

State of Florida



# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** February 22, 2024

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of the General Counsel (Sunshine) *SMC*  
Division of Accounting and Finance (Cicchetti) *ALM*  
Division of Economics (Guffey) *EJD*

**RE:** Docket No. 20240022-WS – Proposed Amendment of Rule 25-30.0371, F.A.C., Acquisition Adjustments.

**AGENDA:** 03/05/24 – Regular Agenda – Rule Proposal - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

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## Case Background

A staff workshop was held on February 1, 2023, to examine the Commission’s regulatory policies and practices in the water and wastewater industries in Florida, which included the topic of acquisition adjustments. Participating in the workshop were the Office of Public Counsel (OPC) and representatives from the National Association of Water Companies (NAWC), U.S. Water Services Corporation (U.S. Water), Sunshine Water Services (SWS), Central States Water Resources-Florida (CSWR), Southwest Water Company, Florida Utility Services, Florida Community Water Systems, Ni Florida, Inc., and the Florida Rural Water Association (FRWA). Post-workshop and reply comments were submitted by OPC, SWS, and CSWR. It was identified at the workshop that Rule 25-30.0371, Florida Administrative Code (F.A.C.), Acquisition Adjustments, last amended in 2010, was outdated and in need of modernization in order to prioritize the acquisition of smaller, troubled systems. Based on workshop comments, staff initiated rulemaking to explore the potential amendment of Rule 25-30.0371, F.A.C.

### ***The Current Rule***

Rule 25-30.0371 applies to water and wastewater utilities and sets forth the Commission's policy on acquisition adjustments. Specifically, the rule states that a positive acquisition adjustment, which exists when the purchase price of utility system assets is greater than the net book value of the utility assets, shall not be included in rate base absent proof of extraordinary circumstances. In determining whether extraordinary circumstances have been demonstrated by an entity that believes a positive acquisition adjustment should be allowed, the rule provides that the Commission shall consider evidence provided to it 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, and whether the purchase was made as part of an arms-length transaction.

Currently under the rule, a negative acquisition adjustment will be included in rate base if the purchase price is equal to or less than 80 percent and will not be included in rate base if the purchase price is greater than 80 percent. The proposed amendment to the rule does away with this distinction by providing that a negative acquisition adjustment will not be included in rate base.

The rule further provides that in setting an amortization period for a Commission-approved positive acquisition adjustment, the Commission shall consider evidence such as the composite remaining life of the assets purchased and the condition of the assets purchased, with amortization beginning on the date of issuance of the order approving the transfer of assets, as well as providing how the appropriate period over which to amortize a Commission-approved negative acquisition adjustment shall be determined.

Lastly, the rule provides for the subsequent modification of any full or partial positive acquisition adjustment if the extraordinary circumstances do not materialize or subsequently are eliminated or changed within five years of the date of issuance of the order approving the transfer of assets.

### ***Procedural Matters***

The purpose of this rulemaking is to update and clarify Rule 25-30.0371, F.A.C. A Notice of Development of Rulemaking for Rule 25-30.0371, F.A.C., appeared in the March 29, 2023, edition of the Florida Administrative Register, Vol. 49, No. 61. Staff held a rule development workshop on April 13, 2023. Participating in the workshop were representatives from OPC, CSWR, U.S. Water, and SWS. OPC, CSWR, SWS, and FRWA submitted post-workshop comments.

A second rule development workshop was held on September 25, 2023, with notice appearing in the September 11, 2023, edition of the Florida Administrative Register, Vol. 49, No. 176. Participating in the workshop were representatives from OPC, CSWR, SWS, and U.S. Water. OPC and CSWR submitted post-workshop comments.

This recommendation addresses whether the Commission should amend Rule 25-30.0371, F.A.C., Acquisition Adjustments. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), and 367.121(1)(f), F.S.

## Discussion of Issues

**Issue 1:** Should the Commission propose the amendment of Rule 25-30.0371, F.A.C., Acquisition Adjustments?

**Recommendation:** Yes. The Commission should propose the amendment of Rule 25-30.0371, F.A.C., as set forth in Attachment A. The Commission should certify the rule as a minor violation rule. (Sunshine, Cicchetti, Guffey)

**Staff Analysis:** The purpose of this rulemaking is to amend Rule 25-30.0371, F.A.C., to update and clarify the rule. Based upon stakeholder responses and comments received at and from the workshops to examine the Commission’s regulatory policies and practices in the water and wastewater industries in Florida, staff recommends the Commission propose the amendment of Rule 25-30.0371, F.A.C., as set forth in Attachment A. Staff is recommending a substantial revision of the current rule.

The proposed amendments to the rule provide greater regulatory certainty and clarity to the acquisition adjustment process. This includes establishing separate regulatory pathways for utilities to seek approval of a positive acquisition adjustment that are dependent upon the condition of the utility to be acquired. Regulatory requirements for a “non-viable” utility mimic the traditional purpose of the rule, to incentivize the acquisition of “troubled systems” that are in financial distress or unable to provide safe service. In addition, the rule amendments also provide an additional pathway for a positive acquisition adjustment if a utility seeks to acquire a “viable” system that is otherwise providing safe service and is in a financially healthy position if the acquisition results in net economic and quality of service benefits to customers.

