality of service,
 23 anticipated improvements in compliance with regulatory mandates, anticipated rate reductions
 24 or rate stability over a long term period, anticipated cost efficiencies, and whether the
 25 purchase was made as part of an arms-length transaction. Amortization of a positive

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1 ~~acquisition adjustment shall be pursuant to paragraph (4)(a) below.~~

2 (a) Application. The purchasing utility must file the following information with its petition
3 in conjunction with its transfer application pursuant to Rule 25-30.037, F.A.C.:

4 1. The amount of the acquisition adjustment requested;

5 2. The amortization period requested;

6 3. A cumulative present value of the revenue requirements analysis (CPVRR) in the form
7 of a spreadsheet. Form PSC XXX (XX/23), entitled “Water and/or Wastewater Utilities
8 Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment
9 Worksheet,” which is incorporated by reference in this rule and is available at [hyperlink], is
10 an example CPVRR that may be completed and included in the purchasing utility’s
11 application to comply with this paragraph. The form may also be obtained from the
12 Commission’s website, www.floridapsc.com;

13 4. An Excel spreadsheet with the data and information included in the CPVRR analysis
14 with the spreadsheet formulas intact;

15 53. Primary water quality test results of the acquired utility submitted to the Florida
16 Department of Environmental Protection from the past 10 years from the filing date;

17 4. Secondary water quality test results of the acquired utility submitted to the Florida
18 Department of Environmental Protection from the past 10 years from the filing date;

19 65. Any notices of violation, consent decrees or other regulatory actions issued by a
20 federal, state, regional, or local agency regarding the provision of the acquired utility’s water
21 or wastewater service over the past 10 years from the filing date;

22 76. The acquired utility’s annual capital investments and operations and maintenance
23 expenses over the past 10 years from the filing date;

24 87. A description of the managerial, operational, financial, and technical capabilities of
25 the ownership and management of the acquired utility;

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1 98. A description of the ability of the acquired utility to furnish and maintain safe and
2 adequate service and facilities over the next 5 years from the filing date;

3 109. The extent to which the acquired utility is insolvent or unable to service its debt
4 obligations;

5 110. The purchasing utility's planned infrastructure additions and maintenance to improve
6 the acquired utility's quality of service and compliance with environmental regulations;

7 121. An explanation of the extent to which the acquisition was made as part of an arms-
8 length transaction;

9 132. The contract of sale, including the estimated cost of the fees and transaction closing
10 costs to be incurred by the purchasing utility;

11 143. All engineering studies or appraisals the purchasing utility procured pertaining to the
12 purchase of the acquired utility;

13 154. The 5-year projected rate impact on the customers of the utility system being
14 acquired, which must include the rate impact of any cost efficiencies expected to result from
15 the acquisition transaction and the impact of the acquisition adjustment; and

16 165. A calculation of the net book value of the acquired utility including the composite
17 remaining life of the assets purchased.

18 (b) A full or partial positive acquisition adjustment will be allowed for inclusion in the
19 purchasing utility's rate base if the purchasing utility demonstrates that the acquired utility is a
20 non-viable utility and that customers will benefit if a full or partial positive acquisition
21 adjustment is allowed. In determining whether the acquired utility meets the definition of a
22 non-viable utility in paragraph (2)(e), the Commission will consider information filed with the
23 application in paragraph (4)(a). In determining whether customers will benefit from a full or
24 partial acquisition adjustment, the Commission will consider whether the anticipated
25 improvements in the acquired utility will lead to the likelihood of an improvement in quality

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1 of service, quality of facilities, or compliance with primary and secondary water quality
2 standards or wastewater regulatory requirements over the 5 years following the date of
3 acquisition; the amount of anticipated rate impacts over the 5 years following the date of
4 acquisition; and whether the purchase was made as part of an arms-length transaction.

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

11 (5) Positive Acquisition Adjustments for Viable Utility.

12 (a) Application. The purchasing utility must file the following information with its petition
13 in conjunction with its transfer application pursuant to Rule 25-30.037, F.A.C.:

14 1. The amount of the acquisition adjustment requested;

15 2. The amortization period requested;

16 3. A cumulative present value of the revenue requirements analysis (CPVRR) in the form
17 of a spreadsheet. Form PSC XXX (XX/23), entitled “Water and/or Wastewater Utilities
18 Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment
19 Worksheet,” which is incorporated by reference in this rule and is available at [hyperlink], is
20 an example CPVRR that may be completed and included in the purchasing utility’s
21 application to comply with this paragraph. The form may also be obtained from the
22 Commission’s website, www.floridapsc.com;

23 4. An Excel spreadsheet with the data and information included in the CPVRR analysis
24 with the spreadsheet formulas intact;

25 5. All supporting data and assumptions used in the CPVRR spreadsheet;

