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October 9, 2023  
(via efilng)

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

Re: Post-Workshop Comments – September 25, 2023 Staff Rule Development  
Workshop Regarding Amendments to Rule 25-30.0371, Acquisition Adjustments

Dear Mr. Teitzman:

Attached please find CSWR-Florida's Post-Workshop Comments and draft rule for the Florida Public Service Commission Staff's above-referenced Rule Development Workshop. Please let me know if you have any questions.

Sincerely,

*/s/ Susan F. Clark*

Susan F. Clark

SFC/dmg  
Enclosure

**CSWR-Florida's Post-Workshop Comments to September 25, 2023, Staff Rule  
Development Workshop Regarding Amendments to Rule 25-30.0371,  
Acquisition Adjustments**

**Introductory Comments**

It has been a year since the Florida Public Service Commission (Commission) directed the staff to develop a revised rule regarding acquisition adjustments that would provide appropriate incentives to encourage the consolidation of smaller systems with the goal of improving service to water and wastewater utility customers and address water quality and environmental issues. More specifically, Commissioners noted the need for the incentive of a positive acquisition adjustment as a means of encouraging system consolidation.

Attached to these post-workshop comments is a draft of amendments to Rule 25-30.0371, Florida Administrative Code (FAC) that CSWR-Florida Utility Operating Company (CSWR-Florida) recommends be adopted by the Commission to provide the appropriate incentive to advance the goal of water and wastewater system consolidation. The draft was developed in collaboration with, and is supported by, Sunshine Water Services, US Water Corporation, and Ni-Florida, Inc.

These comments address the amendments proposed in the attached draft and respond to comments made by the Office of Public Counsel (OPC) at the September 25, 2023 Workshop.

**Comments on Proposed Changes to Rule**

*Subsection (1), Purpose.*

The impetus for this rulemaking was the Commission's direction to staff to craft a rule that would advance the policy of encouraging the consolidation of smaller systems into larger entities with the goal of improving service to customers and addressing water quality and environmental issues in the state to the benefit of not just the customers but of the state and its citizens as well. To that end, the proposed amendments include a statement of purpose that provides that in the evaluation of a request for an adjustment, the primary focus should be on the benefits to be realized by both customers and the public by the acquisition.

Subsection (2), Definitions.

The proposed amendments add definitions for good cause, non-viable utility, and viable utility.

The term “good cause” is used in reference to the circumstances in which the time frames may be extended for requests for an acquisition adjustment or for review of an acquisition adjustment.

“Non-viable utility” and “viable utility” are defined for purposes of the criteria applicable in deciding whether an acquisition adjustment is warranted. The criteria listed for a non-viable utility are all indications of a utility that would be unable to provide safe and reliable service over the long term.

Subsection (3), Positive Acquisition Adjustment for a Non-Viable Utility.

Consistent with the purpose of the rule, this section identifies benefits from an acquisition that would be factors in granting a positive acquisition adjustment. The amendments retain the Commission’s flexibility to consider other potential benefits, and an acquiring utility is not required to show all the listed benefits in order to receive a full or partial adjustment.

Subsection (4), Positive Acquisition Adjustment for a Viable Utility.

When the acquisition involves a viable utility, this section calls for a demonstration of a positive CPVRR (cumulative present value revenue requirement) as a criterion for receiving a positive acquisition adjustment, but also allows for such an adjustment without a positive CPVRR if other benefits can be shown. The amendments provide for a showing of a positive CPVRR over 5 years, but retain the Commission’s ability to approve a longer period over which a positive CPVRR is to be shown.

Subsection (5), Application.

It has been CSWR-Florida’s consistent position that an acquiring utility should have the option of filing a request for an acquisition adjustment at the time of transfer or at a later date after the approval for the transfer. The proposed amendments provide for a 5-year period within which to request an adjustment, and for the extension of the 5-year period for good cause. CSWR firmly believes a utility should have the opportunity to operate a system for a period of time after

closing to identify needed improvements and to present a more complete picture of the benefits to be realized by the acquisition. The proposed amendments also make it clear that a request for an acquisition adjustment can be made as a separate filing or as part of a rate case.

*Subsection (6), Negative Acquisition Adjustment.*

CSWR agrees with the elimination of the provisions of the current rule regarding negative acquisition adjustments. The imposition of a negative acquisition adjustment does not align with the goal of encouraging beneficial acquisitions. Elimination of the negative adjustment does not harm customers, it encourages the acquiring utility to negotiate for a lower price, and the additional earnings provide a resource that could be used to reinvest in the acquired system.

*Subsection (7), Amortization Period.*

The proposed amendment to this section is for consistency with other changes to the rule (extension of time to request an acquisition adjustment and elimination of the negative acquisition adjustment) and to address the circumstance where the closing of a transfer takes place after an acquisition adjustment is approved.