The recommended rule amendments provide necessary definitions to effectuate these new processes for viable and non-viable utilities; establish when an acquiring utility may petition the Commission to receive an acquisition adjustment; when and under what circumstances an acquisition adjustment will be allowed for the acquisition of either a viable or non-viable utility; enumerate the required contents of a petition; delineate the factors the Commission will consider in determining whether to allow an acquisition adjustment; determine when the amortization period for an acquisition adjustment will begin; confirm the Commission’s existing authority to review an acquisition adjustment; establish that a negative acquisition adjustment will no longer be included in rate base; and provide a necessary notice provision to ensure customers of the acquiring utility and the acquired utility are made aware of the filing of a petition for an acquisition adjustment and advised that they may file a motion to intervene in any proceeding on the petition.

Below is a detailed explanation of each section of staff’s recommended rule amendments, including stakeholder comments on the specific draft rule provisions.

### Subsection (1) – Definitions

This subsection provides specific definitions for the terms “acquisition adjustment,” “positive acquisition adjustment,” and “negative acquisition adjustment.” Staff also recommends adding a definition for “good cause,” which will clarify when a utility may be granted an extension of the

3-year period to petition for an acquisition adjustment as provided in subsection (3) and (4) of the amended rule.

Of particular note are staff's recommended definitions of "non-viable utility" and "viable utility" in paragraphs (1)(e) and (f) of the draft rule, which set forth the status of an acquired utility for purposes of determining which process an acquiring utility must follow when petitioning the Commission for an acquisition adjustment, with acquisition of a "non-viable utility" following the requirements of subsection (3) of the draft rule and a "viable utility" following the requirements of subsection (4) of the draft rule.

A "non-viable utility," as defined, means a utility that is either: (1) currently unable, or is projected to be unable, to provide and maintain safe, adequate, and reliable service and facilities to its customers within the next 5 years due to a history of enforcement or compliance actions by regulatory agencies based on violations of primary, or exceedance of secondary, water quality standards or other health, safety, and environmental standards; and insufficient investment, repair, or maintenance of assets or an inability to acquire and maintain adequate managerial, operational, financial, or technical capabilities to ensure safe and reliable service to its customers; or (2) is insolvent, meaning it is unable to pay its debts. A "viable utility," is defined as all utilities that are not non-viable.

### ***Stakeholder Comments***

The inclusion of secondary water quality standards, as well as utility insolvency, within the definition of "non-viable utility," as provided in subparagraphs (1)(e)1.a. and 2., were discussed at the workshops and raised in post-workshop comments.

### ***Inclusion of Secondary Water Quality Standards***

OPC asserted secondary water quality standards should not be included in the definition of "non-viable utility," as there are no Commission orders actually revoking a utility's certificate due to secondary water quality standards, which OPC believes will result 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. OPC additionally commented it could support the addition of secondary water quality violations to the definition of a non-viable utility by tying secondary standards to those which interfere with the customer's ordinary use and enjoyment of water service such as black water or sulfur taste, which are the same standards considered by the Commission for return on equity adjustments in the rate-setting process."

CSWR, in response, stated whether the Commission has ever revoked a utility's certificate for failing to comply with secondary water standards has no relevance to whether that criteria should be removed given that 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.

SWS, in response to the definition for "non-viable utility," suggested "in addition to primary water quality standards, the Commission should consider secondary 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."

Staff recommends inclusion of secondary water standards within the definition of “non-viable utility,” as it aligns with the treatment of water utilities during a rate case and certain utilities may lack the resources to adequately address secondary water quality standards. OPC’s suggestion for the amended rule to be more explicit in the description of secondary standards is not necessary and may actually detract from compliance with all secondary water quality standards.

### ***Definition of Insolvent Utilities***

Regarding insolvent utilities, OPC suggested the inclusion of the phrase “or with the financial assistance of its parent company” after the word “utility,” as 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. Additionally, OPC recommends “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.”

CSWR, in response, states “[w]hether 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.”

Staff agrees with CSWR and recommends approval of the rule language in subsections (1), which defines one of the two means of establishing when a utility is non-viable, i.e., a utility that is insolvent or unable to service its debt. OPC’s suggestion of incorporating a more explicit definition of insolvency such as a debt service coverage ratio of less than 1 is not recommended because it is just one of potentially many factors that may need to be considered depending on the circumstances.

### **Subsection (2) - Petition**

This subsection provides the process by which a water or wastewater utility may petition the Commission to establish an acquisition adjustment, for either a viable or non-viable utility, to include some or all of a positive acquisition adjustment in the acquired utility’s rate base; provides that an acquiring utility may seek such approval at the time of transfer of the certificate of authorization or anytime within 3 years from Commission’s transfer order; authorizes a utility to request an extension of the 3-year period for good cause; and provides the petition may be made as a separate filing or as part of a rate proceeding.

### ***Stakeholder Comments***

OPC suggested the 3-year time period should not be included, reasoning “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.” OPC further reasoned “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.” Lastly, OPC suggested the acquiring utility be required to submit its petition in conjunction with its transfer application.

CSWR stated 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 of the transfer, believing that 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, adding that allowing a request for an acquisition adjustment to be made after a transfer does not harm customers who will still have the ability to object to an acquisition adjustment when a utility files a request for an adjustment.

SWS stated the timing of application for an acquisition adjustment being limited to 3 years from the transfer is an arbitrary and unnecessary structure that could add to the regulatory burden of the parties to the extent that requiring a filing by a certain date, as opposed to the preferred timing of inclusion in a subsequent 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. However, nothing in the amended rule prevents a utility from filing its petition as a part of a rate case proceeding within 3 years of the transfer.

