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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240022-WS

Proposed amendment of
Rule 25-30.0371, FAC,
Acquisition Adjustments.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN MIKE LA ROSA
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, March 5, 2024

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN LA ROSA: So let's move on to Item
3 No. 3, allow Mr. Sunshine to take his seat.

4 I know we've got a lot of same participants
5 involved, so, Mr. Sunshine, you are recognized to
6 get us started.

7 MR. SUNSHINE: Thank you, Mr. Chair.

8 Good morning, Commissioners. I am Douglas
9 Sunshine with the Office of General Counsel.

10 Agenda Item No. 3 is staff's recommendation
11 regarding the proposed amendment to Rule
12 25-30.070371, Florida Administrative Code,
13 Acquisition Adjustments. In response to comments
14 received at a workshop to examine the Commission's
15 regulatory policies and practices in the water and
16 wastewater industries in Florida.

17 Specifically it was identified that the
18 acquisition adjustments rule was outdated and in
19 need of modernization in order to prioritize the
20 acquisition of smaller troubled systems.

21 Accordingly, staff recommends a substantial
22 rewrite of the rule. Primarily the proposed
23 amended rule does away with the existing
24 extraordinary circumstances standard, as well as
25 doing away with a negative acquisition adjustment

1 being included in rate base.

2 Additionally, the proposed amended rule
3 provides the opportunity of a positive acquisition
4 adjustment when a viable utility acquires another
5 viable system.

6 As explained more fully in the recommendation,
7 the amended rule provides clear definitions,
8 procedures for filing a petition to receive an
9 acquisition adjustment; establishes factors the
10 Commission will consider in determining whether to
11 grant an acquisition adjustment, provides when the
12 amortization period will begin; recognizes the
13 Commission's authority to review an acquisition
14 adjustment if it finds customer benefits did not
15 materialize or subsequently changed; eliminates
16 negative acquisition adjustments from being
17 included in rate base; and establishes a notice of
18 requirement to the acquiring utility's customers,
19 as well as to the customers of the utility being
20 acquired, thus, ensuring due process.

21 Patricia Christensen of the Office of Public
22 Counsel would like to address the Commission
23 regarding the proposed amendment of the rule.
24 Susan Clark and Tom Crabb of the Radey Law Firm, as
25 well as their client, Josiah Cox, President of

1 CSWR, would like to address the Commission as well,
2 and Martin Friedman of the Dean Mead Law Firm,
3 representing Sunshine Water Services, is present
4 and has advised that he would like to address any
5 comments made by other parties. Representatives of
6 Southwest NI are present to answer any questions
7 but do not plan to address the Commission.

8 Staff is also available to answer any
9 questions.

10 Thank you.

11 CHAIRMAN LA ROSA: Thank you, Mr. Sunshine.

12 So, Commissioners, I will just add one point
13 here as we get rolling with this, is that there --
14 of course, we just made some changes to Item No. 2,
15 which was proposed. There are some similar
16 overlaps as far as language that is in this item.
17 We are not under constraints of a timeline as we
18 were in the previous item. So I think, at minimum,
19 I just want to make sure that that's pointed out
20 and that's aware.

21 We do have parties that are here. I would --
22 I would like to hear from the parties, as Mr.
23 Sunshine just mentioned, those that would like to
24 address us, but I am not in -- I am not in
25 opposition if this -- if this rule ultimately got

1 pushed back. Again, just being open and
2 transparent.

3 So I will start with who wants to, I guess, go
4 first? Ms. Clark? I am sorry. I am sorry. Let
5 me go to OPC. She was recognized by Mr. Sunshine.

6 MS. CHRISTENSEN: My turn?

7 CHAIRMAN LA ROSA: Yes.

8 MS. CHRISTENSEN: Yes. Good afternoon,
9 Commissioners. Patty Christensen with the Office
10 of Public Counsel.

11 I want to make some brief comments on the
12 proposed rule amendment to Rule 25-30.0371, the
13 acquisition adjustment rule.

14 OPC has several areas of concern with the
15 proposed rule language. First, section (2) of the
16 rule, lines nine -- or seven through nine on page
17 16 of the recommendation, there is language there
18 that would allow a three-year extension for the
19 filing of approval of the acquisition adjustment
20 for good cause.

21 The Commission's current policy grants or
22 denies an acquisition adjustment at the time of
23 transfer, when the information from the seller and
24 the buyer is most readily available.

25 Further, the current timing allows for

1 customers to know the potential bill impact from
2 any acquisition adjustment when they could affect
3 the potential transfer.

4 OPC requests that the Commission continue its
5 current practice of only determining the approval
6 or denial of an acquisition adjustment at the time
7 of transfer.

8 Second, section (3)(a), at the bottom of page
9 16, sets out the criteria for the approval of a
10 partial or a full acquisition adjustment for a
11 nonviable utility.

12 OPC is concerned that there is no criteria for
13 a cumulative present value of revenue requirement,
14 or CPVRR, analysis or other form of objective
15 economic analysis that would demonstrate the cost
16 savings. This type of economic analysis is
17 necessary to establish the cost savings expected,
18 and is an objective criteria that the Commission
19 can use as the basis for granting or denying a
20 partial or full acquisition adjustment.

21 In anticipation that the Commission will vote
22 on the proposed really today, OPC hopes -- hopes to
23 continue to work with Commission staff and other
24 stakeholders to address these concerns and bring
25 language forward that might avoid the need for

1 further public hearings.

2 Thank you.

3 CHAIRMAN LA ROSA: Ms. Clark, you are
4 recognized.

5 MS. CLARK: Thank you, Mr. Chairman.

6 With respect to the two components Ms.
7 Christensen just said, we agree with the staff's
8 language on those two items.

9 We do have a suggestion on, I guess -- and I
10 am just going to go through them as we had them in
11 our letter, and also in the rule themselves.

12 Starting with what is a nonviable utility,
13 this would be -- let me get there. This would be
14 subsection (1)(e)(1). We believe the standard
15 should be failure to comply, and that focuses the
16 issue on whether there has been compliance, rather
17 than whether there have been actions taken by a
18 government body.

19 We believe there have been instances where a
20 utility misrepresented information provided to an
21 enforcement agency, did not provide the required
22 self-reporting, or otherwise avoided -- avoided
23 formal actions.

24 And further, we think the conjunction at the
25 end of that paragraph A should be "or" to make sure

1 that either -- meeting either one of those criteria
2 would satisfy being nonviable. And we say that,
3 because if you leave it to a requirement of
4 noncompliance, essentially if you don't have it,
5 the utility could still be nonviable on a
6 forward-looking basis.

7 To us, it kind of takes you back to where you
8 were with a hard and fast that it has to be this
9 and we can't consider anything else. I think by
10 doing the "or", it maintains your flexibility.

11 The next thing is adding the criteria of a
12 negative or zero rate base. It's argued that a
13 utility that has a negative or zero rate base is a
14 clear indication that the current owner is either
15 unable or unwilling to make necessary capital
16 improvements, which will negatively affect their
17 ability to provide service in the future. I would
18 note, we have been consistent in our suggestion
19 that this be included.

20 Next is the language under paragraph B on the
21 contents of the petition. One of the things the
22 utility is supposed to provide is the acquired
23 utility's annual capital investments and operations
24 and maintenance expenses over the past five years.

25 These are generally small utilities. It's

1 very possible that that never was done. So we
2 think, unlike the change that was made in the other
3 rule, if available is appropriate here.

4 And I think the last thing is the notice
5 provision, and I think we covered that in the last
6 rule, and we would be comfortable with a similar
7 notice provision here.

8 I think that's it, Mr. Chairman.

9 CHAIRMAN LA ROSA: Yeah, Mr. Cox, do you have
10 something?

11 MR. COX: Yes, Chairman. I guess I will do
12 this in a real life scenario here.

13 I was before the Commission a little less than
14 two years ago with Sunshine Utilities of Central
15 Florida, a water and wastewater system that we
16 purchased. At the time, they, you know, there were
17 historical instances of environmental
18 noncompliance. In fact, I heard, you know, sitting
19 at this table that, hey, that's just normative for
20 small utilities, I think should not be the
21 standard. At the time of purchase, it was
22 currently in compliance.

23 A number of months after we purchased that
24 system, we had a hydropneumatic tank explode. And
25 the reason why it exploded is poor maintenance, and

1 it turned out that they were cannibalizing old
2 tanks and welding on sheets on top of these
3 systems.

4 So it was a great example of a utility running
5 and own it, because historical records you cannot
6 trust. Don't know how bad it really is.

7 So, you know, right now we are testing for
8 PFAS in the state of Florida. So we've had 11
9 positive PFAS tests since we've come into the
10 state. I would say that PFAS is an eminent concern
11 here in the state mainly because of the nature of
12 the aquifer. It's very shallow and perched, which
13 means it's ubiquitous.

