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**PAUL RENNER**  
*Speaker of the House of  
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November 30, 2023

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**Docket No. 20230123-WS – In Re: Proposed Rule 25-30.0372, Florida Administrative Code,  
Alternative Procedure for Establishing Rate Base Value of Acquired Utility System**

**OPC Post-Workshop Comments**

Dear Ms. Sapoznikoff:

On October 31, 2023, the Florida Public Service Commission (Commission) issued its Notice of Development of Rulemaking for Docket No. 20230123-WS, In Re: Proposed Rule 25-30.0372, Florida Administrative Code, Alternative Procedure for Establishing Rate Base Value of Acquired Utility System. On November 14, 2023, Commission Staff held its workshop and proposed receiving post workshop comments approximately two weeks later on November 30, 2023. To the extent the Office of Public Counsel (OPC) has a position on the language of the proposed rule at this time, OPC is filing these comments consistent with staff's request. Several stakeholders, Sunshine Water Services (Sunshine) and U.S. Water Services Corporation (U.S. Water), have comments in the docket, filed as of November 27, 2023, which OPC will address.

**Proposed Rule 25-30.0372, Florida Administrative Code**

**Section (1)(a)1.** – Please see attached draft type and strike of the Rule. OPC is proposing to add additional designations that OPC believes also meet the criteria for being a “Licensed Appraiser.” OPC believes that expanding the group of professionals within the definitions will enable the buyers and sellers to more easily meet the criteria of obtaining three separate appraisals with independent licensed appraisers. The expansion of the group should also allow for the three

appraisers to be obtained from separate companies. OPC is concerned that if the allowable appraiser pool is drafted too narrowly, it may require the use of appraisers from the same company.

In Sunshine's comments on Section (1)(a)1, they also expressed concerns that the credential criteria is unnecessarily narrow. However, rather than expand the certifications and designations that would qualify, they appear to want to eliminate certification altogether. OPC would disfavor elimination of the qualifications criteria altogether. The absence of any independent certification or designation could lead to litigation regarding whether the individual was qualified to provide an appraisal.

**Section (2)(b)** – Please see attached draft type and strike of the Rule. OPC is proposing to add additional language that “the Commission staff will select the third appraiser.” OPC believes adding this requirement will mitigate the potential interest of both buyer and seller seeking the highest evaluation possible.

**Section (3)(a)**- Sunshine stated that staff's proposed rule language that the engineering assessment “include impacts on the quality of product” improperly exceeds the requirements set forth in the statute. Several other water utilities at the workshop, and U.S. Water in their post workshop comments, also had concerns with this language. U.S. Water asserted that an engineering assessment is to analyze the age and condition of the tangible assets.

However, OPC believes that this language should remain in the proposed rule. As noted by Commission staff at the workshop, improvements in quality of service is one of the factors that the Commission must consider in determining whether the rate base valuation petition is in the public interest. The engineer is in the best position to determine if there is infrastructure issues that need to be corrected that would otherwise impact the quality of product or the operational condition of the facilities. It is also would be informative to the Commission to know if there are no engineering issues with the infrastructure that would impact product quality or the operational condition of facilities. Contrary to Sunshine's assertion that this type of evaluation may exceed the qualifications or resources of the engineer performing the assessment adding to the cost, OPC would have concerns if the engineer hired to perform the assessment of water and/or wastewater system was not qualified to make such an analysis as a matter of routine. Further, the engineering assessment would provide a potential objective source of information that does not solely rely on the seller's representations.

**Section (3)(b)**- Please see attached draft type and strike of the Rule. OPC proposes adding language that the “acquiring utility and the utility system being acquired shall jointly retain a” licensed engineer to perform the engineering assessment. This language reflects the language in Section 367.0811(4)(b) which requires “[t]he acquiring utility and the utility system being acquired shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system being acquired.”

**Section (4)(a)**- Sunshine comments that this provision contemplates that the Valuation Petition may only be filed after a transfer application and not simultaneously with the transfer application. Sunshine also states that the filing date should be determined by the date the Valuation Petition is filed, not some future arbitrary date but rather similar to the process used in rate cases for determining the official filing date. U.S. Water agreed with Sunshine in that a similar process to

the rate case process should be used i.e. the date the utility meets the filing requirements of the Valuation Petition.