*Subsection (8), Subsequent Review.*

The proposed language for this subsection provides for, but does not mandate, a subsequent review of an acquisition adjustment. Mandating a subsequent review adds unnecessary uncertainty and expense in requesting an adjustment, and it may cost customers more to have the adjustment reviewed than any subsequent reduction in the original amount would cost; and it unnecessarily limits the Commission's discretion regarding the need for a subsequent review. Also, the basis for modification would be due to benefits that do not materialize due to factors within the utility's control. Any order approving, denying or modifying the acquisition adjustment would be final and not subject to re-adjudication in a subsequent proceeding.

**Office of Public Counsel Comments at the September 25, 3023 Workshop**

At the workshop, OPC made comments regarding a reference to compliance with secondary water standards being included as a criterion for evaluating whether a utility is non-viable, the insolvency of a utility that is owned by a parent company,

the timing of a request for an acquisition adjustment, and the imposition of a negative acquisition adjustment.

CSWR-Florida is opposed to OPC's recommendations relating to the timing of a request for an acquisition adjustment and the elimination of a negative acquisition adjustment, for the reasons stated above. Allowing a request for an acquisition adjustment to be made after a transfer does not harm customers. Customers will still have the ability to object to an acquisition adjustment when a utility files a request for an adjustment.

Regarding paragraph (2)(e) of the proposed amendments, OPC's argument for deleting compliance with secondary water standards from the criteria to be considered in determining whether a utility was non-viable seemed to be that the Commission has never revoked a utility's certificate for failing to comply with those standards. While that may be true, it has no relevance to whether that criteria should be removed. Compliance with secondary standards is an element to be considered in fixing rates, and a failure to comply with those standards is indicative of a non-viable utility because it is unable to provide safe and reliable service.

OPC also commented on the listing of insolvency as a criterion for determining whether a utility is non-viable arguing that the ability of a utility's parent company should also be considered in determining if a utility is insolvent. Whether there is a parent that can provide financial support does not change the fact that the utility is operating in an unsustainable manner because it cannot meet the financial obligations attendant to providing utility service.

### **Conclusion**

CSWR-Florida appreciates the opportunity to provide these post-workshop comments and recommends the Commission adopt the changes to Rule 25-30.0371 proposed in the attached draft.

1       **25-30.0371 Acquisition Adjustments.**

2       (1) Purpose. The purpose of this rule is to encourage the consolidation of water and  
3 wastewater systems to improve service to customers of utility systems and address water  
4 quality and environmental issues in the state, and to provide an application process for  
5 approval of a positive acquisition adjustment.

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

7       (a) “Acquisition Adjustment” means the difference between the purchase price of utility  
8 system assets to an acquiring utility and the net book value of the utility assets. A positive  
9 acquisition adjustment exists when the purchase price is greater than the net book value. A  
10 negative acquisition adjustment exists when the purchase price is less than the net book value.

11       (b) “Good cause” means a showing of financial hardship, unforeseen events or other events  
12 outside the utility’s control.

13       (c) “Positive Acquisition Adjustment” means the purchase price is greater than the net  
14 book value.

15       (d) “Negative Acquisition Adjustment” means the purchase price is less than the net book  
16 value.

17       (e) “Non-Viable Utility” means a utility that meets one or more of the following criteria:

18       1. Fails to comply with primary and or secondary water quality standards or other health,  
19 safety, and environmental standards established by federal, state or local agencies that affect  
20 the quality of service provided;

21       2. Demonstrates a lack of historical investment, repair, or adequate sustainable  
22 maintenance to support the provision of safe and adequate service;

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

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1 4. Is not reasonably expected to furnish and maintain safe and reliable service facilities in  
2 the future;

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

5 6. Has a negative or zero rate base.

6 7. A registered third party Florida professional engineer has outlined one or more serious  
7 deficiencies inside the subject utility's assets.

8 (f) "Viable" means a utility that is not non-viable as defined in paragraph (2)(e) of this  
9 rule.

10 ~~(3) Positive Acquisition Adjustments for a Non-Viable Utility. A positive acquisition~~  
11 ~~adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any~~  
12 ~~entity that believes a~~ A full or partial positive acquisition adjustment should be made has the  
13 ~~bureden to prove the existence of extraordinary circumetances.~~ will be allowed for inclusion in  
14 rate base for the acquisition of a non-viable utility if it is demonstrated the purchase was made  
15 as part of an arms-length transaction and that customers will benefit from the acquisition. In  
16 determining whether customers benefit, extraordinary circumstances have been demonstrated,  
17 the Commission may shall consider evidence provided to the Commission such as:

18 (a). Anticipated improvements to water or effluent quality that can improve human health  
19 and safety;

20 (b) Anticipated improvements in quality of service;

21 (c). Anticipated improvements in compliance with regulatory mandates;

22 (d). Anticipated rate reductions or rate stability over a long-term period;

23 (e). Anticipated cost efficiencies;

24 (f). Increased ability to attract capital at a reasonable cost; or

25 (g). Increased professional and experienced managerial, financial, technical, and

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1 ~~operational resources, and whether the purchase was made as part of an arms-length~~  
2 ~~transaction.~~

3 The above list of customer benefits is not exhaustive and the acquiring utility is not required to  
4 demonstrate all the listed benefits in order to receive a full or partial acquisition adjustment.