14 So those are great examples. The previous
15 utilities were not required to test for PFAS. So
16 another great example like we would like the
17 opportunity to come back and explain, hey, these --
18 this system was nonviable for a number of reasons.

19 I think Ms. Clark nailed it on the, you know,
20 negative or zero rate base. If you are negative or
21 zero rate base, obviously you are not investing
22 like a proper utility should. That's a clear sign
23 every non-viability.

24 And I just want to address the OPC the CPVRR
25 on this one. So what is the value of clean water?

1 What is -- how much money can I attribute to the
2 fact that customers are getting proper boil
3 notifications, that their -- the provision of
4 service is constant, that they don't have a history
5 of noncompliance of it? Those are hard to
6 quantify, you know, and I think we disagree, you
7 know, through any given five people what that
8 means.

9 So I think, you know, proving the system is
10 nonviable with the criteria laid out before I think
11 is enough to justify. And obviously, you all have
12 discretion over the whole thing.

13 And then just to piggyback, I agree, the if
14 available. I have purchased a number of systems
15 here in Florida, and I get a bankers box for 20
16 years of records. So there are a lot of records
17 that truly are not available, or will not be
18 provided to us. So if is a lot bigger, you know,
19 deal here than it was in the previous rulemaking we
20 were talking about earlier.

21 And then I agree, in the notice requirements,
22 we are fine with a bill insert. So I appreciated
23 the opportunity to speak to this.

24 CHAIRMAN LA ROSA: Mr. Friedman, you are
25 recognized. You can pass it on if you would like

1 to.

2 MR. FRIEDMAN: Well, I always got to give the
3 boss the first shot, you know.

4 Yeah, I mean, I think this is a great
5 improvement over what we had, and hopefully this
6 will result in some positive acquisition
7 adjustments. And we concur in all the suggestions
8 that Ms. Clark has made.

9 I would like to stress that the change in
10 paragraph (1)(a), failure to comply instead of
11 history of enforcement, because I am not sure what
12 history of enforcement means. You know, what's the
13 history -- is the history, one, enforcement action?
14 Is it, two, does it mean something that happened
15 yesterday, is it something that happened 10 years
16 ago? I think that's a more ambiguous term,
17 whereas, failure to comply is either you look at
18 the report and you complied or you didn't.

19 So I think that's a substantial reason why
20 that language is better than the history of
21 noncompliance.

22 Thank you.

23 CHAIRMAN LA ROSA: Commissioners, questions?
24 Commissioner Graham, you are recognized.

25 COMMISSIONER GRAHAM: Well, I am not going to

1 try to stir the pot too much on this. My first
2 question when I looked through this was I thought
3 three years was a long time, and I just wanted for
4 staff or somebody to tell me where that number came
5 from, because I thought you could this, I mean, a
6 year is pushing. And last year at this time, a lot
7 of these utility companies would have been happy
8 give a year to come back with proof of a positive
9 acquisition adjustment. That's the first thing.

10 The second one is the difference between
11 viable and non -- and non -- whatever that word is.

12 CHAIRMAN LA ROSA: Viable.

13 COMMISSIONER GRAHAM: Yeah. I just want to
14 make sure that we stay consistent, because if we
15 determine, because for a positive acquisition
16 adjustment, that something is non via -- that word
17 -- non NV, then it should also be the same way when
18 we are looking at regular rate cases. And if we
19 realize that something is NV, then, I mean, when we
20 come back and we ding them because they are not
21 providing a quality product, I think that that
22 still should be a part of this whole process.

23 So if we are determining something is NV here,
24 it should also be NV when we are talking about rate
25 cases, you know, for anybody coming back. It

1 doesn't have to be transfer of ownership. If it's
2 nonviable, it's nonviable. So whatever that
3 definition is here, it should always be that
4 definition. And that may affect upcoming rate
5 cases.

6 But I want to make sure everybody is on the
7 same page, that we are not saying that the system
8 is not functional here, and then say, well, okay,
9 well, it's a rate case, it may be this function
10 because it's the same guy, or because they came to
11 standard just before the rate case. I mean, at
12 some point somewhere during there, it's not
13 considered a via -- whatever that word is -- you
14 know what I am saying?

15 And those are my only two concerns. But the
16 number one was staff to explain to us where the
17 three years came from.

18 CHAIRMAN LA ROSA: Let's hear from staff.
19 Let's get a little history on that.

20 MR. CICCHETTI: Commissioner, staff's
21 preference would be to have the petition filed at
22 the same time of the transfer. The industry felt
23 very strongly that there should be a period of
24 time, and I believe OPC feels the same way, that it
25 should be at the time of transfer.

1 The industry wanted some period of time to be
2 able to run the systems. We had the CSWR cases
3 before the Commission where that came up. And we
4 have had in the past when the natural gas industry
5 petitions for acquisition adjustments had occurred
6 after the actual purchase of the utility.

7 So as a compromise, staff is recommending the
8 three years, but it was mainly the industry that
9 felt strongly that they should have some time to be
10 able to run the system to see what actual
11 improvements were necessary and could be made.

12 With regard to the viable versus nonviable,
13 the nonviable part of the rule is similar to the
14 existing rule, except in the existing rule, we have
15 extraordinary circumstances. So we wanted to be
16 able to define what a troubled system was so that
17 it wouldn't -- that it would be readily available
18 to be taken over, and that there would be an
19 incentive for that system to be taken over, and
20 they wouldn't have to do a CPVRR, cumulative
21 present value revenue requirements.

22 So that's the difference between -- main
23 difference between the viable and the nonviable, is
24 we're -- the nonviable are troubled utilities that
25 need some immediate assistance, and we wanted to

1 provide that incentive.

2 If you would like me to address the previous
3 comments --

4 CHAIRMAN LA ROSA: Please.

5 MR. CICCHETTI: -- that were made.

6 With regard to Public Counsel's comments,
7 again, they want the petition for the acquisition
8 adjustment to be filed at the same time as the
9 transfer. We recognize that concern, and we wanted
10 the customers to be able to know that they were
11 dealing with a potential increase in costs. And so
12 we believed that the noticing requirements, which
13 weren't a part of the existing rule, will solve
14 that problem. When a nonviable system is going to
15 be taken over, they will be notified. And we
16 didn't think -- because we just wanted the system
17 to get in good hands and get customers good quality
18 service. We didn't think a CPVRR would be
19 necessary in those circumstances.

20 With regard to the previous comments, the
21 first issue raised by Ms. Clark was to change the
22 language to failure to comply versus a history of
23 enforcement or compliance action. That's on page
24 one of her letter.

25 And when you just say failure to comply, that

1 would be one instance. And so we thought that you
2 would need a history of compliance or enforcement
3 actions so that it wasn't one instance was pointed
4 out.

5 CSWR has been very firm in their request to
6 have extended three-year periods of time in order
7 to file the petition, and so we would think that
8 they would be able to come up with the compliance
9 shortfalls during that period of time.

10 The request with regard to a negative or zero
11 rate base. From an operational standpoint, in
12 order to have a negative rate base, you would have
13 to have depreciation in excess of investment, and
14 that's basically an accounting problem. But,
15 again, it would mean a low investment in rate base.

16 We have, in the past 30 years, seen a couple
17 of instances where a developer was going to build a
18 large number of homes, put in infrastructure and
19 then only built a fraction of those -- that amount.
20 And so the system was over-contributed. That
21 infrastructure was donated to the utility. The
22 system is over-contributed. Between that and the
23 used and useful adjustment, it would result in a
24 negative rate base.

25 But we don't think that should be allowed to

1 be considered a nonviable utility, where you would
2 avoid cumulative present value of the revenue
3 requirement analysis. We wouldn't want to incent
4 that type situation. So we think that a negative
5 rate base, or a lack of sufficient investment is
6 included in subsection (b) of number one, and we
7 wouldn't want to make negative rate base a sole
8 criteria to be considered nonviable.

9 With regard to the page three, the if
10 available. Again, if we do consistent with the
11 previous rule and make it if exists, or whatever
12 language that staff is going to come up with, we
13 would be fine with that.

14 I am just going by the recommendation.

15 And then finally, on page six, I believe the
16 notice requirement, the Commission has dealt with
17 that.

18 MR. FUTRELL: Mr. Chairman, if I may append on
19 to Mr. Cicchetti's comments to respond to
20 Commissioner Graham's points.

21 The cannibalization of nonviable or viable, we
22 don't see that as affecting the Commission's
23 authority in a rate setting proceeding to take into
24 consideration the criteria and the factors the
25 Commission has to look at in setting rates with

1 regard to quality of service, quality of the
2 product, all those factors that the Commission
3 considers in setting rates.

4 So regardless of whether it's nonviable or
5 viable for purposes of this rule in seeking an
6 acquisition adjustment, that does not factor into
7 the Commission's authority to set -- to take the
8 performance of the utility and providing service
9 into consideration.

