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March 1, 2024  
(via e-filing)

Mr. Douglas Sunshine  
Senior Attorney  
Office of General Counsel  
2540 Shumard Oak Boulevard

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

Dear Mr. Sunshine,

CSWR-Florida Operating Company, LLC (CSWR-Florida) will be attending the March 5, 2024 Public Service Commission (Commission) Agenda Conference to address the Commission regarding the proposed amendments to Rule 25-30.0371, Florida Administrative Code (F.A.C.) Acquisition Adjustments (rule).

CSWR-Florida appreciates the efforts of Commission Staff in developing the proposed amendments to the rule and their willingness to consider the comments and suggestions of participating parties. The proposed draft is a substantial improvement over the current rule, however there are a few amendments CSWR-Florida recommends the Commission also include as proposed amendments. A copy of the rule with CSWR-Florida's proposed amendments is attached. The attached copy is a "clean" copy of Staff's proposed rule amendments with CSWR-Florida's changes shown in type and strike.

With regard to the criteria of meeting governmental standards in sub-subparagraph (1)(e)1.a. the language should be changed to a "failure to comply with primary or secondary water standards..." CSWR-Florida believes the criteria should focus on whether there has been *compliance* regardless of whether there have been actions filed by a government agency. There have been instances where a utility misrepresented information provided to an enforcement agency, did not provide the required self-reporting for violations, or otherwise avoided formal enforcement actions for a violation. Further, the "and" at the end of the sub-subparagraph should be changed to "or" to clarify that either condition is an indication of an inability to provide safe, adequate and reliable service.

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A subparagraph (1)(e)3. is added to the list of criteria for determining non-viability to include “A utility that has a negative or zero rate base.” A negative or zero rate base is a clear indication that the current owner has been unable to make capital improvements or has otherwise neglected to make those improvements which negatively affects the ability of that owner to provide service in the future. CSWR-Florida has been consistent in its comments on proposed rule amendments that this criterion should be included.

Language is added to subparagraph (3)(b)9., regarding the contents of a petition for an acquisition adjustment for a non-viable utility, to add the words “if available.” In small or neglected systems this information is not always available due to poor record keeping or the lack of record keeping.

The last recommended change is with regard to the notice requirements in subsection (8). This notice provision was not included in previous drafts of the rule which CSWR-Florida reviewed. This subsection should be amended to require notice only to customers of the utility being acquired. Customers of the acquiring utility are not substantially affected by the acquisition adjustment request, and the notice would likely confuse those customers since they were not customers of the utility being acquired. The notice for a transfer application is only provided to customers of the utility being transferred.

CSWR-Florida looks forward to addressing the commission on the proposed rule amendment and the changes suggested by CSWR-Florida.

Sincerely,

*/s/ Susan F. Clark*

Susan F. Clark

1 **25-30.0371 Acquisition Adjustments.**

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

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

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

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

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

13 (e) “Non-viable utility” means a utility that meets ~~one~~either of the  
14 following subparagraphs:

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

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

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

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

26 2.3. ~~A utility that has a negative or zero rate base.~~

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

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

13 (3) Positive Acquisition Adjustments for Non-Viable Utility.

14 (a) A full or partial positive acquisition adjustment will be allowed if it is  
15 demonstrated that the acquired utility meets the definition of non-viable utility under  
16 paragraph (1)(e) of this rule; that the purchase was made as part of an arms-length  
17 transaction; and that customers from the acquired utility will benefit from the  
18 acquisition. In determining whether the acquired utility customers benefit, the  
19 Commission will consider the following factors:

- 20 1. Anticipated improvements in quality of service;
- 21 2. Anticipated improvements in compliance with water or wastewater  
22 regulatory requirements;
- 23 3. Anticipated impacts on the cost of providing service over the next 5  
24 years from the date of acquisition;
- 25 4. Anticipated cost efficiencies, including any economies of scale;
- 26 5. Ability to attract capital at reasonable cost; and

1           6.     The professional and experienced managerial, financial, technical, and  
2 operational resources of the acquiring utility.