Since the proposed language requires that the Valuation Petition is filed at the later of the final transfer order or the closing date of the sale, OPC agrees that it would seem on its face to preclude filing with the transfer request. OPC agrees with this proposed process. Sunshine avers that some purchases may be contingent upon approval of an alternative rate base valuation, but since these sales are “contingent” they can be unwound at a future date if necessary because there is an unknown factor that precludes the higher valuation and the buyer chooses not to keep the system. Given that this process is asking that customers pay a higher rate base, customers deserve a thorough review of the Valuation Petition once the purchaser takes possession of the system and all the factors are known. It is the Commission’s practice to set the book value of the utility at the time of transfer and generally maintain the current rates in place. The statute contemplates that a rate base valuation will be used in the next general rate case which is generally requested several years after a transfer. It is the customers who will be harmed over the long term if a higher rate base is established without sufficient justification and before all factors are known. OPC does not see how the utility is harmed under the proposed scheme.

It also appears that the proposed rule language is consistent with the practice in water and wastewater rate cases. Similar to the process used in water and wastewater rate cases, the Commission staff will send a letter within 30 days notifying the buyer of any deficiencies in Valuation Petition filing and then once all the filing requirements are met, the official filing date is established.

**Section (4)(b)-** Sunshine objects to the proposed rule requirement that CPVRR evaluation be provided rather than allowing the CPVRR to be optional. Other utilities also wanted to change the proposed rule language to make a CPVRR evaluation optional, allowing other methodologies to establish the five year rate impact. OPC believes that proposed rule language requirement of a CPVRR will provide for consistency in evaluating these types of Petitions. In determining if the Valuation Petition meets the public interest criteria set forth in Section 367.0811(9), Florida Statutes, the same objective standard of a five-year CPVRR analysis should be applicable to all Valuation Petitions to demonstrate the economic benefits and impacts. If a utility wants to seek an alternative methodology, they should have the burden to meet the standard of seeking a waiver.

**Section (4)(c)-** U.S. Water asserts that it would be difficult to accurately project billing determinants and many factors influence them. Further, U.S. Water argues that the section states that the CPVRR must support these projections, but the CPVRR form itself does not contain any input request for this. Unless this concern is addressed already by the existing “(Revenue from Customers)” row that provides the opportunity for inputs to revenues for years one through five, OPC would agree that the CPVRR form should be change to support all the required information.

**Section (4)(e)-** Finally, Sunshine asserts that tying the language of “significant individual increase in rates” to the price index is not practical. Sunshine claims that there are many factors that potentially drive a five year projected rate impact period that may exceed current rates. Sunshine notes that virtually every purchase would meet this threshold and the index could conceivably be vanishingly small or negative.

OPC agrees that using the rate increases exceeding the price index over current rates is the appropriate standard to use. As Sunshine noted, utilities can avail themselves of the price index

on an annual basis, so customers would be in the same position vis-a-vie rate impacts without respect to the higher valuation. Since any rate impact above a “price index” rate impact would require approval via a general rate case, the Commission needs to have this rate impact information at the time of the Valuation Petition to make an informed decision if the higher rate base value is in the public interest. Once a Valuation Petition is approved, the customer will have to pay for the rate impact of higher rate base value in the next rate case and will not be able to challenge the granting of a higher rate base value due to the transfer in the next general rate case.

Respectfully Submitted,

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1        **25-30.0372 Alternative Procedure for Establishing Rate Base Value of Acquired**  
2        **Utility System.**

3        (1) Definitions. For the purposes of this rule, the following definitions apply:

4        (a) “Licensed Appraiser,” as referenced in Section 367.0811(4)(a), F.S., means a person  
5        who meets all the following criteria:

6        1. Has certification as an Accredited Senior Appraiser by the American Society of  
7        Appraisers (ASA), designation as a Chartered Financial Analyst (CFA) by the CFA Institute,  
8        designation as a Certified Valuation Analyst by the National Association of Certified  
9        Valuators and Analysts (NACVA), designation as Certified Business Appraiser by the  
10       Institute of Business Appraisers (IBA), or designation as a Accredited in Business Valuation  
11       by the American Institute of Certified Public Accountants (AICPA) ~~Member of the Appraisal~~  
12       ~~Institute by the Appraisal Institute;~~ and

13       2. ~~Is Has a current license~~ in good standing ~~with the ASA, the CFA Institute, the NACVA,~~  
14       ~~the IBA or the AICPA from any state as an appraiser, engineer, or certified public accountant.~~

15       (b) “Price Index” means the most recent annual price increase or decrease index of major  
16       categories of operating costs incurred by water and wastewater utilities established by the  
17       Commission by order entered pursuant to Section 367.081(4)(a), F.S.