Staff agrees with the rationale of CSWR which supports a reasonable timeframe to seek an acquisition adjustment after the time of transfer. The acquiring utility should have the flexibility to submit its petition at the time of transfer or anytime within 3 years thereafter as three years is a reasonable time for the utility to operate the acquired system after transfer and closing and identify needed improvements to present a more accurate and complete picture of the benefits to be realized from the acquisition. Three years is also appropriate because data tends to get stale after 3 years. OPC’s concern of potential exposure to customers if an acquisition is not addressed at the time of transfer is without merit as the recommended rule language requires the acquiring utility to provide notice to customers in advance of the proceeding considering the inclusion of an acquisition adjustment. In addition, the recommended rule requires a CPVRR analysis to support the projected 5-year rate impact on customers in the case of the acquisition of viable systems. Finally, the recommended rule codifies the Commission’s existing authority to review and prospectively reduce or remove a positive acquisition adjustment if the Commission finds that customer benefits did not materialize or subsequently changed within 5 years of the order approving the acquisition adjustment.

### **Subsection (3) – Positive Acquisition Adjustments for Non-Viable Utility**

This subsection sets forth factors the Commission will consider for a utility to be allowed a full or partial positive acquisition adjustment for a non-viable utility; factors considered in determining whether an acquired utility’s customers benefit; and the information the acquiring utility must file in its petition for a positive acquisition adjustment. It should be noted that a utility is not required to meet all of the factors enumerated in paragraph (3)(a); rather, the rule simply sets out the specific factors the Commission will consider in determining whether the acquired utility customers benefit and give whatever weight it believes is appropriate to the factors based on the record of the hearing.

Paragraph (3)(b) of the draft rule encompasses what information staff believes should be contained in the utility's petition for an acquisition adjustment for a non-viable utility. Staff has crafted the language in paragraph (3)(b) to align with the factors in paragraph (3)(a), which the Commission will consider in determining whether the acquired utility customers benefit from the requested acquisition adjustment. Staff recommends the information the utility must file with its petition include:

- the amount of acquisition adjustment and amortization period requested;
- how acquisition was part of an arms-length transaction;
- the contract of sale, estimated cost of fees, and closing costs;
- calculation of book value and composite remaining life of assets purchased;
- whether acquired utility is solvent; description of acquiring utility's managerial, operational, financial, or technical capabilities to furnish and maintain safe and adequate service and facilities over the next 5 years;
- any regulatory actions issued by governmental agencies regarding provision of acquired utility's service(s) over the past 5 years;
- acquired utility's annual capital investments and operations and maintenance expenses over the past 5 years;
- 5-year projected impact on cost of service to acquired utility customers;
- any planned infrastructure additions and maintenance to improve acquired utility's quality of service or compliance with environmental regulations;
- any engineering studies or appraisals done regarding the purchase; and
- how the acquiring utility has greater access to capital than the acquired utility, if applicable.

### ***Stakeholder Comments***

This subsection was debated by the stakeholders at the workshops and in post-workshop comments. OPC stated the recommended rule removes the longstanding "extraordinary circumstances" and "negative acquisition adjustment" policies, which it says were designed to balance all of the provisions of the public interest, suggesting that if those previous lines of safeguard protections for 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.

OPC opposes the proposed rule because it fails to provide customer safeguards and 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.

OPC asserts that Florida is an original cost state, and the rule appears to move Florida away from cost-based regulation to a form of market-based regulation, without any discernable guidelines, solely for the benefit of acquiring utilities. The rule thus unfairly discriminates against existing

regulated utilities who are fulfilling their part of the compact and already providing satisfactory quality of service to their customers.

SWS disagreed with OPC, arguing that its comments 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 for a reasonable price, which is not only in the best interest of owners of the non-viable system, but is also in the best interest of the customers of the non-viable system as a result of being taken over by a capable utility operator for the long-term. SWS lastly suggests:

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 [r]ules should reflect this and incentivize – for buyer and seller – acquisitions of non-viable systems.

CSWR supported the proposed rule amendments, as they “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.”

Staff recommends approval of the rule language in subsection (3), as it has the effect of incentivizing non-viable utilities to transfer their troubled systems to viable utilities; incentivizes viable utilities to pursue such transfers at a reasonable price; and provides flexibility to the Commission to consider various potential customer benefits. The recommended rule makes clear under what circumstances a positive acquisition adjustment can be allowed for a non-viable system. Furthermore, the Commission has the discretion to determine, based on the record of the hearing, if qualitative factors indicate the acquisition will be to the customers’ benefit. Staff disagrees with OPC’s concern about a lack of safeguards because the recommended rule codifies the Commission’s existing authority to review and prospectively reduce or remove a positive acquisition adjustment if the Commission finds that customer benefits did not materialize or subsequently changed within 5 years of the order approving the acquisition adjustment. Staff believes the recommended rule language will allow for acquisitions when it is in everyone’s best interest, even when there are not extraordinary circumstances.

#### **Subsection (4) – Positive Acquisition Adjustments for Viable Utility**

This subsection provides the requirements that must be demonstrated by an acquiring utility to be allowed a full or partial positive acquisition adjustment for a viable utility; the factors the Commission will consider in determining whether acquired utility customers benefit; and the information that the acquiring utility must file in its petition for a positive acquisition adjustment.

