

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-30.0371, Acquisition
Adjustments.

DOCKET NO. 20240022-WS
ORDER NO. PSC-2024-0066-NOR-WS
ISSUED: March 13, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED RULE

BY THE COMMISSION

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has proposed the amendment of Rule 25-30.0371, Florida Administrative Code, relating to water and wastewater utility acquisition adjustments.

The attached Notice of Proposed Rule appeared in the March 13, 2024 edition of the Florida Administrative Register (Vol. 50/51).

Requests for hearing on the proposed rule, information regarding the statement of estimated regulatory costs, or proposals for a lower cost regulatory alternative must be provided in writing and received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than April 3, 2024.

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By ORDER of the Florida Public Service Commission this 13th day of March, 2024.



ADAM J. TEITZMAN

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

DDS

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-30.0371 Acquisition Adjustments

PURPOSE AND EFFECT: To amend the rule to update and clarify the rule to set forth the Commission's policy on acquisition adjustments and establish a process whereby a water or wastewater utility can petition for an acquisition adjustment for a non-viable or viable utility and what the Commission will consider when evaluating the utility's petition.

SUMMARY: The amendment substantially rewrites the current rule, providing: revised and new definitions; general filing instructions; factors considered in determining whether to grant an acquisition adjustment; what must be included in the contents of the petition; establishment of when amortization period begins; recognition of Commission's authority to review acquisition adjustment if customer benefits do not materialize or subsequently change; eliminates negative acquisition adjustment from being included in rate base; incorporated form; and establishment of notice requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC examined the factors required by Section 120.541(2), F.S., and concluded that the rule will not have an adverse impact on economic growth, business competitiveness, or small business and that transactional costs are anticipated to be minimal after implementation of the rule amendment.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 367.121(1)(f) F.S.

LAW IMPLEMENTED: 367.071(5), 367.081(2)(a), (b) F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Douglas Sunshine, dsunshin@psc.state.fl.us, Office of General Counsel, 2540 Shumard Oak Blvd, Tallahassee, FL 32399-0850, (850)413-6199.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 25-30.0371 follows. See Florida Administrative Code for present text.

25-30.0371 Acquisition Adjustments.

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

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

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

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

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

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

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

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

b. Insufficient investment, repair, 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. A utility that is insolvent, i.e., unable to pay debts.

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

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

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

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

1. Anticipated improvements in quality of service;

2. Anticipated improvements in compliance with water or wastewater regulatory requirements;

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

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

5. Ability to attract capital at reasonable cost; and

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

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

1. The amount of the acquisition adjustment requested;
2. The amortization period requested;
3. An explanation of how the acquisition was made as part of an arms-length transaction;
4. The contract of sale, including the estimated cost of the fees and transaction closing costs to be incurred by the acquiring utility;
5. A calculation of the net book value of the acquired utility including the composite remaining life of the assets purchased;
6. A statement as to whether the acquired utility is insolvent or unable to service its debt obligations;
7. A description of the acquiring utility's managerial, operational, financial, or technical capabilities to furnish and maintain safe and adequate service and facilities over the next 5 years from the date of acquisition;
8. Any notices of violation, consent decrees or other regulatory actions issued by a federal, state, regional, or local agency regarding the provision of the acquired utility's water or wastewater service over the past 5 years from the date of acquisition, including any notices of violation of primary or notices of exceedances of secondary water quality standards;
9. The acquired utility's annual capital investments and operations and maintenance expenses over the past 5 years from the date of acquisition, if existing;
10. Any planned infrastructure additions and maintenance by the acquiring utility to improve the acquired utility's quality of service or compliance with environmental regulations;
11. Any engineering studies or appraisals the acquiring utility procured pertaining to the purchase of the acquired utility;
12. The 5-year projected impact on the cost of providing service to the customers of the utility system being acquired, including the impact of any operation and maintenance cost savings and economies of scale expected to result from the acquisition transaction, the impact of the cost of any plant infrastructure additions, and the impact of the acquisition adjustment; and
13. An explanation as to how the acquiring utility has greater access to capital than the acquired utility, if applicable.

(4) Positive Acquisition Adjustments for Viable Utility.

(a) A full or partial positive acquisition adjustment will be allowed if the acquiring utility demonstrates that the purchase was made as part of an arms-length transaction and the transaction incorporating the full or partial positive 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. If the CPVRR does not result in a positive customer benefit over the 5-year period, the Commission will consider the following factors in determining whether to allow a full or partial acquisition adjustment:

1. Anticipated improvements in quality of service and compliance with any regulatory requirements;
2. Anticipated rate reductions or rate stability over the next 5 years from the date of acquisition;
3. Anticipated cost savings;
4. Increased ability to attract capital at reasonable cost;
5. Lower overall cost of capital; and

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

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

1. The amount of the acquisition adjustment requested;
2. The amortization period requested;
3. An explanation of how the acquisition was made as part of an arms-length transaction;
4. The contract of sale, including the estimated cost of fees and transaction closing costs to be incurred by the acquiring utility;

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

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

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

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

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

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

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

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

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

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

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

(8) Notice. At the time the petition is filed with the Commission, the acquiring utility must provide a draft notice for review by Commission staff. Commission staff will review the draft notice within 7 days. Once staff has approved the notice, the acquiring utility must provide notice by regular mail to the Office of Public Counsel and by regular mail or personal service to each customer and owner of property located within the service area for both the acquiring utility

and the utility being acquired, to the extent the utilities' customers are within the Commission's jurisdiction. The notice required by this rule may be combined with the notice of Application for Authority to Transfer issued pursuant to Rule 25-30.030, F.A.C., or for existing customers, the notice may be included in their next bill. The notice must contain:

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

(b) A statement that the utility has filed a petition with the Commission to establish an acquisition adjustment for either a viable or a non-viable utility system;

(c) The date the petition was filed with the Commission;

(d) The docket number associated with the petition;

(e) A statement of the 5-year projected rate impact or the anticipated effect of the requested acquisition adjustment on rates for the next five years;

(f) A statement that the utility's petition is available on the Commission's website;

(g) The acquiring utility's address, telephone number, and business hours; and

(h) 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.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Cicchetti

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Vol. 49, No. 61, March 29, 2023