18       (2) Appraisals.

19       (a) Each appraisal must assess the value of the utility system being acquired according to  
20       its intended use.

21       (b) The acquiring utility will select one licensed appraiser, the utility being acquired will  
22       select one licensed appraiser, and ~~those two utilities will jointly~~ the Commission staff will  
23       select the third licensed appraiser.

24       (c) The list of licensed appraisers required by Section 367.0811(4)(a), F.S., can be found at  
25       [www.floridapsc.com/appraiserlist](http://www.floridapsc.com/appraiserlist) or obtained from the Office of the Commission Clerk,

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

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1 Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
2 32399-0850.

3 (d) A licensed appraiser will be included on the Commission's list of approved licensed  
4 appraisers by submitting all of the following to [appraiserlist@psc.state.fl.us](mailto:appraiserlist@psc.state.fl.us) or the Office of the  
5 Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard,  
6 Tallahassee, FL 32399-0850:

- 7 1. The licensed appraiser's name, mailing address, telephone number, and email address;  
8 2. The name of any company with which the licensed appraiser is employed or associated;  
9 and  
10 3. Proof of the information required by paragraph (1)(a) above.

11 (e) It is the responsibility of the licensed appraiser to ensure that correct and updated  
12 information remains on file with the Commission. The licensed appraiser must submit updated  
13 information to [appraiserlist@psc.state.fl.us](mailto:appraiserlist@psc.state.fl.us) within 30 days of any change of information. If the  
14 Commission determines that a person no longer meets the requirements to be a licensed  
15 appraiser on the Commission's list, that person will be removed from the list. Upon request  
16 and upon providing proof that the requirements listed in paragraph (1)(a) above are met, a  
17 person will be added back to the list.

18 (f) The licensed appraiser can be removed from the list by submitting a request for  
19 removal in writing to [appraiserlist@psc.state.fl.us](mailto:appraiserlist@psc.state.fl.us).

20 (3) Engineering Assessment.

21 (a) In assessing the impact on quality of service, the assessment of the tangible assets of  
22 the utility system being acquired required by Section 367.0811(4)(b), F.S., must include  
23 impacts to the quality of product, as well as the operational condition of facilities pursuant to  
24 [Rules 25-30.225 and 25-30.433\(2\), F.A.C.](#)

25 (b) The [acquiring utility and the utility system being acquired shall jointly retain a licensed](#)

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1 engineer who performs the engineering assessment required by Section 367.0811(4)(b), F.S.,  
2 may not also serve as a licensed appraiser on the same acquisition transaction.

3 (4) Petition. Section 367.0811(5), F.S., sets forth the filing requirements a petition to  
4 establish the rate base value must contain.

5 (a) The petition must be filed within 6 months of the issuance of the final order approving  
6 the transfer of the certificate(s) of authorization or the closing date of the sale, whichever is  
7 later. Commission staff will review the petition and within 30 days of receipt of the petition  
8 will notify the acquiring utility whether the petition is complete or identify the information  
9 missing from the petition under the requirements of Section 367.0811(5), F.S. The date the  
10 petition is complete under Section 367.0811(6), F.S., is the date that Commission staff notifies  
11 the acquiring utility that the petition meets the filing requirements of Section 367.0811(5), F.S.

12 (b) Form PSC XXX (XX/23), entitled “Water and/or Wastewater Cumulative Present  
13 Value of the Revenue Requirement for Alternate Rate Base Worksheet” (“CPVRR”), which is  
14 incorporated by reference in this rule and may be obtained from [\[hyperlink\]](#), must be included  
15 in the petition to show the 5-year projected rate impact required by Section 367.0811(5)(e),  
16 F.S. The form can also be found at [www.floridapsc.com](http://www.floridapsc.com), or obtained from the Office of the  
17 Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard,  
18 Tallahassee, Florida 32399-0850.