This subsection further requires that when an acquiring utility purchases a viable system and seeks approval of a positive acquisition adjustment, it must demonstrate that the purchase was made as part of an arms-length transaction and that the transaction incorporating a full or partial acquisition adjustment is projected to provide a positive cumulative present value of the revenue requirements (CPVRR) customer benefit over a 5-year period from the date of acquisition. In



the event the CPVRR does not result in an objective positive customer benefit, the recommended rule amendments provide the Commission will consider specified factors in determining whether to allow an acquisition adjustment. By operation of math, the inclusion of any amount of acquisition adjustment in the determination of revenue requirement will place upward pressure on customer rates, all other elements held constant. In order for the Commission to make an informed decision whether to approve a requested acquisition adjustment, it must have reliable information from the acquiring utility regarding the magnitude of the impact on customer rates. Based on comments received from the stakeholders, staff believes the 5-year period for the CPVRR analysis strikes an appropriate balance between obtaining this relevant and necessary information while not being overly burdensome on the acquiring utility.

To assist the Commission in the determination of whether the CPVRR results in a positive customer benefit over the 5-year period, the acquiring utility must file a CPVRR in the form of a spreadsheet with its petition. Rule 25-30.0371(4)(b)6., F.A.C., creates a form titled, “Water and/or Wastewater Utilities Cumulative Present Value of the Revenue Requirements for Acquisition Adjustment Worksheet” that may be completed by a viable utility acquiring another viable system and that may be included in its petition for a positive acquisition adjustment unless the acquiring utility decides to provide its own CPVRR in an Excel spreadsheet with the data and information included in the CPVRR analysis, along with providing the spreadsheet formulas intact and all supporting data and assumptions used in the spreadsheet.

Paragraph (4)(b) of the draft rule encompasses what information staff believes should be contained in the utility’s petition for an acquisition adjustment for a viable utility. Staff has crafted the language in paragraph (4)(b) to align with the factors in paragraph (4)(a), which the Commission will consider in determining whether the acquired utility customers benefit from the requested acquisition adjustment. Staff recommends that the information the utility must file with its petition include:

- the amount of acquisition adjustment and amortization period requested;
- how acquisition was part of an arms-length transaction;
- the contract of sale, estimated cost of fees, and closing costs;
- calculation of book value and composite remaining life of assets purchased;
- CPVRR in spreadsheet form or Excel spreadsheet with data and information included in CPVRR analysis with all supporting data and assumptions used;
- description of anticipated improvements or planned infrastructure additions and maintenance by the acquiring utility;
- description of anticipated cost savings from the acquisition;
- 5-year projected impact on cost of service to acquired utility customers; and
- any engineering studies or appraisals done regarding purchase.

### ***Stakeholder Comments***

None of the stakeholders objected to the concept of a CPVRR being required to substantiate the projected 5-year rate impact or disputed the Commission’s need to obtain the information the CPVRR provides; however, SWS raised its concern that the CPVRR limits the calculation of benefits to a 5-year window.

OPC also supported a CPVRR projected 5-year rate impact, stating that, “[t]he objective standard of a 5-year CPVRR analysis must be applicable for all positive acquisition adjustments in order to demonstrate offsetting economic customer savings in the public interest.” However, it also asserted that “it would be impossible to demonstrate that any qualitative benefits outweigh the potential rate impact to customers, absent a positive CPVRR benefit for customers over a 5-year period.

SWS suggested the 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,” adding “[t]he Commission’s considerations or criteria to approve a transaction, and any applicable acquisition adjustment, should consider all relevant aspects of the acquisition. SWS further suggested that a CPVRR does not account for the potential array of scenarios that may be presented and limits the calculation of benefits to a 5-year window, adding that in many acquisitions, 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.”

CSWR suggested a full or partial acquisition adjustment “should still be allowed if there are other qualitative benefits such as improved customer service, improved monitoring and reporting of and response to health and safety requirements, or improved billing, record keeping and compliance with regulatory reporting requirements.”

Staff recommends approval of the rule language in subsection (4), as it will provide viable utilities the flexibility to seek a positive acquisition adjustment if the CPVRR quantitatively establishes a positive customer benefit, as well as providing flexibility for when the CPVRR does not result in a positive customer benefit. It does so by providing the Commission the ability to weigh other factors described in subparagraphs (4)(a)1.-6., which demonstrate a positive customer benefit.

### **Subsection (5) – Amortization Period for a Positive Acquisition Adjustment**

This subsection amends the date upon which a positive acquisition adjustment will begin by providing that the Commission will set the amortization period in the order approving a positive acquisition adjustment, which will begin either on the date of the approving order or on the date the sale closes, whichever occurs last.

### ***Stakeholder Comments***

OPC stated that since the rule became effective in 2002, no utility has raised the concern that the amortization should not start until after closing. In response, SWS stated the Commission has never approved a positive acquisition adjustment since the rule became effective, which OPC publicly acknowledged is correct.

SWS supports the language in the recommended proposed rule, stating it provides for flexibility should the acquiring utility request a deferral of the approval of the transfer, or if the Commission were to only provisionally approve the acquisition adjustment at the time of acquisition approval. SWS further added that amortization before closing would be inconsistent

with the matching of amortization of the adjustment with the acquired system assets' depreciation.

CSWR stated this section is to address the circumstance where the closing of a transfer takes place after an acquisition adjustment is approved.

Staff recommends approval of the rule language in subsection (5), for both internal consistency within the amended rule, as well as to address the circumstance where the closing of a transfer may take place after an acquisition adjustment is approved.

### **Subsection (6) – Subsequent Review of Acquisition Adjustments**

This subsection recognizes the Commission's authority to review a positive acquisition adjustment if it finds customer benefits did not materialize or subsequently changed within 5 years of the date of the order approving the positive acquisition adjustment.