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

5           1.     The amount of the acquisition adjustment requested;

6           2.     The amortization period requested;

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

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

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

13          6.     A statement as to whether the acquired utility is insolvent or unable to  
14 service its debt obligations;

15          7.     A description of the acquiring utility's managerial, operational,  
16 financial or technical capabilities to furnish and maintain safe and adequate service  
17 and facilities over the next 5 years from the date of acquisition;

18          8.     Any notices of violation, consent decrees or other regulatory actions  
19 issued by a federal, state, regional, or local agency regarding the provision of the  
20 acquired utility's water or wastewater service over the past 5 years from the date of  
21 acquisition, including any notices of violation of primary or notices of exceedances  
22 of secondary water quality standards;

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

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

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

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

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

10           (4) Positive Acquisition Adjustment for Viable Utility.

11           (a) A full or partial positive acquisition adjustment will be allowed if the  
12 acquiring utility demonstrates that the purchase was made as part of an arms-length  
13 transaction and the transaction incorporating the full or partial positive acquisition  
14 adjustment is projected to provide a positive cumulative present value of the revenue  
15 requirements (CPVRR) customer benefit over a 5-year period from the date of  
16 acquisition. If the CPVRR does not result in a positive customer benefit over the 5-  
17 year period, the Commission will consider the following factors in determining  
18 whether to allow a full or partial acquisition adjustment:

19           1. Anticipated improvements in quality of service and compliance with  
20 any regulatory requirements;

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

23           3. Anticipated cost savings;

24           4. Increased ability to attract capital at a reasonable cost;

25           5. Lower overall cost of capital; and

26           6. Additional professional and experienced managerial, financial,  
27 technical, and operational resources.

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

3 1. The amount of the acquisition adjustment requested;

4 2. The amortization period requested;

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

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

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

11 6. A CPVRR in the form of a spreadsheet. Form PSC 1034 (3/24), entitled  
12 “Water and/or Wastewater Utilities Cumulative Present Value of the Revenue  
13 Requirements for Acquisition Adjustment Worksheet,” which is incorporated by  
14 reference in this rule and is available at [hyperlink] is an example CPVRR that may  
15 be completed and included in the acquiring utility’s petition to comply with this  
16 subparagraph. The form may also be obtained from the Commission’s website,  
17 [www.floridapsc.com](http://www.floridapsc.com);

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

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

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

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

25 11. The 5-year projected rate impact on the customers of the utility system  
26 being acquired, including the rate impact of any cost efficiencies and economies of  
27 scale expected to result from the acquisition transaction, the rate impact of the cost

1 of any plant infrastructure additions, and the rate impact of the acquisition  
2 adjustment; and

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

5 (5) Amortization Period for a Positive Acquisition Adjustment. The  
6 Commission will set the amortization period in the order approving the positive  
7 acquisition adjustment. Amortization of the acquisition adjustment will begin on the  
8 date of issuance of the order approving the positive acquisition adjustment or on the  
9 date the sale closes, whichever occurs last.

10 (6) Nothing herein removes the Commission's existing authority to review  
11 a positive acquisition adjustment if the Commission finds that customer benefits did  
12 not materialize or subsequently changed within 5 years of the date of the order  
13 approving the positive acquisition adjustment.

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

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

26 (a) Title: Notice of Utility's Petition to Establish an Acquisition  
27 Adjustment;



- 1           (b)    A statement that the utility has filed a petition with the Commission to  
2 establish an acquisition adjustment for either a viable or non-viable utility system;
- 3           (c)    The date the petition was filed with the Commission;
- 4           (d)    The docket number associated with the petition;
- 5           (e)    A statement of the 5-year projected rate impact or the anticipated effect  
6 of the requested acquisition adjustment on rates for the next five years;
- 7           (f)    A statement that the utility’s petition is available on the Commission's  
8 website;
- 9           (g)    The acquiring utility’s address, telephone number, and business hours;  
10 and
- 11          (h)    A statement that any customer substantially affected by the petition may  
12 file a motion to intervene in accordance with Rule 28-106.205, F.A.C.