

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk and
Seminole Counties by Sunshine Water Services
Company

Docket No. 20240068-WS

SUNSHINE WATER SERVICES COMPANY’S RESPONSE TO OFFICE OF PUBLIC
COUNSEL’S MOTION FOR RECONSIDERATION OF FINAL ORDER

Sunshine Water Services Company (“SWS” or “Company”), by and through its undersigned attorneys and pursuant to Rule 25-22.060, Florida Administrative Code, files this response to the Motion for Reconsideration (“Motion”) filed by Office of Public Counsel (“OPC”), with regard to Florida Public Service Commission (“PSC” or “Commission”) Order No. PSC-2025-0196-FOF-WS issued on June 6, 2025.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order.¹ In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.² Furthermore, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.”³

1. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981).

2. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

3. *Stewart Bonded Warehouse, Inc.* at 317.

TEST YEAR ANNUALIZATION

The Company wishes to first clarify OPC's focus of concern regarding alleged violations of Rule 25-30.433(5), F.A.C. In summarizing the Company's MFRs, OPC confusingly conflates an annualization of Depreciation Expense (an expense item in the revenue requirement) with the annualization of Accumulated Depreciation (a rate base item)⁴. The Company made an annualization adjustment in its MFRs to Depreciation Expense, and, in the interest of matching the Expense adjustment with the offsetting and directly related impact, likewise annualized Accumulated Depreciation. While the Accumulated Depreciation adjustment did affect rate base, the Depreciation Expense adjustment does not, and thus would not be subject to Rule 25-30.433(5). There is no rule or statute that would prohibit the Company from proposing or being authorized a pro-forma adjustment to Depreciation Expense. Therefore, that portion of the Company's adjustment, as approved by the Commission, should not be subject to OPC's Motion.

OPC's Motion is also inconsistent in its framing of the Accumulated Depreciation annualization adjustment. OPC states that Staff's Recommendation "deviated from standard practice by recommending approval of Sunshine's adjustment annualizing depreciation expense and associated accumulated depreciation".⁵ Later, OPC concedes that "(i)n Sunshine's two prior rate cases, the Commission approved adjustments annualizing accumulated depreciation"⁶. The latter point is factually true, even if it undersells the extent to which this adjustment is accepted as Commission practice. The Company at various points in the record of the instant case provided

⁴ Motion at 3.

⁵ Motion at 5.

⁶ Motion at 9.

support for many previous rate cases, dating back to at least 2007, with the same adjustment being proposed and approved, without objection by OPC, which was involved in each of them. It is clear from this lengthy and consistent history of Commission decisions that the Company's proposed pro-forma adjustment to Test Year Accumulated Depreciation is not inconsistent with the Commission's long-standing interpretation and application of Rule 25-30.433(5) in SWS's and its predecessors' rate cases.

Contrary to OPC's assertion in the Motion, the annualization adjustment to Test Year Plant In-Service was not "unilaterally recommended" or done "out of the blue". In fact, it was OPC *itself* that, at various points in the record of the instant case, identified the lack of a Plant In-Service adjustment as creating a mismatch. The Staff Recommendation, and the resulting Commission Final Order, had available the following facts and evidence in the record to reach their conclusions:

- 1) Company Witness Swain's testimony (pre-filed and oral) at various points of the proceeding explained that the Accumulated Depreciation adjustment was proposed in the interest of avoiding mismatches in related balances in the revenue requirement. Witness Swain also clarified that pro-forma adjustments are commonly made to the 13-month average balances of other rate base items, such as working capital, and were proposed in the instant case.⁷
- 2) OPC's opening statement for the Evidentiary Hearing stated: "Commission Rule 25-30.433 requires that the method used by the company to calculate rate base shall be a 13-month average for Class A utilities. Despite this, the company proposes to calculate

⁷ Evidentiary Hearing Transcript Vol 1 at 67. Notably, OPC did not dispute the use of pro-forma adjustments to the Test Year 13-month average for Working Capital.

accumulated depreciation, a component of rate base, in an annualized manner. By calculating accumulated depreciation this way, the company creates a mismatch between every other rate base component calculated using the 13-month average.”⁸

3) OPC’s question to Company Witness Swain at the Evidentiary Hearing:

“Q: By annualizing depreciation, aren't you creating a mismatch with any component of rate base which you did not also annualize, **such as plant in-service?**

A: Absolutely not.”⁹

4) OPC’s Post-Hearing Brief states that “The associated test year additions were recorded on a 13-month average basis. This was a mismatch of depreciation **and plant** and a violation of the rule.”¹⁰

Further complicating OPC’s Motion position is a statement *in the Motion itself* (referencing the statement in the Post-Hearing Brief above) that confirms OPC was the party to raise the concern of a mismatch between the Accumulated Depreciation adjustment and a lack of matching adjustment for Plant In-Service.¹¹

In the Staff Recommendation, Staff makes clear that they agree with Company Witness Swain’s proposed Accumulated Depreciation pro-forma adjustment.¹² They also agree with OPC

8 Evidentiary Hearing Transcript Vol 1 at 25.

9 Evidentiary Hearing Transcript Vol 1 at 68 (emphasis added).

10 Citizen’s Post-Hearing Brief at 28.

11 Motion at 3-4.

12 Staff Recommendation, page 60, makes clear that Staff agrees with Witness Swain that the nature of the Accumulated Depreciation adjustment is a “pro-forma adjustment”, and therefore not subject to Rule 25-30.433(5). The Commission’s Final Order, page 45, uses the same language as the Staff Recommendation in confirming their categorization of Witness Swain’s adjustment as a “pro-forma adjustment”.

Witness Smith (disagreeing with Witness Swain) that the adjustment creates a mismatch with Plant In-Service. Staff therefore concluded that a Plant In-Service pro-forma adjustment was reasonable to avoid a mismatch - *which is consistent with OPC's position in the instant case* - and recommends the adjustment. Similar to, and in support of the Depreciation Expense and Working Capital pro-forma adjustments mentioned above, the Company finds no Rule or statute that precludes a pro-forma adjustment to rate base items. It is clear that the concept of a mismatch between Accumulated Depreciation and Plant In-Service was presented to the Commission, and the components of the Staff Recommendation and Commission decision were sufficiently available in the record.

OPC's claims that the Staff Recommendation and Commission decision to annualize Test Year Plant In-Service as a pro-forma adjustment were somehow a surprise or unsupported by the record are demonstrably unfounded, in large part due to the repeated raising of the concept by OPC itself in the record of the instant case.

CAPITAL STRUCTURE

Regarding the adjustment made by the Commission to the capital structure, OPC complains that the adjustment was neither proposed by SWS in its MFRs nor by OPC, and as a result, it was inappropriate. OPC believes that this decision was the result of the Staff Recommendation and subsequent Final Order failing to articulate the respective parties' positions. *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 908 (Fla. 2023), relied upon by OPC, requires that a Commission decision be "reasonably explained". The Final Order includes a statement of the parties' positions and reasonably explains its adjustment, even citing prior, recent Commission

Orders where such an adjustment was made (seemingly without regard for the adjustment being explicitly proposed by any party).

WHEREFORE, Sunshine Water Services Company, requests that this Commission enter an Order denying the Motion to for Reconsideration of Final Order No. PSC-2025-0196-FOF-WS filed by Office of Public Counsel.

Respectfully submitted this 30th day of June,
2025, by:

Dean Mead
420 S. Orange Ave., Suite 700
Orlando, FL 32801
Telephone: (407) 310-2077
Fax: (407) 423-1831
mfriedman@deanmead.com

/s/Martin S. Friedman
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

Electronic mail to the following parties this 30th day of June, 2025:

Walt Trierweiler, Esquire
Charles J. Rehwinkel, Esquire
Octavio Simoes-Ponce, Esquire
Austin Watrous, Esquire
Office of Public Counsel
c/o Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, FL 32399-1400
TRIERWEILER.WALT@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
PONCE.OCTAVIO@leg.state.fl.us
WATROUS.AUSTIN@leg.state.fl.us

Ryan Sandy, Esquire
Saad Farooqi, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
sfarooqi@psc.state.fl.us
rsandy@psc.state.fl.us
discovery-gcl@psc.state.fl.us

/s/ Martin S. Friedman
Martin S. Friedman