Staff recommends approval of the recommended rule language in subsection (6), as it recognizes the Commission's existing authority and flexibility to review an acquisition adjustment on a case-by-case basis, as well as providing the Commission flexibility to address on a case-by-case basis, depending on the evidence in the record of the hearing and the appropriateness of an acquisition adjustment in light of whether customer benefits materialized as projected or subsequently changed within 5 years of the approval of the acquisition adjustment (thus enabling the Commission to modify an acquisition adjustment accordingly).

### **Subsection (7) – Negative Acquisition Adjustment**

This subsection eliminates the provisions of the current rule regarding negative acquisition adjustments. The amended rule provides that a negative acquisition adjustment will not be included in rate base.

#### ***Stakeholder Comments***

OPC believes that a negative acquisition adjustment should remain in the rule. OPC asserted the current policy benefits customers with a lower rate base if the purchase price is equal to or less than 80 percent of the net book value. OPC lastly asserted that the current rule balances the interest of the acquiring utility and its customers, particularly where the acquired utility has been neglected, thus selling below book value and causing customers to pay for improvements.

CSWR agrees with the amended language advising “[t]he 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.” CSWR further noted:

As Staff has pointed out that no other state imposes a negative acquisition adjustment and that there is a lack of parity in the treatment of rate base in a transfer situation in that the rate base of the existing utility carries over to the acquiring utility unless the acquiring utility pays less than the existing rate base. Imposition of a negative adjustment discourages an acquiring utility to negotiate

the lowest price or from acquiring a small troubled system at all. Furthermore, allowing the acquiring utility to earn on the seller's actual rate base provides an additional source of revenue that could be used to reinvest in the utility.

SWS opined there are serious concerns with maintaining negative acquisition adjustments, noting "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."

Staff recommends approval of the rule language in subsection (7). Continuing to apply negative acquisition adjustments, as defined, in rate base has the negative effect of limiting the ability of, and thereby disincentivizing, viable utilities from acquiring non-viable systems, as well as constraining the seller's market for buyers, resulting in missed opportunities for consolidation and regionalization of water and wastewater systems in Florida. Furthermore, denying the net book value of a system to a purchaser, notwithstanding a purchase price lower than net book value, is not consistent with original cost-based accounting.

#### **Subsection (8) – Notice**

This subsection requires, at the time an acquiring utility files its petition, to provide a draft notice for review by Commission staff. Commission staff will review the draft notice within 7 days, and once approved, the acquiring utility must provide the notice, in the manner directed in the rule, to OPC and to each customer and owner of property located within the service area for both the acquiring utility and to customers of the utility being acquired. The recommended rule language permits the acquiring utility to combine this notice with the notice of Application for Authority to Transfer and provides what the notice must contain, thereby allowing the acquiring utility to avoid duplication of efforts.

Staff recommends approval of the language in subsection (8), as a notice requirement safeguards the due process rights of both the acquiring and acquired utility customers by requiring the notice provide a statement that any customer substantially affected by the petition may file a motion to intervene in accordance with Rule 28-106.205, F.A.C.

#### **Minor Violation Rule Certification**

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Under Section 120.695(2)(b), F.S., a violation of a rule is minor if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Rule 25-30.0371, F.A.C., should be listed as a minor violation rule by the Commission. This rule is a minor violation rule because the violation of this rule would not result in economic or physical harm to a person, cause an adverse effect on the public health, safety, or welfare, or create a significant threat of such harm. Violations of Rule 25-30.0371, F.A.C., would be minor violations. Therefore, for the purposes of filing the rule for adoption with the Department of State, staff recommends that the Commission certify Rule 25-30.0371, F.A.C., as a minor violation rule.

### **Statement of Estimated Regulatory Costs**

Section 120.54(3)(b)1., F.S., encourages agencies to prepare a Statement of Estimated Regulatory Costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the amended rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation.

The SERC concludes that the amended rule will likely not directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the amended rule will not likely increase regulatory costs, including any transactional costs, or have an adverse impact on business competitiveness, productivity, or innovation, in excess of \$1 million in the aggregate within five years of implementation. Thus, pursuant to Section 120.541(3), F.S., the rule does not require legislative ratification.

Further, the SERC concludes that the amended rule will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the amended rule does not require legislative ratification pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the amended rule would have no adverse impact on small businesses, would have no implementation or enforcement costs on the Commission or any other state or local government entity, and would have no impact on small cities or small counties. The SERC states that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the amended rule.

### **Conclusion**

Based on the foregoing, staff recommends the Commission should propose the amendment of Rule 25-30.0371, F.A.C., as set forth in Attachment A. Staff further recommends the Commission certify Rule 25-30.0371, F.A.C., as a minor violation rule.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no requests for hearing or JAPC comments are filed, the rule should be filed for adoption with the Department of State, and the docket should be closed. (Sunshine)

**Staff Analysis:** If no requests for hearing or JAPC comments are filed, the rule should be filed for adoption with the Department of State, and the docket should be closed.

1       **25-30.0371 Acquisition Adjustments.**

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

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 acquired utility’s assets.

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

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

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

15       (e) “Non-viable utility” means a utility that meets either of the following subparagraphs:

16       1. A utility that is currently unable or is projected to be unable to provide and maintain  
17 safe, adequate, and reliable service and facilities to its customers over the 5-year period  
18 following the date of acquisition due to:

19       a. A history of enforcement or compliance actions by federal, state, or local regulatory  
20 agencies based on violations of primary or exceedance of secondary water quality standards or  
21 other health, safety, and environmental standards; and

22       b. Insufficient investment, repair, maintenance of assets or an inability to acquire and  
23 maintain adequate managerial, operational, financial, or technical capabilities to ensure safe  
24 and reliable service to its customers; or

25       2. A utility that is insolvent, i.e., unable to pay debts.