19 (c) The 5-year rate impact required by Section 367.0811(5)(e), F.S., must also include the  
20 following for each year for residential and general service customers, and the CPVRR must  
21 support the projections for these charges:

- 22 1. Base facility charge,  
23 2. Gallonage charge, and  
24 3. Billing determinants.

25 (d) The information filed under Section 367.0811(5)(e), F.S., must include the acquiring

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1 utility’s proposed journal entries anticipated to result from the acquisition, including tax  
2 entries and account numbers in conformance with the 1996 NARUC Uniform System of  
3 Accounts, which is incorporated by reference in Rule 25-30.115, F.A.C.  
4 (e) For purposes of determining whether the petition must include a rate stabilization plan  
5 under Section 367.0811(5)(h), F.S., “significant individual increase in rates” means a rate  
6 increase during any twelve consecutive months of the 5-year projected rate impact period in  
7 excess of price index over the current rates of the utility system being acquired. A copy of the  
8 most recent Commission order establishing the price index can be obtained from the Public  
9 Service Commission, Division of Accounting & Finance, 2540 Shumard Oak Boulevard,  
10 Tallahassee, Florida 32399-0850.  
11 *Rulemaking Authority 367.0811(11), FS. Law Implemented 367.0811, FS., History–New*

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WATER AND/OR WASTEWATER CUMULATIVE PRESENT VALUE OF THE REVENUE REQUIREMENTS  
 FOR ALTERNATE RATE BASE WORKSHEET

Discount Rate / WACC		0.00%		Acquired Utility						
Start Date										
Acquisition Date										
	Escalation Rate	Beginning Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Nominal Total	5-year CPVPR	
Discount Rate			1.00000	1.00000	1.00000	1.00000	1.00000			
<b>Revenue Requirements</b>										
Operations and Maintenance <sup>1</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Depreciation and Amortization <sup>2</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Taxes Other Than Income	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Interest Expense <sup>3</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Return on Equity <sup>4</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Income Tax <sup>5</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
System Impact <sup>6</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>Total Revenue Requirements</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
(Revenue from Customers) <sup>7</sup>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>Net Customer (Savings)/Cost*</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	

Cost Adjustments - Acquired Utility					
Year 1	Year 2	Year 3	Year 4	Year 5	
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0

Discount Rate / WACC		0.00%		Acquiring Utility						
Start Date										
Acquisition Date										
	Escalation Rate	Beginning Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Nominal Total	5-year CPVPR	
Discount Rate			1.00000	1.00000	1.00000	1.00000	1.00000			
<b>Revenue Requirements</b>										
Operations and Maintenance <sup>1</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Depreciation and Amortization <sup>2</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Taxes Other Than Income	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Interest Expense <sup>3</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Return on Equity <sup>4</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Income Tax <sup>5</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
System Impact <sup>6</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Acquisition Cost <sup>7</sup>	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>Total Revenue Requirements</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
(Revenue from Customers) <sup>8</sup>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>Net Customer (Savings)/Cost*</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	

Cost Adjustments - Acquiring Utility					
Year 1	Year 2	Year 3	Year 4	Year 5	
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0

<b>Combined Net Customer (Savings)/Cost</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
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<sup>1</sup>Represents estimated Operations and Maintenance Expense for operating the system.  
<sup>2</sup>Depreciation and Amortization Expense associated with the assets and system capital expenditures.  
<sup>3</sup>Interest expense assumes weighted cost of debt and debt-to-investor capital ratio excluding any interest expense (if applicable) related to the acquisition.  
<sup>4</sup>Return on equity assumes cost of equity and equity-to-investor capital ratio excluding any return (if applicable) related to the acquisition.  
<sup>5</sup>Income tax assumes blended state and federal tax rate.  
<sup>6</sup>Fixed costs and capital needed to serve the system.  
<sup>7</sup>Capital costs related to the acquisition.  
<sup>8</sup>Revenue from customers at forecasted rates.  
 \*Revenue requirements netted against revenue from customers.

WORKSHOP AGENDA

1. STAFF WELCOME AND OVERVIEW OF DRAFT RULE
2. STAKEHOLDER COMMENTS ON DRAFT RULE
3. DISCUSSION OF NEXT STEPS
4. ADJOURN