10 COMMISSIONER GRAHAM: Why not?

11 MR. FUTRELL: Because this is strictly for
12 creating two pathways, depending upon the condition
13 of the utility, to seek an acquisition adjustment.
14 As Mr. Cicchetti said, the nonviable concept is the
15 traditional troubled system, where there is a
16 threat to -- immediate threat to service quality or
17 the financial condition of the utilities is in --
18 is in question.

19 And this pathway relieves the utility of
20 having to make an economic case for the
21 acquisition. It says, there is -- there is an
22 immediate threat to service or financial integrity
23 of the company, and an acquirer needs to step in to
24 provide good service and to be financially strong.
25 And they don't have to make an economic case of

1 savings or economic benefits to the customers down
2 the road.

3 The viable is the -- is the new concept we are
4 proposing that recognizes and provides a utility an
5 opportunity to present to the Commission an
6 economic case for an acquisition. And that's the
7 new pathway. But they need to provide some -- some
8 quantified data that will substantiate the
9 potential savings and financial benefits that could
10 accrue to the customers. And so that's the --
11 that's the sole distinction.

12 COMMISSIONER GRAHAM: But during a normal rate
13 case, if -- by this process, if something is
14 considered a troubled system, and then a normal
15 rate case, by the same criteria, that system would
16 be considered a troubled system. Why would we
17 reward a troubled system unless it's specifically
18 tied back to projects?

19 MR. FUTRELL: I think in the troubled system
20 is you are in a condition where there is an
21 immediate threat to service quality, and you need
22 someone to step in and to take over to provide
23 service. The cost of whatever needs to be done to
24 upgrade facilities, or upgrade service, that will
25 be considered in a rate case.

1 Again, that's -- as you know, acquisition
2 adjustments have been rare. And think we are
3 trying to maintain that strong strict standard to
4 create new pathways for companies to seek ways to
5 approach the Commission when there may be an
6 economic case for an acquisition.

7 COMMISSIONER GRAHAM: Well, I am not going to
8 beat this dead horse. If -- I guess when we go
9 forward to another rate case coming up, if there is
10 something that comes across that, by this
11 definition in my mind, is a troubled system, then
12 we will have that conversation there.

13 CHAIRMAN LA ROSA: So I am going to start off
14 with a question on my end. There is a definition
15 of nonviable utility. Is it possible to be one of
16 these and not either of these items listed below as
17 being -- as being what's recommended as far as
18 paragraphs one, two and three?

19 MR. CICCHETTI: You would either be one or the
20 other in order to be considered nonviable. If you
21 were insolvent, that would be considered nonviable,
22 or meet the definitions of (1)(a) and (1)(b).

23 CHAIRMAN LA ROSA: Okay. Thank you.

24 So I am going to shift over to the companies
25 that are being represented. Is there the reason

1 the word either is stricken because you are trying
2 to make this singular, or is it possible that
3 multiple, that you would qualify for multiple
4 issues? In fact, that there isn't -- they have
5 failed to comply or there hasn't been -- or the
6 company is -- or the utility is insolvent?

7 MS. CLARK: Well, I think you -- I think we
8 put one of the -- of the -- of these criteria,
9 because we recommended three, but we think the
10 criteria for number one should be in the
11 alternative. Either you have a history of this
12 noncompliance, which shows there are problems, or
13 because of your financial lack of -- lack of
14 keeping up with the system, you are nonviable. It
15 should be a disjunctive --

16 CHAIRMAN LA ROSA: Commissioners --

17 MS. CLARK: -- because if -- you know, you
18 could meet the second part, and the staff would
19 say, well, there have been no violations so we are
20 good, but do we want to wait until there are
21 violations to encourage folks to take them over?

22 CHAIRMAN LA ROSA: Commissioner Clark.

23 COMMISSIONER CLARK: I think, Mr. Chairman, I
24 had the same question of why they changed it from
25 one or either, and specifically I think that is

1 because they added a third option, and then
2 grammatically, it only works by using the one word
3 one instead of either.

4 CHAIRMAN LA ROSA: Perfect.

5 COMMISSIONER CLARK: Thank you. I saw the
6 same thing.

7 CHAIRMAN LA ROSA: Yeah, so I'm, okay,
8 scratching my head.

9 MS. CLARK: To be clear, in order to meet one,
10 it's either/or of those criteria, but then there is
11 also two if you meet two.

12 CHAIRMAN LA ROSA: Gotcha. Okay. I got it.
13 Question for staff. Could a viable system
14 have a negative or a zero rate base?

15 MR. CICCHETTI: No.

16 CHAIRMAN LA ROSA: Okay.

17 MR. CICCHETTI: Well, let me -- let me correct
18 that.

19 You may have a system with a low rate base,
20 but I couldn't see a viable system with a negative
21 rate base, or zero rate base. But you -- even with
22 a low rate base, you may still be operating. You
23 may have future plans to invest in infrastructure.
24 But generally speaking, I would not think you would
25 see a viable system with a negative rate base.

1 CHAIRMAN LA ROSA: Okay. Thank you.

2 Commissioner Clark.

3 COMMISSIONER CLARK: My only question goes
4 back to the failure to comply versus a history of
5 enforcement. I don't see a substantial difference
6 in the two. I think it's -- a history of
7 enforcement is kind of the Commission's discretion
8 here.

9 Failure to comply, I think you are putting
10 down into a scenario where if you had one maybe
11 very minor instance, you could say, well, it was a
12 failure to comply. It doesn't matter how
13 insignificant the issue was, you didn't dot the I
14 or cross the T, so we are going to rate that as
15 failure to comply. I think that's -- and now that
16 utility is a nonviable.

17 So, you know, either changing the word to
18 substantial failure to comply, or multiple failures
19 to comply, I think would address my only concern
20 with -- I think that language might be just a
21 little too -- you might have a serious issue the
22 company did not comply that was not significant in
23 my opinion.

24 CHAIRMAN LA ROSA: Mr. Cox, yeah, you are
25 recognized.

1 MR. COX: Thank you, Chairman.

2 Commissioner, I -- substantial failure to
3 comply is great language. I think what we are
4 trying to account for is the fact that these small
5 utilities, either by design or just by, you know,
6 sheer lack of managerial and technical ability,
7 have not tracked what's happened inside the
8 utility. So, you know, we want the opportunity to
9 go back and demonstrate that.

10 And I think Commissioner Graham, one of the
11 things you said about the three years. Part of the
12 three-year piece is also coming up with the plans,
13 the engineering plans to be able to demonstrate
14 what the fixes are going to be, and that takes
15 time. So we can operate it for a while, name all
16 the problems, go through the engineering process,
17 name all the fixing that the state DEP is going to
18 accept, and then submit those to the Commission as
19 part of a full package on why this system is
20 nonviable. So that's the time component from our
21 perspective. And we've seen that.

22 And I think, back to the, you know, zero net
23 or small rate base, what we are seeing right now
24 impending environmental compliance requirements
25 that a system with small -- with a low net book

1 value or zero net book value, even if they are
2 currently providing service, so you are a small
3 200-person subdivision, you get a hydropneumatic
4 tank and you have done a fine job, you know, you
5 have not had severe loss of service, but you have
6 this PFAS thing that's coming up and there is no
7 way you are going to be able to afford that for
8 your system.

9 So that's a great example of guys who need
10 bought and the issue is going to be it's
11 substantial failure compliance, they are not going
12 to be able to fix that. So that's the way kind of
13 view that whole provision.

14 MS. CHRISTENSEN: Commissioner, could I
15 address --

16 CHAIRMAN LA ROSA: Sure.

17 MS. CHRISTENSEN: -- the nonviable issue. And
18 the reason OPC has a concern, and would ask that
19 there be some sort of economic analysis and cost
20 saving analysis even on the nonviable, whether or
21 notes the Commission allows itself an option and to
22 make that just a consideration of whether or not to
23 approve an acquisition adjustment or not is because
24 the acquisition adjustment is above and beyond the
25 cost-based or the net book value of the system.

1 And as you just heard from the company, on top of
2 that additional cost from the acquisition
3 adjustment, they are going to have to go in and
4 make actual rate base improvements.

5 So there is going to be a double whammy to
6 these customers that are maybe a small system of
7 200 customers, particularly when you are looking at
8 allowing a positive acquisition adjustment under
9 those circumstances, especially if that acquisition
10 adjustment is particularly large.

11 So without some sort of CPVRR analysis, where
12 the Commission can look at what are the potential
13 cost savings that this utility is going to bring to
14 the system from economies of scale that might
15 justify some of that positive acquisition
16 adjustment, you are looking at essentially a double
17 whammy on these small customers' bill.

18 You are looking at a cost for acquiring the
19 system that's above the cost base of the net book
20 value, and you are looking at additional cost to
21 bring the system up to snuff.

22 And it's not that we don't want those systems
23 to be acquired, but you have got customers that are
24 captured customers that are in a position that have
25 no say as to how the utility is being run, or who

1 is going to acquire them. So we have to look at
2 what that cost is going to be to those customers to
3 get that better service, and we have to be
4 skeptical of that cost.