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1        (f) “Viable utility” means all utilities that are not non-viable as defined in paragraph (1)(e)  
2 of this rule.

3        (2) Petition. A utility that acquires another utility may petition the Commission to establish  
4 an acquisition adjustment under either subsection (3) or subsection (4) of this rule to include  
5 some or all of a positive acquisition adjustment in the acquired utility’s rate base. A utility  
6 may seek approval of a positive acquisition adjustment at the time the utility seeks approval to  
7 transfer the certificate of authorization or anytime within 3 years of the issuance date of the  
8 Commission order approving the transfer of the certificate of authorization. The utility may  
9 request an extension of the 3-year period, which must include a statement of good cause. The  
10 petition for a positive acquisition adjustment may be made as a separate filing or as part of a  
11 rate proceeding.

12        ~~(3)(2) Positive Acquisition Adjustments for Non-Viable Utility. A positive acquisition~~  
13 ~~adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any~~  
14 ~~entity that believes a full or partial positive acquisition adjustment should be made has the~~  
15 ~~burden to prove the existence of extraordinary circumstances. In determining whether~~  
16 ~~extraordinary circumstances have been demonstrated, the Commission shall consider evidence~~  
17 ~~provided to the Commission such as anticipated improvements in quality of service,~~  
18 ~~anticipated improvements in compliance with regulatory mandates, anticipated rate reductions~~  
19 ~~or rate stability over a long term period, anticipated cost efficiencies, and whether the~~  
20 ~~purchase was made as part of an arms-length transaction. Amortization of a positive~~  
21 ~~acquisition adjustment shall be pursuant to paragraph (4)(a) below.~~

22        (a) A full or partial positive acquisition adjustment will be allowed if it is demonstrated  
23 that the acquired utility meets the definition of non-viable utility under paragraph (1)(e) of this  
24 rule; that the purchase was made as part of an arms-length transaction; and that customers  
25 from the acquired utility will benefit from the acquisition. In determining whether the acquired

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1 utility customers benefit, the Commission will consider the following factors:

2 1. Anticipated improvements in quality of service;

3 2. Anticipated improvements in compliance with water or wastewater regulatory

4 requirements;

5 3. Anticipated impacts on the cost of providing service over the next 5 years from the date

6 of acquisition;

7 4. Anticipated cost efficiencies, including any economies of scale;

8 5. Ability to attract capital at reasonable cost; and

9 6. The professional and experienced managerial, financial, technical, and operational

10 resources of the acquiring utility.

11 (b) Contents of Petition. The acquiring utility must file the following information in its

12 petition:

13 1. The amount of the acquisition adjustment requested;

14 2. The amortization period requested;

15 3. An explanation of how the acquisition was made as part of an arms-length transaction;

16 4. The contract of sale, including the estimated cost of the fees and transaction closing

17 costs to be incurred by the acquiring utility;

18 5. A calculation of the net book value of the acquired utility including the composite

19 remaining life of the assets purchased;

20 6. A statement as to whether the acquired utility is insolvent or unable to service its debt

21 obligations;

22 7. A description of the acquiring utility's managerial, operational, financial, or technical

23 capabilities to furnish and maintain safe and adequate service and facilities over the next 5

24 years from the date of acquisition;

25 8. Any notices of violation, consent decrees or other regulatory actions issued by a federal,

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1 state, regional, or local agency regarding the provision of the acquired utility's water or  
2 wastewater service over the past 5 years from the date of acquisition, including any notices of  
3 violation of primary or notices of exceedances of secondary water quality standards;

4 9. The acquired utility's annual capital investments and operations and maintenance  
5 expenses over the past 5 years from the date of acquisition;

6 10. Any planned infrastructure additions and maintenance by the acquiring utility to  
7 improve the acquired utility's quality of service or compliance with environmental  
8 regulations;

9 11. Any engineering studies or appraisals the acquiring utility procured pertaining to the  
10 purchase of the acquired utility;

11 12. The 5-year projected impact on the cost of providing service to the customers of the  
12 utility system being acquired, including the impact of any operation and maintenance cost  
13 savings and economies of scale expected to result from the acquisition transaction, the impact  
14 of the cost of any plant infrastructure additions, and the impact of the acquisition adjustment;

15 and

16 13. An explanation as to how the acquiring utility has greater access to capital than the  
17 acquired utility, if applicable.

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

24 (4) Positive Acquisition Adjustments for Viable Utility.

25 (a) A full or partial positive acquisition adjustment will be allowed if the acquiring utility

1 demonstrates that the purchase was made as part of an arms-length transaction and the  
2 transaction incorporating the full or partial positive acquisition adjustment is projected to  
3 provide a positive cumulative present value of the revenue requirements (CPVRR) customer  
4 benefit over a 5-year period from the date of acquisition. If the CPVRR does not result in a  
5 positive customer benefit over the 5-year period, the Commission will consider the following  
6 factors in determining whether to allow a full or partial acquisition adjustment:

7 1. Anticipated improvements in quality of service and compliance with any regulatory  
8 requirements;

9 2. Anticipated rate reductions or rate stability over the next 5 years from the date of  
10 acquisition;

11 3. Anticipated cost savings;

12 4. Increased ability to attract capital at reasonable cost;

13 5. Lower overall cost of capital; and

14 6. Additional professional and experienced managerial, financial, technical, and  
15 operational resources.