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- 1 6. A description of the anticipated improvements in the acquired utility's quality of
2 service;
- 3 7. A description of anticipated improvements in the acquired utility's compliance with
4 regulatory requirements;
- 5 8. Projected annual rate impacts over the 5 years following the filing date, which must
6 include the rate impact of any cost savings expected to result from the acquisition transaction
7 and the impact of the acquisition adjustment;
- 8 9. A description, including any supporting data, of the anticipated cost savings resulting
9 from the acquisition;
- 10 10. An explanation of the extent to which the acquisition was made as part of an arms-
11 length transaction;
- 12 11. The contract of sale, including the estimated cost of fees and transaction closing costs
13 to be incurred by the purchasing utility;
- 14 12. All engineering studies or appraisals the purchasing utility procured pertaining to the
15 purchase of the acquired utility; and
- 16 13. A calculation of the net book value of the acquired utility including the composite
17 remaining life of the assets purchased.
- 18 (b) A full or partial positive acquisition adjustment will be allowed for inclusion in rate
19 base if the purchasing utility demonstrates that the transaction incorporating the full or partial
20 positive acquisition adjustment is projected to provide a positive CPVRR customer benefit
21 over a 5-year period from the date of acquisition. If the CPVRR does not result in a positive
22 customer benefit over a 5-year period, a full or partial positive acquisition adjustment will be
23 allowed if the purchasing utility demonstrates that the following factors outweigh the lack of a
24 positive CPVRR customer benefit:
- 25 1. Anticipated improvements in quality of service and compliance with water or

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1 wastewater regulatory requirements;

2 2. Anticipated rate reductions or 5 years of rate stability following the date of acquisition;

3 3. Anticipated cost savings over the 5 years following the date of acquisition;

4 4. Increased ability to attract capital;

5 5. Lower overall cost of capital;

6 6. Additional professional and experienced managerial, financial, technical, and

7 operational resources; and

8 7. The purchase was made as part of an arms-length transaction.

9 ~~(4) Amortization Period:~~

10 ~~(a) In setting the amortization period for a Commission approved positive acquisition~~
11 ~~adjustment pursuant to subsection (2), above, the Commission shall consider evidence such as~~
12 ~~the composite remaining life of the assets purchased and the condition of the assets purchased.~~
13 ~~Amortization of the acquisition adjustment shall begin on the date of issuance of the order~~
14 ~~approving the transfer of assets.~~

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

17 ~~1. If the purchase price is greater than 50 percent of net book value, the negative~~
18 ~~acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the~~
19 ~~order approving the transfer of assets. In this case, the negative acquisition adjustment shall~~
20 ~~not be recorded on the books for ratemaking purposes or used for any earnings review unless~~
21 ~~the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814, 367.0817 or~~
22 ~~367.0822, F.S., that will be effective during the amortization period.~~

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

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

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

5 (6) Amortization Period for a Positive Acquisition Adjustment. The Commission will set
6 the amortization period in the order approving the positive acquisition adjustment.

7 Amortization of the acquisition adjustment will begin on the date of issuance of the order
8 approving the positive acquisition adjustment.

9 ~~(7)(5) Subsequent Review Modification of a Positive Acquisition Adjustment. Any full or~~
10 ~~partial positive acquisition adjustment, once made by the Commission pursuant to subsection~~
11 ~~(2), above, may be subsequently modified if the extraordinary circumstances do not~~
12 ~~materialize or subsequently are eliminated or changed within 5 years of the date of issuance of~~
13 ~~the order approving the transfer of assets.~~

14 (a) Any full or partial positive acquisition adjustment, once made by the Commission
15 pursuant to either subsection (4) or (5) of this rule will be reviewed by the Commission in the
16 utility's next rate proceeding or in a proceeding initiated by the utility within 5 years from the
17 issuance date of the Commission order approving the acquisition adjustment, whichever date
18 is earlier. The utility may request an extension of the 5-year review period, which must
19 include a statement of good cause.

20 (b) The utility must file in the rate proceeding or in the proceeding initiated by the utility
21 under paragraph (7) an explanation of how the anticipated customer benefits that were the
22 basis for the Commission's approval of the positive acquisition adjustment materialized or did
23 not materialize.

24 (c) The Commission's review under this subsection will be to determine if the full or
25 partial positive acquisition adjustment should be subsequently reduced or eliminated. In

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1 making this determination, the Commission will consider whether the anticipated customer
2 benefits did not materialize or subsequently changed within 5 years of the date of issuance of
3 the order approving the positive acquisition adjustment.

4 (8) Negative Acquisition Adjustments. If the purchase price is greater than 80 percent of
5 net book value, a negative acquisition adjustment will not be included in rate base. When the
6 purchase price is equal to or less than 80 percent of net book value, a negative acquisition
7 adjustment shall be included in rate base and will be equal to 80 percent of net book value less
8 the purchase price. The appropriate period over which to amortize a Commission approved
9 negative acquisition adjustment pursuant to this section, shall be determined as follows:

10 1. If the purchase price is greater than 50 percent of net book value, the negative
11 acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the
12 order approving the transfer of assets. In this case, the negative acquisition adjustment shall
13 not be recorded on the books for ratemaking purposes or used for any earnings review unless
14 the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814, 367.0817 or
15 367.0822, F.S., that will be effective during the amortization period.

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

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

21 b. 50 percent of the negative acquisition adjustment shall be amortized over the remaining
22 life of the assets. ~~Negative Acquisition Adjustment. A negative acquisition adjustment will~~
23 ~~not be included in rate base.~~

24 *Rulemaking Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.071(5),*
25 *367.081(2)(a), 367.121(1)(a), (b) FS. History–New 8-4-02, Amended 11-22-10,_____*

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