5 And that's what we think the Commission should
6 preserve through the CPVRR analysis, and a more
7 timely look at the acquisition adjustment, because
8 the customer's time to come in and step in and
9 protest a potential transfer is at the time of
10 transfer. Not a year from then, or three years
11 out. That's the time that they have to protest
12 whether or not they want to have this new company
13 come in and have their bills impacted by a \$300,000
14 positive acquisition adjustment.

15 CHAIRMAN LA ROSA: Commissioner Clark.

16 COMMISSIONER CLARK: Well, I would
17 theoretically kind of disagree with that. The
18 whole point you have declared that a nonviable
19 system, there is a desperate need that something
20 happened. And allowing that point of acquisition
21 adjustment, giving that time period to evaluate the
22 system, I think, gives us a better picture of what
23 a real acquisition adjustment needs to be, and then
24 we, as the Commission, would have the authority to
25 say, no, you are not getting 100 percent of the

1 acquisition adjustment. You are getting 50
2 percent. You are getting 40 percent.

3 So I think we have that discretion just built
4 in the general -- the general acquisition process.

5 MS. CHRISTENSEN: And I am not suggesting you
6 couldn't look at the acquisition itself in three
7 years. That was not the point I was making, and
8 maybe I wasn't clear.

9 I am saying the time -- you wouldn't be able
10 to be back and protest the actual transfer to the
11 other company. And if they were going to be
12 granted the full acquisition in three years, they
13 couldn't come back and protest and say, hey, we
14 don't want this company. That's what I am saying
15 would have sailed under the bridge.

16 And, you know -- and I think, to your point,
17 Commissioner, where you are looking at a positive
18 acquisition, having the economic analysis, if you
19 are going to go with allowing some time to -- for
20 the acquiring utility to develop its plans and see,
21 you know, what needs to be done, then I don't think
22 there is a harm, even in the nonviable situation,
23 of providing an economic analysis at that time. So
24 the Commission has more information about, you know
25 what, other types of cost savings can we expect?

1 What can be absorbed by those kinds of cost
2 savings? What may be, you know, you would allow in
3 a partial acquisition adjustment. And that --
4 that's consistent with our comments that we would
5 like to make today.

6 CHAIRMAN LA ROSA: Commissioner Clark.

7 COMMISSIONER CLARK: I want to -- I want to
8 agree with you in some regard in terms of doing the
9 CPVRR. I am just curious, not having all of the
10 information, I think that's -- that's one of my big
11 concerns, is you are buying something that's
12 buried, in a lot of cases, and then you are going
13 to figure out exactly what you bought once you own
14 it.

15 I mean, in doing the CPVRR, in the upfront
16 analysis, do you really -- are you really going to
17 see what those true savings are -- and I am going
18 to direct this to you, Mr. Cox, from an operator's
19 standpoint -- or is this something you are going to
20 learn and be able to include in it when you come in
21 for your acquisition adjustment in a three-year
22 period?

23 I don't see there is any provision the CPVRR
24 not being thrown out, it's just not being required
25 until we get to the acquisition point, correct?

1 MR. COX: Commissioner, from my perspective,
2 that is correct.

3 I would go even a step further, though. The
4 CPVRR does not have any provision for what is the
5 economic benefit for safe service. You know, you
6 don't get to build that into the model. All they
7 are looking for is, you know, potential cost
8 savings, economies of scale, you know, when a
9 utility, for example, Aquarina should have been,
10 you know -- I had customers who probably should
11 have been on boil water notice for a year because
12 of a lot of pressure issues in the back of the
13 system, which is -- remember, when you have a
14 precautionary boil notice, what you are saying is,
15 like, hey, these customers were potentially exposed
16 human pathogens. I can't build in the CPVRR, but I
17 can prove that from the lack of service.

18 So it's both your comment, Commissioner, that,
19 yes, we have to ascertain the system and go through
20 all the fixes to have a full economic picture
21 later, correct. And there is no provision in that
22 for the basic -- there is no provision for the
23 economic benefit for the -- for a better provision
24 of service.

25 COMMISSIONER CLARK: Right. And I would

1 agree. I understand there is no provision up
2 front, but by declaring it a nonviable system and
3 allowing the acquisition to proceed, we kind of set
4 that aside for a minute, in my opinion, and then we
5 are moving on to, okay, now, what are the
6 efficiencies in operating this system? We will get
7 to the CPVRR and use those numbers to determine how
8 much you are going to get as an acquisition
9 adjustment, assuming you are not coming in up front
10 and asking for the acquisition adjustment at the
11 time of purchase.

12 MR. COX: Yeah. Yes. Commissioner, that is
13 exact how we do it.

14 COMMISSIONER CLARK: Okay.

15 CHAIRMAN LA ROSA: Commissioners, further
16 thoughts or questions?

17 So to -- let's kind of unwind and unpack a
18 little bit of this.

19 To be clear kind of where we are, there is
20 comments that we've been directing questions
21 around. Commissioner Clark, you mentioned the word
22 "substantial" in front of the failure to comply.
23 Is that a direction that you are wanting to go?
24 That's currently not in the rule that's being
25 proposed in front of us. So if we need to have

1 staff digest this, we probably should direct them
2 to do that.

3 COMMISSIONER CLARK: I would like to see us do
4 something in that regard, Mr. Chairman. I don't
5 know if substantial is the right word, but
6 something to keep us from having a minor compliance
7 failure issue cause something to be declared
8 nonviable.

9 MS. CIBULA: Yeah. As you may recall, like in
10 the prior docket, we were trying to define
11 significant and substantial, because that's
12 ambiguous. So we can't put substantial in the rule
13 because that's an ambiguous term. So that's the
14 reason why, through the rulemaking process, we came
15 up with, like, there was a number of different
16 iterations of the rule where we tried to come up
17 with, like, the number of violations, and we could
18 never land on a particular number. And that's how
19 we got to the point of saying just historical
20 noncompliance.

21 MR. FUTRELL: And, Commissioner Clark, I think
22 we -- that was our intent, is to make this language
23 a bit more strict, if you will, such that, for
24 example, secondary standards are included here, or
25 contemplated here. And if, for example, there is a

1 one-time exceedance, minor exceedance of an iron
2 level, we certainly don't want that to trigger this
3 pathway.

4 And so that's why we felt like the language of
5 an enforcement or compliance action, something that
6 rose to the level of an agency taking an action,
7 not just reporting result of a test exceeding a
8 minimum standard would trigger. Something that's
9 much more substantial as far as there is an ongoing
10 condition that would require an environmental
11 agency to take a formal action, which we felt was a
12 bit more of a strict standard.

13 COMMISSIONER CLARK: So there is -- so
14 basically we are saying that it would be -- as it's
15 written, the Commission would make -- have the
16 discretion to say, yeah, that's enough history to
17 substantiate the transaction? I can live with
18 that.

19 MR. FUTRELL: Yes, sir.

20 MR. SUNSHINE: I will also add THAT you have
21 to have (a) and (b) as it's currently proposed.
22 It's not simply the history of enforcement. You
23 also have to have insufficient investment, repair,
24 maintenance, and so forth. You have to have both
25 of those to qualify under one, or number two, be

1 insolvent or unable to pay debts.

2 COMMISSIONER CLARK: I like the or.

3 MS. CLARK: Mr. Chairman.

4 CHAIRMAN LA ROSA: Yes, you are recognized.

5 MS. CLARK: If substantial is causing
6 problems, could we do something like a history of
7 failure to comply, or a history of enforcement in
8 compliance actions?

9 I mean, it strikes me, if history is okay for
10 that, then it's okay for the compliance, where you
11 don't have to actually have, you know, formal
12 compliance things.

13 I mean, that was what we were trying to get
14 at. You have those utilities that are not
15 complying, but you don't have any formal sort of
16 activity because it's not being reported or kept
17 track of.

18 CHAIRMAN LA ROSA: I will say this, that the
19 language "history of enforcement" doesn't
20 necessarily mean that there is a negative, right?
21 Could that technically not be, you know, follow its
22 rules and procedures, whatever may have been set
23 out for the utility?

24 MS. CIBULA: What was your question again?

25 CHAIRMAN LA ROSA: So a history of enforcement

1 may not signify a negative, meaning that it may
2 simply be that there was no negative aspect to the
3 utility, or no -- there -- you know, meaning that
4 they just filed whatever they had to file and the
5 report is with XYZ agency.

6 MR. FUTRELL: I think this rises to a higher
7 level where there has been some conditions observed
8 that are perhaps recurring or serious enough to
9 require an environmental agency, or the agencies
10 listed to take some formal action, to enforce a
11 requirement or a standard, as opposed to just
12 reporting an exceedance that could have happened
13 one time, and it could be minor in nature. That
14 doesn't particularly have a recurring impact on the
15 health of the product being provided to customers.
16 This is, again, a higher level of a requirement.