16 (b) Contents of Petition. The acquiring utility must file the following information in its  
17 petition:

18 1. The amount of the acquisition adjustment requested;

19 2. The amortization period requested;

20 3. An explanation of how the acquisition was made as part of an arms-length transaction;

21 4. The contract of sale, including the estimated cost of fees and transaction closing costs to  
22 be incurred by the acquiring utility;

23 5. A calculation of the net book value of the acquired utility including the composite  
24 remaining life of the assets purchased;

25 6. A CPVRR in the form of a spreadsheet. Form PSC 1034 (3/24), entitled "Water and/or

1 Wastewater Utilities Cumulative Present Value of the Revenue Requirements for Acquisition  
2 Adjustment Worksheet,” which is incorporated by reference in this rule and is available at  
3 [hyperlink], is an example CPVRR that may be completed and included in the acquiring  
4 utility’s petition to comply with this subparagraph. The form may also be obtained from the  
5 Commission’s website, www.floridapsc.com;

6 7. An Excel spreadsheet with the data and information included in the CPVRR analysis  
7 with the spreadsheet formulas intact;

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

9 9. A description of any anticipated improvements or planned infrastructure additions and  
10 maintenance by the acquiring utility;

11 10. A description, including any supporting data, of any anticipated cost savings resulting  
12 from the acquisition;

13 11. The 5-year projected rate impact on the customers of the utility system being acquired,  
14 including the rate impact of any cost efficiencies and economies of scale expected to result  
15 from the acquisition transaction, the rate impact of the cost of any plant infrastructure  
16 additions, and the rate impact of the acquisition adjustment; and

17 12. Any engineering studies or appraisals the acquiring utility procured pertaining to the  
18 purchase of the acquired utility.

19 ~~(4) Amortization Period.~~

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

25 ~~(b) The appropriate period over which to amortize a Commission approved negative~~

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1 ~~acquisition adjustment pursuant to subsection (3), above, shall be determined as follows:~~  
2     ~~1. If the purchase price is greater than 50 percent of net book value, the negative~~  
3 ~~acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the~~  
4 ~~order approving the transfer of assets. In this case, the negative acquisition adjustment shall~~  
5 ~~not be recorded on the books for ratemaking purposes or used for any earnings review unless~~  
6 ~~the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814, 367.0817 or~~  
7 ~~367.0822, F.S., that will be effective during the amortization period.~~  
8     ~~2. If the purchase price is 50 percent of net book value or less, the negative acquisition~~  
9 ~~adjustment shall be amortized from the date of issuance of the order approving the transfer of~~  
10 ~~assets as follows:~~  
11         ~~a. 50 percent of the negative acquisition adjustment shall be amortized over a 7-year~~  
12 ~~period; and~~  
13         ~~b. 50 percent of the negative acquisition adjustment shall be amortized over the remaining~~  
14 ~~life of the assets.~~  
15     (5) Amortization Period for a Positive Acquisition Adjustment. The Commission will set  
16 the amortization period in the order approving the positive acquisition adjustment.  
17 Amortization of the acquisition adjustment will begin on the date of issuance of the order  
18 approving the positive acquisition adjustment or on the date the sale closes, whichever occurs  
19 last.  
20     (6) Nothing herein removes the Commission’s existing authority to review a positive  
21 acquisition adjustment if the Commission finds that customer benefits did not materialize or  
22 subsequently changed within 5 years of the date of the order approving the positive acquisition  
23 adjustment.  
24     (7) Negative Acquisition Adjustment. A negative acquisition adjustment will not be  
25 included in rate base.

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1       (8) Notice. At the time the petition is filed with the Commission, the acquiring utility must  
2 provide a draft notice for review by Commission staff. Commission staff will review the draft  
3 notice within 7 days. Once staff has approved the notice, the acquiring utility must provide  
4 notice by regular mail to the Office of Public Counsel and by regular mail or personal service  
5 to each customer and owner of property located within the service area for both the acquiring  
6 utility and the utility being acquired, to the extent the utilities' customers are within the  
7 Commission's jurisdiction. The notice required by this rule may be combined with the notice  
8 of Application for Authority to Transfer issued pursuant to Rule 25-30.030, F.A.C. The notice  
9 must contain:

- 10       (a) Title: Notice of Utility's Petition to Establish an Acquisition Adjustment;  
11       (b) A statement that the utility has filed a petition with the Commission to establish an  
12 acquisition adjustment for either a viable or a non-viable utility system;  
13       (c) The date the petition was filed with the Commission;  
14       (d) The docket number associated with the petition;  
15       (e) A statement of the 5-year projected rate impact or the anticipated effect of the  
16 requested acquisition adjustment on rates for the next five years;  
17       (f) A statement that the utility's petition is available on the Commission's website;  
18       (g) The acquiring utility's address, telephone number, and business hours; and  
19       (h) A statement that any customer substantially affected by the petition may file a motion  
20 to intervene in accordance with Rule 28-106.205, F.A.C.

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

23  
24  
25

WATER AND WASTEWATER UTILITIES CUMULATIVE PRESENT VALUE OF THE REVENUE REQUIREMENTS  
 FOR ACQUISITION ADJUSTMENT WORKSHEET

		Acquired Utility							
Discount Rate / WACC	0.00%								
Start Date									
Acquisition Date									
	Escalation Rate	Beginning Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Nominal Total	5-year CPVRR
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>8</sup>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Net Customer (Savings)/Cost<sup>9</sup></b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<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 Adjustment.

<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 Adjustment.

<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 unamortized Acquisition Adjustment balance as well as the yearly amortization expense of the Acquisition Adjustment.

<sup>8</sup>Revenue from customers at forecasted rates.

<sup>9</sup>Revenue requirements netted against revenue from customers.