5 Amortization of a positive acquisition adjustment will ~~shall~~ be pursuant to subsection (7)  
6 ~~paragraph (4)(a)~~ below.

7 Should the Commission deny an acquisition adjustment due to a determination that the  
8 utility is not a non-viable utility, then the acquiring utility shall have one year from the date  
9 of the Order to apply for an acquisition adjustment for a viable utility.

10 (4) Positive Acquisition Adjustments for a Viable Utility. A full or partial positive  
11 acquisition adjustment will be allowed for the acquisition of a viable utility if it is  
12 demonstrated that the transaction incorporating the full or partial positive acquisition  
13 adjustment is projected to provide a positive cumulative present value of the revenue  
14 requirements (CPVRR) benefit over a five-year period or longer period as approved by the  
15 Commission. All data and assumptions used in such CPVRR analysis, including the  
16 spreadsheet with formulas intact used to calculate the CPVRR, must be provided in the  
17 application requesting a full or partial positive acquisition adjustment. Form PSC XXXX  
18 (XX/23), entitled “Water and/or Wastewater Utilities Cumulative Present Value of the  
19 Revenue Requirements for Acquisition Adjustment Worksheet,” which is incorporated by  
20 reference in this rule and is available at <hyperlink>, is an example CPVRR that may be  
21 completed by the applicant and included in the application required by subsection (4) of this  
22 rule. This form may also be obtained from the Commission’s website, [www.floridapsc.com](http://www.floridapsc.com).  
23 A partial or full acquisition adjustment may be made in the absence of such positive CPVRR  
24 analysis result if it can be shown that there are other customer benefits that will result from the  
25 acquisition. These benefits include, but are not limited to:

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1 (a). Anticipated improvements in quality of service and compliance with water or  
2 wastewater regulatory requirements;

3 (b). Anticipated rate reductions or long-term rate stability;

4 (c). Anticipated cost savings;

5 (d). Increased ability to attract capital;

6 (e). Lower overall cost of capital; or

7 (f). Additional professional and experienced managerial, financial, technical, and  
8 operational resources. ~~Acquisition Adjustments. If the purchase price is greater than 80~~

9 ~~percent of net book value, a negative acquisition adjustment will not be included in rate base.~~

10 ~~When the purchase price is equal to or less than 80 percent of net book value, a negative~~

11 ~~acquisition adjustment shall be included in rate base and will be equal to 80 percent of net~~

12 ~~book value less the purchase price. Amortization of a negative acquisition adjustment shall be~~

13 ~~pursuant to subparagraph (4)(b)1. or (4)(b)2. below.~~

14 (5) Application. An application for a full or partial positive acquisition adjustment may be

15 made at the time of transfer of ownership or at any time within five years of the date of the

16 order approving of the transfer of ownership and assets. The five year period may be extended

17 for good cause shown, and the application for a positive adjustment may be made as a separate

18 filing or as part of a rate case.

19 (6) Negative Acquisition Adjustment. A negative acquisition adjustment will not be

20 included in rate base.

21 (7) (4) Amortization Period. The Commission will set the amortization period in the order

22 approving the positive acquisition adjustment. Amortization will begin on the date of issuance

23 of the order approving the adjustment, or at the date of closing, whichever shall occur last. (a)

24 ~~In setting the amortization period for a Commission approved positive acquisition adjustment~~

25 ~~pursuant to subsection (2) above, the Commission shall consider evidence such as the~~

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1 ~~composite remaining life of the assets purchased and the condition of the assets purchased.~~  
2 Amortization of the acquisition adjustment shall begin on the date of issuance of the order  
3 approving the transfer of assets.

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

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

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

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

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

19 (8) (5)-Subsequent Modification. Any full or partial positive acquisition adjustment, once  
20 made by the Commission pursuant to subsections (3) or (4) above, may be subsequently  
21 modified if the anticipated customer benefits ~~extraordinary circumstances~~ do not materialize  
22 or subsequently are substantially changed due to factors within the acquiring utility's control .  
23 Any subsequent modification by the Commission must be initiated within five (5) years of the  
24 date of issuance of the order approving the acquisition adjustment. Upon good cause shown,  
25 the 5-year period may be extended. ~~transfer of assets. Any order approving, denying or~~

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1 modifying the acquisition adjustment shall be final and not be subject to re-adjudication in any  
2 future proceeding.

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

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9 (7) Amortization Period. The Commission will set the amortization period in the order  
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12 (8) Subsequent Modification. Any full or partial positive acquisition adjustment, once  
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