17 MS. CIBULA: And it's more concrete
18 information to -- compared to, I guess maybe
19 subjective information that the company could
20 provide. So it would be -- the Commission will
21 actually have, like, some concrete information from
22 another agency that says this is what the condition
23 of that -- the utility company to consider in the
24 process.

25 And again, keep in mind that this is one

1 pathway to get an acquisition adjustment. There is
2 still the other pathway. So you are not totally
3 denied the ability to ask for an acquisition
4 adjustment. It would just be a different pathway
5 to get there.

6 MR. CICCHETTI: And, Commissioners, it's not
7 unusual for companies to have violations and then
8 correct them. So we didn't want to have a company
9 considered nonviable just because they had a
10 history of actions and then corrected them and have
11 that alone be the reason why the bar is lowered and
12 they are considered nonviable. So that's why we
13 have the and, so you have had some enforcement
14 actions, maybe the Commission thinks that's too
15 many, and we can show -- or the company can show
16 there has been insufficient investment, et cetera.

17 CHAIRMAN LA ROSA: Commissioner Clark.

18 COMMISSIONER CLARK: Kind of a -- I understand
19 where Mr. Cox is coming from in terms of looking
20 at, you know, there may not be a history of that
21 failure to comply, but there is still a failure to
22 comply.

23 Just say or, failure to comply with or a
24 history of enforcement, that way you have covered
25 both the basis and both parties are happy.

1 There is no logical reason not to say that
2 either one of those stands alone, and they actually
3 don't contradict each other.

4 CHAIRMAN LA ROSA: I am not in opposition to
5 that.

6 Mr. Cox.

7 MR. COX: Yes, Chairman. I appreciate it.

8 I think the one thing we have shown over and
9 over again, we take these systems over. For
10 example, we brought a system before the Commission
11 and we had an area where the wastewater plant was
12 spilling untreated sewage onto the ground beside
13 the plants. They had never reported an SSO,
14 sanitary sewer overflow. It had -- there had been
15 so much erosion in the side wall of the system that
16 there was, like, a notch in the concrete, right?

17 So that's an example of, obviously, they've
18 had a history of failure to comply, but there was
19 no enforcement with that, because they had never
20 self-reported to the State, and at no point had the
21 State been out on-site to see that actually happen.

22 So those are great examples of, like, hey,
23 this system was endangering the surrounding public.
24 There was no history, you know, history of
25 enforcement actions, but obviously was not

1 complying. So just to give you a real life
2 example.

3 CHAIRMAN LA ROSA: Okay.

4 MR. HETRICK: And, Mr. Chairman, not to -- in
5 response to Commissioner Clark. I actually like
6 the suggestion, failure to comply with or a
7 history, and leave the rest of the language. That
8 covers -- seems to cover both situations.

9 CHAIRMAN LA ROSA: Commissioner Clark wants
10 credit for that.

11 So is that -- is that adequate, Commissioner?
12 Staff?

13 Okay. Again, making sure we -- we get this
14 correct.

15 Moving on to other elements of the rule.

16 MR. FUTRELL: Mr. Chairman.

17 CHAIRMAN LA ROSA: Yes.

18 MR. FUTRELL: I would just like to amplify an
19 earlier comment Mr. Cicchetti made in response to
20 Commissioner Graham's -- one of his two points
21 about the three years between the transfer and the
22 filing of the acquisition adjustment request.

23 As he said, that was a compromise through the
24 rulemaking -- rule development process where staff
25 landed, but we would be open if the -- I think --

1 certainly, the Commission has discretion to set
2 that at a time as it feels is appropriate.

3 I would point out, in the prior item, in the
4 fair market value rule, there was the amount of
5 time to file the petition in that process is six
6 months. So, again, just wanted to follow on to an
7 earlier response to Commissioner Graham's question
8 about the three years. Is again, that was a result
9 of a compromise, but certainly you had discretion
10 to set that amount of time as you see fit.

11 CHAIRMAN LA ROSA: Okay.

12 COMMISSIONER CLARK: I will add to that. I --
13 when we first broached this idea, three years was
14 my idea to begin with on how long to allow this,
15 and I stand by it. I think three years is an
16 adequate number.

17 MS. CLARK: Mr. Chairman.

18 CHAIRMAN LA ROSA: Yes.

19 MS. CLARK: I think the three years was in
20 some ways tied to the gas cases, that you had the
21 filing three years after the acquisition, at least
22 for one.

23 CHAIRMAN LA ROSA: Okay.

24 MS. CLARK: There was a period of time allowed
25 for the operation of the utility. And I think, as

1 Mr. Cox has pointed out, there is -- you need some
2 time to look at it and formulate a plan.

3 CHAIRMAN LA ROSA: Okay. Commissioners?

4 COMMISSIONER GRAHAM: I was ready a long time
5 ago.

6 CHAIRMAN LA ROSA: That you did. I will give
7 you credit for that.

8 All right. Moving on further down into the
9 rule, page six of the rule, at least the
10 recommended -- the requested in front of me, but I
11 need to work off of the actual rule, which is in
12 the noticing requirement. I should have looked at
13 that first.

14 Obviously, there has been discussion from the
15 previous item. Let me pose this question to the
16 Commission. Is there any concern with altering, or
17 does there need to be altering of this noticing
18 requirement?

19 Commissioner Passidomo.

20 COMMISSIONER PASSIDOMO: I think in light of
21 the previous fair market value rule, I do think
22 there needs to be some alternative. Then I don't
23 -- the if available, I -- if it's getting a good
24 indication from staff that that seems like that
25 gives maybe a little bit too much discretion by the

1 acquiring utility to be able to just, like, say
2 that this doesn't exist, but maybe Commissioner
3 Clark's language of existing, we need -- it is
4 incumbent on the acquiring utility to do the
5 legwork to find this information.

6 But again, there is certain -- like, you know,
7 there is certain systems they don't have -- and
8 this is even a more difficult. You are not looking
9 to go to, you know, a government agency to find
10 this information, you are trying to go to a small
11 system that might not have as adequate of
12 recordkeeping, so maybe striking a balance there.

13 CHAIRMAN LA ROSA: Okay. Commissioner Fay.

14 COMMISSIONER FAY: Sure, I will just reiterate
15 what Commissioner Passidomo said. I view them as
16 the two separate issues, the if available as
17 proposed, and based on the previous conversations,
18 I -- yeah, I think we can mess with the words, if
19 any, or in existence, or whatever it may be, but
20 the reality is, I mean, this is not public
21 documentation like the last rule, and I would
22 presume maybe in annual reports you could confirm.

23 Does the Commission get that information --
24 assuming a utility is filing the annual report,
25 would we get the information from that timeframe.

1 MR. CICCHETTI: That information would be
2 reflected in the annual reports, but it might not
3 be -- well, again generally, yes, you are going to
4 have capital investments, operations and
5 maintenance expenses should be in the annual
6 report.

7 COMMISSIONER FAY: Okay. Well, I wouldn't
8 have any objection to if in existence. I mean, I
9 guess there is some scenario where they are not
10 there. I just -- if available, to me, I have some
11 heartburn about, because I don't know what that's
12 means from an access perspective. If it's asked,
13 if it's formally requested if it's not with the
14 utility.

15 So assuming, Commissioner Passidomo, I don't
16 want to massage what you were saying, but I think
17 that's kind of where you were going.

18 And then on the notice provision, I don't see
19 any reason we don't keep it consistent with what we
20 did on the last rule. I mean, I think that aligns
21 with all the due process components, unless there
22 is some abnormality to this, that would be
23 different.

24 I think there probably even -- there is not
25 the 10,000 threshold, so it's probably even smaller

1 of an impact based on the structure, and I think
2 that probably would get us there.

3 So with that, Mr. Chairman, I am comfortable
4 with where we are at --

5 CHAIRMAN LA ROSA: Yeah.

6 COMMISSIONER FAY: -- and I don't know if you
7 want to do any drafting, or you want to take up a
8 motion. However you would prefer to do it.

9 CHAIRMAN LA ROSA: Yeah. Let me just open it
10 back unto the Commission.

11 Commissioners, any other final thoughts or
12 comments before we go that direction?

13 If you can turn your mic on.

14 COMMISSIONER FAY: Your mic.

15 COMMISSIONER CLARK: I got very comfortable
16 over here, didn't I?

17 I would just go back. Did we skip number
18 three, the negative or zero rate base? We did not
19 discuss or --

20 CHAIRMAN LA ROSA: No, I apologize, I did ask
21 a question about it, but I don't know that we -- we
22 harped on this -- on it.

23 COMMISSIONER CLARK: That goes back to
24 answering this -- we have got to answer this
25 question, one, two or three, and is three in

1 existence, do we leave one or either in there and
2 make the decision which way we are going to go?