		Acquiring Utility							
Discount Rate / WACC	0.00%								
Start Date									
Acquisition Date									
	<u>Escalation Rate</u>	<u>Beginning Cost</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Nominal Total</u>	<u>5-year CPVRR</u>
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 Adjustment <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<sup>9</sup></b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Combined Net Customer (Savings)/Cost</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<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 Adjustment.

<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 Adjustment.

<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 unamortized Acquisition Adjustment balance as well as the yearly amortization expense of the Acquisition Adjustment.

<sup>8</sup>Revenue from customers at forecasted rates.

<sup>9</sup>Revenue requirements netted against revenue from customers.



<b>Cost Adjustments - Acquired Utility</b>				
<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$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>Cost Adjustments - Acquiring Utility</b>				
<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$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

PSC 1034 (3/24)  
Rule 25-30.0371

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** February 9, 2024

**TO:** Douglas Sunshine, Senior Attorney, Office of the General Counsel

**FROM:** Corey Hampson, Economic Supervisor, Division of Economics

**RE:** Docket No. 20240022-WS: Proposed amendment of Rule 25-30.0371, F.A.C., Acquisition Adjustments.

### **Statement of Estimated Regulatory Costs**

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Rule 25-30.0371, Florida Administrative Code (F.A.C.), Acquisition Adjustments, applies to water and wastewater utilities and sets forth the Commission's policy on acquisition adjustments. The Florida Public Service Commission staff has initiated rulemaking to amend Rule 25-30.0371, F.A.C., to update and clarify the rule. Based upon stakeholder responses and comments received at and from the workshops, Commission staff is recommending amendments to Rule 25-30.0371, F.A.C.

A staff workshop was held on February 1, 2023, to examine the Commission's regulatory policies and practices in the water and wastewater industries in Florida, which included the topic of acquisition adjustments. Participating in the workshop were the Office of Public Counsel (OPC) and representatives from the National Association of Water Companies (NAWC), U.S. Water Services Corporation (U.S. Water), Sunshine Water Services (SWS), Central States Water Resources-Florida (CSWR), Southwest Water Company, Florida Utility Services, Florida Community Water Systems, Ni Florida, Inc., and the Florida Rural Water Association (FRWA). Post-workshop and reply comments were submitted by OPC, SWS, and CSWR.

Staff held a rule development workshop on April 13, 2023. Participating in the workshop were representatives from OPC, CSWS, U.S. Water, and SWS. OPC, CSWR, SWS, and FRWA submitted post-workshop comments. Staff held a second rule development workshop on September 25, 2023. Participating in the workshop were representatives from OPC, CSWS, U.S. Water, and SWS. OPC and CSWR submitted post-workshop comments.

On January 18, 2024, staff issued a Statement of Estimated Regulatory Costs (SERC) data request to the water and wastewater utilities of Florida. Sunshine Water Services, First Coast Regional Utilities, and Ni Florida, Inc., provided written responses. First Coast Regional Utilities submitted a letter stating that they do not serve any customers yet. The purpose of the request was to assess and consider the fiscal impacts of the proposed rule. The responses have been evaluated during the preparation of this SERC. The attached SERC addresses the economic impacts and considerations required pursuant to Section 120.541, F.S.

The SERC analysis indicates that the recommended amendment to Rule 25-30.0371, F.A.C., will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. The recommended rule amendment would not potentially have adverse impacts on small businesses, would have no implementation cost to the Commission or other state and local government entities, and would have no impact on small cities or counties.

No regulatory alternatives were submitted pursuant to Section 120.541(1)(g), F.S. The SERC concludes that none of the impacts/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the proposed rule revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Chapter 25-30.0371, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes  No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes  No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth Yes  No

Private-sector job creation or employment Yes  No

Private-sector investment Yes  No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes  No

Productivity Yes  No

Innovation Yes  No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: In response to staff's data request, Sunshine Water Services stated that it may require analysis by a licensed engineer and further review by additional external legal counsel in order to comply with staff's revisions to Subsection (3)(b)10 F.A.C., and (4)(b)8 through 12 F.A.C. While Sunshine Water Services stated that it may require a licensed engineer and external legal counsel, the utility did not quantify the incremental costs as they depend on several factors related to the acquisition. Ni Florida did not identify any additional incremental costs, other than for legal review and filing, to comply with staff's revisions to Subsections (3)(b) F.A.C., and (4)(b) F.A.C. Ni Florida did not quantify its incremental costs for legal review and filing.

Furthermore, Sunshine Water Services estimated that complying with the noticing requirements proposed in Subsection (8) F.A.C., would cost \$9,000 to provide noticing in combination of the notice of Application for Authority to Transfer and \$30,000 as a separate notice. Ni Florida stated that it estimates no incremental costs for combined noticing. For separate noticing, Ni Florida estimated that the costs could be minimal or commensurate with market rates, depending on the size of the notice and number of recipients.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

143 investor-owned water and/or wastewater systems.

(2) A general description of the types of individuals likely to be affected by the rule.

All water and wastewater utilities regulated by the Commission. Utilities which come under the jurisdiction of the Commission in the future also would be required to comply. It is not anticipated that all utilities will petition the Commission for a positive acquisition adjustment; however, the number of potential petitions is difficult to estimate.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

None.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation. All responding utilities stated that transactional costs are anticipated to be minimal and would not exceed \$1 million in the aggregate within five years after implementation of the rule.

Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities:  
[120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

No regulatory alternatives were submitted.

A regulatory alternative was received from

Adopted in its entirety.

Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.