3 And I have no strong feeling as to what --

4 I get where number three comes into play.

5 It's -- it's you have this case, it definitely is a
6 nonviable utility, but, you know, I don't know, Mr.
7 Chair, you certainly understand the financial and
8 accounting perspective better than I do, but zero
9 rate base and -- or negative rate base seems really
10 strange to me. That's a non -- that is the
11 standard definition of a nonviable utility. Why
12 shouldn't we -- or that is one of the potential
13 definitions, I think.

14 MR. CICCHETTI: Well, because of the situation
15 that we had in the past with the developers, where
16 they over-contribute. They put in a lot of
17 infrastructure and gave away free --

18 COMMISSIONER CLARK: And gave it to the
19 homeowner?

20 MR. CICCHETTI: Donated it to the utility,
21 then only built a fraction of the houses. And then
22 between the contributed property and used and
23 useful adjustment, you had a negative rate base.

24 COMMISSIONER CLARK: And you could still be a
25 viable utility, that's your point?

1 MR. CICCHETTI: Correct.

2 COMMISSIONER CLARK: So if you have one of
3 these criteria and have met that, you would --
4 okay, you -- that makes sense.

5 MR. CICCHETTI: Yeah.

6 COMMISSIONER CLARK: That makes sense. That's
7 a scenario in which you could end up giving a
8 positive rate -- a positive acquisition adjustment
9 that probably shouldn't get one.

10 MR. CICCHETTI: And insufficient adjustment in
11 repair is included in (1)(b).

12 MR. FRIEDMAN: Chairman, may I comment on
13 that?

14 CHAIRMAN LA ROSA: You may.

15 MR. FRIEDMAN: It seems like that the problem
16 the staff has got is with once you apply used and
17 useful adjustment, that's what puts you in the
18 negative. So maybe define negative as zero rate
19 base to not include an acquisition adjustment, if
20 it's got a negative or zero rate base without an
21 acquisition adjustment.

22 COMMISSIONER CLARK: Well, you apply the used
23 and useful before you get to the acquisition
24 adjustment, don't you?

25 MR. CICCHETTI: Yeah, it could just be

1 over-contributed --

2 MR. FRIEDMAN: I'm saying don't -- don't --
3 when determining what rate base is for purposes of
4 this rule, you don't include an acquisition
5 adjustment -- I mean, a used and useful.

6 COMMISSIONER CLARK: We are not determining
7 rates base. We are determining whether it's viable
8 by this definition, aren't we?

9 MR. FRIEDMAN: Yeah, but this definition is
10 saying if you have got zero and negative rate base,
11 you are not viable. Staff says, if you apply used
12 and useful, you can really be viable anyway. And
13 so what I'm saying is, don't put a used and useful
14 adjustment when you are making that determination
15 of rate base. And maybe it's not rate base. Maybe
16 it's just net present value.

17 MR. CICCHETTI: That wouldn't solve the
18 problem if it's just that the utility is
19 over-contributed.

20 MS. CLARK: Mr. Chairman, if I could.

21 CHAIRMAN LA ROSA: You are recognized.

22 MS. CLARK: You know, that was an issue
23 decades ago, and it was addressed by rules with the
24 contributions in aid of construction, which
25 required investment, a balancing of investment. I

1 think it was the most you could have was 75, you
2 had to have 25 in investment owner capital.

3 So I don't think the scenario that Mr.
4 Cicchetti is suggesting that you have developers
5 who put it in. Yes, that was a problem. It's not
6 -- I don't believe it's a problem in this day and
7 age, because it's been addressed by that rule.

8 MR. CICHETTI: Commissioner Clark, if you
9 don't apply the used and useful, you most likely
10 wouldn't have a negative rate base. Although, the
11 utility could be over-contributed.

12 COMMISSIONER CLARK: That's from a CIAC
13 contribution. It goes back to your point. Speak
14 up, I am sorry.

15 MS. CLARK: That rule came into effect in
16 about 1982, so it is decades old.

17 COMMISSIONER CLARK: Y'all don't make this
18 easy, do you?

19 CHAIRMAN LA ROSA: Okay. Any further thoughts
20 or comments?

21 So this is what I am going to suggest. Staff,
22 is there anything else needed by us to give us -- I
23 am going to say similar to what we just did on the
24 last rule -- an outline and I am going to say
25 suggested changes based on our comments and

1 discussion?

2 MR. SUNSHINE: Well, the only clarification I
3 would have is whether the Commission has
4 recommended that we use for (e)(1)a, a history of
5 the failure to comply with primary or secondary
6 water quality standards? I just want to make sure
7 I get the language correct that's being proposed.

8 MR. HETRICK: No. It -- what I understood it
9 to be was a failure to comply with or a history,
10 and the rest of the language stays the same.

11 CHAIRMAN LA ROSA: And scratching the concept
12 of substantial, and that would capture the concept,
13 rather than use the language.

14 MS. CHRISTENSEN: Commissioner, can I ask for
15 clarification on the previous discussion that we
16 had with Commissioner Clark?

17 We had discussed whether or not a CPVRR would
18 be available to the Commission for a nonviable
19 system, particularly if they are going to wait the
20 three years to file their petition. Is that part
21 of the recommended language, you were going to add
22 that into the rule, or include it as part of this
23 list?

24 CHAIRMAN LA ROSA: I did not hear that we
25 needed to.

1 COMMISSIONER CLARK: My request there, or
2 goal, was to -- and I may have this kind of mixed
3 up, but at the time of the transaction, I don't
4 think it's necessary, but prior to receiving the
5 acquisition adjustment I think it's necessary. And
6 so if it could be done in that prior to final
7 determination of the acquisition adjustment.

8 CHAIRMAN LA ROSA: My understanding is that's
9 how it's laid out in staff's suggested changes.

10 MR. CICCHETTI: I believe what OPC is asking
11 for is a CPVRR for a nonviable system.

12 CHAIRMAN LA ROSA: Oh, sorry.

13 MR. CICCHETTI: And our concern is where a
14 system is either abandoned or in receivership, or
15 maybe in violation, and the customers need somebody
16 to take that over right now, do we want to go back
17 to them and say, well, you didn't get a positive
18 CPVRR.

19 But I think in those instances, where the
20 system is nonviable, I don't think you are going to
21 see big premiums over the net book value. I
22 wouldn't expect that for nonviable systems, but,
23 you know, we will see what happens.

24 But it's more -- similar to the extraordinary
25 circumstances, we just need somebody to come in and

1 take this over as soon as possible for the
2 customers' benefit.

3 MS. CHRISTENSEN: Well, I would suggest that
4 the Commission consider under (4)(a), it allows for
5 -- it requires that a CPVRR be provided, but it
6 also allows for the Commission to make other
7 considerations if the CPVRR is not positive, which
8 would provide the necessary information for the
9 Commission at the time that they are doing their
10 analysis on whether or not an acquisition
11 adjustment is appropriate.

12 COMMISSIONER FAY: Mr. Chairman, can I just
13 ask specifically, Ms. Christensen, which section
14 you are referring to?

15 CHAIRMAN LA ROSA: Yeah.

16 COMMISSIONER FAY: So you are on (4)(a), where
17 the CPVRR analysis is, and then you say as you
18 continue to where?

19 MS. CHRISTENSEN: Correct. If you look at
20 subsection (4)(a) under the viable utility, it
21 requires that the utility provide a CPVRR analysis
22 to determine customer benefit over the five-year
23 period from the date of acquisition. And then it
24 goes on and provides a caveat that if the CPVRR
25 does not result in a positive customer benefit over

1 the five-year period, the Commission will consider
2 the following factors in determining whether or not
3 to allow a full or partial acquisition adjustment.
4 And it seems to -- and those are the same criteria
5 that they have under nonviable.

6 So it seems to me that if you adopt a language
7 from (4)(a) in (3)(a), you would get the
8 information. In other words, you would get the
9 information whether or not there will be any cost
10 savings on -- regarding economic -- economies of
11 sale, excuse me, and you would also have other
12 factors that the Commission could consider in
13 whether or not they should go ahead and approve a
14 partial or a full acquisition adjustment. But, you
15 know, as I said, in my opening comments, I am also
16 -- and we certainly are willing to work with the
17 companies and Commission staff to see if there is
18 language that we could offer even after this
19 process closes today.

20 CHAIRMAN LA ROSA: Okay. Great. Thank you.

21 COMMISSIONER FAY: Thank you.

22 Yeah, I mean, it seems like we are trying to
23 incentivize this. It's how much of an internal
24 hurdle that would be. Yeah. That's a tough
25 question.

1 I am still surprised you are here, Mr. Cox, to
2 be honest with you. I mean, this is a tough market
3 to try to jump into and, yeah.

4 MR. COX: Can I respond to that comment?

5 CHAIRMAN LA ROSA: Yeah. Sure, to OPC's
6 comment?

7 MR. COX: Yes.

8 CHAIRMAN LA ROSA: Yes.

9 MR. COX: I mean, it goes back to when I have
10 a wastewater plant that's dumping raw sewage onto
11 the ground, what is the CPVRR analysis that I see
12 is the net benefit to the customer. That's the
13 human health and safety issue. There is no
14 provision. That's what I keep saying. There is no
15 provision in that model.

16 And that system that is dumping raw sewage,
17 they -- I think, Commissioner Clark, you said this
18 earlier, their costs are going up. It's not being
19 run in compliance right now. They are not applying
20 labor to it. They are not applying chemicals to
21 it, so that CPVRR has got nothing to do with what
22 needs to happen to that utility. It's literally --
23 it's a spreadsheet that has nothing to do with real
24 life. And these are nonviable utilities.

25 So these are utilities that have existing

1 issues, and we have to prove they have the existing
2 issues. So having a stand-alone spreadsheet has
3 nothing to do with provision of safe and reliable
4 service.

5 MR. FRIEDMAN: And that's the whole reason to
6 have a distinction between viable and nonviable.
7 Basically nonviable, the purpose is to come in and
8 clear up and environmental issue. If it's a viable
9 utility, then you have got to prove that there is
10 some economies of scale or benefit, overall benefit
11 that you are going to get.

12 And if you are going to add the CPVRR,
13 whatever, to the nonviable, then no distinction
14 between viable and nonviable. It's the same
15 criteria and the same standard. And that's not the
16 purpose of creating a different standard. And I
17 don't think there is any place in this nonviable
18 for that financial analysis that Public Counsel
19 wants to add.

20 CHAIRMAN LA ROSA: Staff, there is not a
21 recommendation for a CPVRR in a nonviable?

22 MR. CICCHETTI: That's correct. The purpose
23 of the existing rule is to provide an incentive to
24 have troubled systems taken over. And I think the
25 Commission can evaluate the qualitative factors to

1 see if that's in the public interest, and we don't
2 need a CPVRR in order to deal with the nonviable
3 system.

4 MS. CHRISTENSEN: Commissioners, I'm Patty on
5 behalf of the customers, we appreciate the need to
6 incentivize to some extent people to take over
7 troubled systems. Our concern is paying a premium
8 over book value to take over a nonviable system
9 when you are going to be adding all of these
10 additional costs into rate base that are going to
11 end up costing customers increases in rates which
12 have to be made, and then you are going to add an
13 additional cost in the acquisition adjustment, the
14 positive acquisition adjustment, there just has to
15 be some governor on the amount of positive
16 acquisition adjustment that's allowed.

17 And if you don't have any economic analysis
18 that's provided at the time that you are
19 determining whether or not a positive acquisition
20 adjustment is going to be granted, it's going to be
21 very difficult for the Commission to make a
22 determination what a full or a partial acquisition
23 adjustment should be granted.

24 And that's why we suggest strongly that there
25 should be some sort of CPVRR or economic analysis

1 showing some sort of economics that will happen as
2 they are improving the system. And I will leave my
3 comments there.

4 Thank you.

5 CHAIRMAN LA ROSA: Okay. Thank you.

6 Commissioners, any other thoughts or comments
7 on this?

8 I will kick it back to staff. Now, after
9 elevating that discussion, any -- anything else
10 needed from us if we took a break to present us an
11 outline on what we just discussed?

12 MR. CICCHETTI: I think we've covered
13 everything, Mr. Chairman.

14 CHAIRMAN LA ROSA: Okay.

15 MR. HETRICK: And, Mr. Chairman, I feel
16 compelled to say one thing, and that is that when
17 we started this rulemaking process with respect to
18 nonviable systems, we were looking at trying to
19 codify, put some definition in the rule that would
20 -- this would replace our previous analysis and
21 reliance on extraordinary circumstances, which was
22 kind of vague. And that was the purpose of moving
23 to these sorts of environmental degraded system
24 type criteria.

25 You know, I think we've done that here, but we

1 have to remember that with respect to extraordinary
2 circumstances, we had no CPVRR requirement. The
3 focus was on trying to acquire those systems that
4 were in trouble, and so that's all nonviable
5 systems attempted to do.

6 Part two of the rule, which deals with viable
7 systems, focused more on, you know, as Mark Futrell
8 mentioned, the economic benefits, the economic
9 needs of the companies to acquire smaller systems
10 for the benefit of the customers. That's where the
11 CPVRR comes in, to analyze the rate impacts so that
12 we focus on the additional benefit to the
13 customers.

14 If there is a benefit to the customers, it's
15 -- and that shows that, or if it doesn't, there is
16 another opportunity for a utility to make that
17 case, then the Commission should have the
18 opportunity to consider those acquisition
19 opportunities. But for nonviable systems, it was
20 always meant to just merely put some boundaries
21 around what is a nonviable system, where we never
22 have used CPVRRs to do that.

23 So that's what the original purpose was.
24 That's what we tried to do. And I think stepping
25 back and looking at that overall concept and

1 purpose may help guide the discussion in how you
2 look at the two parts of this rule.

3 CHAIRMAN LA ROSA: All right. So let's do
4 this. Let's take five minutes. Is that
5 sufficient? Just to kind of gather your notes, and
6 then I am going to look to come back to staff with
7 just kind of maybe a boilerplate outline, and then
8 make some final decisions up here.

9 With that, we will reconvene at 1:30.

10 (Brief recess.)

11 CHAIRMAN LA ROSA: All right. Let's bring the
12 meeting back to order.

13 I will open by recognizing staff.

14 MR. FUTRELL: Mr. Chairman, thank you.

15 Just to go over a few of the items that we
16 feel like there is consensus among the Commission,
17 or at least all of the items that are discussed for
18 potential changes to the staff's recommendation is
19 under (1)(e), page 15 of the recommendation, line
20 19, insert at the beginning of the sentence,
21 failure to comply with or a history. Everything
22 else would remain as it is.

23 CHAIRMAN LA ROSA: Okay.

24 MR. FUTRELL: The other would be on page 18 of
25 the recommendation, line five, at the end of that

1 sentence, insert "if existing". And that's
2 comparable to the previous item, the fair market
3 value rule, that language would be comparable.

4 And then the last would be on page 22 of the
5 recommendation in the notice provision section,
6 subsection (8). And the idea there is to make that
7 language regarding the means of notifying customers
8 comparable to what was approved in the previous
9 item on the fair market value rule.

10 CHAIRMAN LA ROSA: Okay. Commissioners, any
11 further discussion?

12 MS. CLARK: Mr. Chairman, just for
13 clarification. And they would not change on line
14 21, page 15, and to or?

15 CHAIRMAN LA ROSA: Line 21, page 15, and I am
16 sorry, could you clarify?

17 MS. CLARK: Change the and to or.

18 CHAIRMAN LA ROSA: To line 21?

19 MS. CLARK: Yes.

20 CHAIRMAN LA ROSA: Is that -- staff, is that
21 what was just stated?

22 MR. FUTRELL: We are not recommending that
23 change, sir. But again, that's up to the
24 Commission's discretion on that one, but we are not
25 recommending that change.

1 CHAIRMAN LA ROSA: I am sorry to harp on
2 individual words, but what was the recommendation?

3 MR. FUTRELL: In that section, it was just
4 that the failure -- at the beginning of that
5 sentence on line 19, failure to comply with or,
6 that was the only change in that section of the
7 rule.

8 CHAIRMAN LA ROSA: Okay. Thank you.
9 Commissioners.

10 COMMISSIONER CLARK: I --

11 CHAIRMAN LA ROSA: Microphone.

12 COMMISSIONER CLARK: I am on it today.

13 I assumed we were working off of the proposal
14 that -- that, I guess, Ms. Clark had provided that
15 had or in it. I like having the option of -- it
16 gives us the choice of taking either one of those.
17 That's just my opinion.

18 I think we -- the idea was they killed number
19 three. Number three is not going to be in there.
20 But you have got one and two, and then under one,
21 you have got the two paragraphs, the sub (a) and
22 sub (b), and you have to meet both of those
23 criteria in order to get a nonviable designation.
24 I disagree. I think it should be either, and that
25 would make the standard easier for us. That makes

1 the standard easier for us.

2 CHAIRMAN LA ROSA: Okay.

3 COMMISSIONER CLARK: I am seeing a no. It
4 doesn't. It makes it harder.

5 MR. BAEZ: No. I won't presume what is easier
6 for you all. That's a decision for you all to
7 make. I think -- I think the effect of making them
8 one or the other sort of -- it violates the notion
9 that they should -- that they can travel -- that
10 they should travel together.

11 I mean, having -- having enforcement -- having
12 enforcement issues without the inability to correct
13 them just is not a troubled utility. You just have
14 someone that refuses, and that -- I mean, seems
15 sort of incomplete. I mean, maybe Mr. Futrell has
16 a better way of saying it.

17 I mean, the idea of linking them is to -- is
18 to maintain the whole of a nonviable utility. A
19 nonviable utility is almost involuntary in some
20 regard. It -- it's a combination of your -- the
21 service is suffering and there is no ability, and
22 there is no ability to make the service better,
23 which is why you have things like insolvency and a
24 failure to invest, and so forth.

25 To have -- to have one without the other

1 leaves too much room. It widens the -- it widens
2 the path. I know I am not -- I know I am not
3 making --

4 COMMISSIONER CLARK: You are not getting me.

5 MR. BAEZ: It -- it --

6 MR. HETRICK: Mark, could you --

7 MR. BAEZ: It shouldn't be easy to be a
8 nonviable utility. It just makes it easier to be a
9 nonviable utility where it rarely doesn't, but I am
10 going to shut up now.

11 MR. FUTRELL: I think the idea is staff's
12 concept with this was two aspects. Quality of
13 service is threatened, or the financial condition
14 of the utility is under threat. And these two, (a)
15 and (b), support and make the -- and allow for the
16 utility to make a case that service quality of the
17 utility to be acquired is under threat, that there
18 is significant environmental compliance issues that
19 -- where it's risen to the level of an agency
20 taking action, formal action, and there is -- there
21 is insufficient investment and repairs has been
22 done that has resulted in the condition of the
23 utility. So that's the service aspect of it. And
24 then two is the financial condition.

25 So that's staff's concept behind having those

1 two linked.

2 COMMISSIONER CLARK: So what you are telling
3 me is that you can have a utility company that was
4 in total disrepair and total shambles and had
5 failure to comply, but as long as they were making
6 some investments in the repairs, then that's in
7 compliance?

8 I mean, you are saying these have to be --
9 they are mutually -- they both have to be -- they
10 both -- these objectives have to be met, but you
11 could have a failure to comply when the owner had
12 plenty of money. He was able to make the
13 investment and refused to do so.

14 MR. FUTRELL: I think that would inform -- ask
15 the question why is the -- why has there been an
16 enforcement action? What is underlying that's
17 driven the condition to be in some state where an
18 agency has taken a formal action?

19 MR. CICCHETTI: Commissioner, I would suspect
20 that if all you needed to be nonviable was to have
21 some violations that you corrected or just didn't
22 comply with, even if you weren't cited, we would
23 have many nonviable utilities.

24 MR. COX: Commissioner, can I?

25 COMMISSIONER CLARK: Go back to the -- hold

1 on. Go back to item number one. It says, these
2 are criteria that establishes the clause in
3 paragraph one, right? The utility is currently
4 unable or is projected to be unable to provide and
5 maintain safe, adequate, reliable service and
6 facilities due to either of these factors. You are
7 meeting number one by qualifying it with number --
8 with (a) and (b), is my understanding of how that
9 reads. (a) or (b). I will do whatever y'all want
10 to do.

11 CHAIRMAN LA ROSA: Yeah, it's -- it's, it
12 sounds -- it sounds simple because it's only a
13 word, but it does get quite complicated. I
14 understand your point. I understand your point.

15 Commissioner Passidomo.

16 COMMISSIONER PASSIDOMO: Yeah, I understand
17 what Commissioner Clark is saying here. And again,
18 you know, these utilities, we do want them to be
19 taken over. My concern about changing that to or,
20 I mean, like, just legal reading, the first thing I
21 remember and and or are significantly different,
22 even though they are very small words, can have
23 very significant outcomes. So if we are talking
24 about calling it a nonviable utility just because
25 they -- I mean, take part (b), those -- all of

1 those things, those are ors, ors, ors, insufficient
2 investments and repairs. That's a nonviable
3 utility in that sense.

4 And I don't think one insufficient -- you
5 know, that there wasn't, you know, an investment at
6 certain a time shouldn't automatically qualify as a
7 nonviable utility. There is several factors within
8 subpart (b) that those are ors. That those can be
9 any of those in combination with part (a). That's
10 kind of my -- I just -- I think that the reason
11 that staff wrote it in this way is because we don't
12 want to make the par bar for a nonviable utility so
13 easy, because I think, as Mr. Cicchetti has said,
14 that would -- is a potential that we have a lot of
15 nonviable utilities in our state.

16 MR. CICCHETTI: Yes. It's -- if you meet (a)
17 and (b), that would be a reason were why you would
18 be unable to provide service, or projected to be
19 unable to provide service.

20 CHAIRMAN LA ROSA: Microphone.

21 COMMISSIONER CLARK: The definitions in (1)(a)
22 and (b), I mean, that's my point.

23 MR. SUNSHINE: Mr. Chair, again, the idea is
24 to create these two pathways. And the concern is
25 that you would have viable systems that would --

1 you know, the burden is on the acquiring utility to
2 establish to the Commission that it meets the
3 definition of a nonviable system. And if we lower
4 that bar by changing and to or, by operation of the
5 rule, if the Commission determines that they are
6 nonviable, they -- you have to approve a positive
7 acquisition adjustment, whether that's full or
8 partial, that's up to the Commission.

9 But I think it just dilutes the rule, and it
10 opens it up to trying to make the argument and
11 persuading to say we met at (1)(a). We don't have
12 to deal with (1)(b), and I think they should be
13 taken together, as Mr. Cicchetti explained, I think
14 that's a necessary analysis.

15 CHAIRMAN LA ROSA: Commissioner Graham.

16 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

17 I guess I am just trying to understand. So if
18 you had one secondary standard -- one secondary
19 standard test that they failed, then it's not --
20 it's a troubled system at that point?

21 MR. FUTRELL: That's certainly not the intent
22 of staff's proposed rule, is to make it a higher
23 standard than that, and that's a concern, but I
24 think --

25 COMMISSIONER GRAHAM: If there is one boil

1 water notice, does that mean it's a troubled
2 system?

3 MR. FUTRELL: I think the language, the
4 failure to comply perhaps would open that
5 interpretation for that to be met, and that's a
6 concern that staff has. But, again, yes, sir, I
7 think that could be the -- that could be a
8 potential result.

9 CHAIRMAN LA ROSA: Commissioner Fay, you are
10 recognized.

11 COMMISSIONER FAY: Thank you, Mr. Chairman.

12 And I know there will be some people that roll
13 their eyes when I say, Commissioner Passidomo and I
14 are on the same page with this.

15 You know, I think when we -- I mean, the
16 reality is when you change (1)(a) and you allow for
17 that failure to comply to be added to that
18 definition of or a history of enforcement, like,
19 that's a significant change as to what is required.
20 And the failure to comply is the lower standard.
21 It's going to be what's probably utilized the
22 majority of the time. So if you change that or, I
23 am not comfortable going that far.

24 I mean, my hope would be that some of the
25 folks that are here today will look at these

1 systems and will see improvements, and maybe as we
2 do, we can consider broadening what that process
3 looks like, and encouraging more and more of it,
4 but I think we are already taking a big step by
5 making that change, incentivize it, and I think we
6 just need to be mindful as to how wide that net
7 would go.

8 And so I just have one vote maybe, and
9 depending on who motions this, but, Mr. Chairman, I
10 think otherwise I am good with the rule and
11 prepared to move forward when you are.

12 CHAIRMAN LA ROSA: Okay. Any other thoughts
13 or comments, Commissioners?

14 I am open to a motion.

15 COMMISSIONER PASSIDOMO: I guess I will move
16 to approve staff's recommendation as amended here
17 today, which I guess just to be as clear as
18 possible. That would include amending the first
19 part of subpart (a) to say, a failure to comply
20 with or, the rest of that, and (b), and/or too, is
21 that sufficient?

22 CHAIRMAN LA ROSA: Including the other items
23 outlined by staff?

24 COMMISSIONER PASSIDOMO: Yeah. I am sorry.
25 This is -- yeah, including the other -- yes, the

1 other amendments that we've made here.

2 COMMISSIONER FAY: As existing in the notice
3 requirement?

4 COMMISSIONER PASSIDOMO: Yes. Yes. Thank
5 you.

6 COMMISSIONER FAY: Staff, is that correct?
7 Did we cover everything?

8 Mr. Chairman, I am happy to second that, but I
9 want to allow if anybody wants to comment before.

10 Okay, second.

11 CHAIRMAN LA ROSA: Okay. Good.

12 So hearing a motion and hearing a second.

13 All those in favor signify by saying yays.

14 (Chorus of yays.)

15 CHAIRMAN LA ROSA: Opposed no.

16 (No response.)

17 CHAIRMAN LA ROSA: Hearing no nos, I show that
18 the rule passes as amended by the Commission.

19 MR. SUNSHINE: Thank you, Mr. Chairman.

20 MS. CLARK: Thank you, Mr. Chairman. And
21 thank you, staff, for working so hard on this.

22 (Agenda item concluded.)

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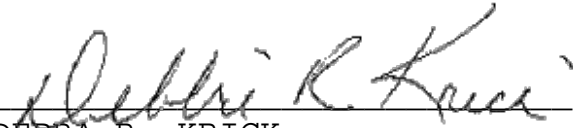
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