

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Acquisition Adjustment Workshop
Regarding Rule 25-30.0371, Florida
Administrative Code

UNDOCKETED

**AQUA UTILITIES FLORIDA, INC.'S
POST-WORKSHOP COMMENTS**

Aqua Utilities Florida, Inc. ("AUF") participated in the staff rule development workshop on May 20, 2010 in this matter, and appreciates the opportunity to provide additional post-workshop comments.¹

Background

The Commission's current policy on acquisition adjustments for water and wastewater utilities is clearly articulated in Order No. PSC-02-0997-FOF-WS² (the "Final Order") and codified in Florida Administrative Code Rule 25-30.0371 (the "Rule"). The Rule is the product of thoughtful and thorough analysis that carefully balanced the interests of all stakeholders, including customers and utilities. According to the Commission, the fundamental purposes of the Rule are to: encourage well-run utilities to acquire smaller systems, reduce the costs of acquisition proceedings by diminishing the controversy of acquisition adjustments, and dissuade the purchasing utility from seeking a rate increase when the purchase price is significantly below the acquired utility's net book value. Final Order at 2-4.

Staff's Draft Amendments to the Rule

At the May 20, 2010 workshop, staff distributed its draft amendments to the Rule, which are attached hereto as Exhibit "A." Staff explained that its proposed changes to the Rule were

¹ These comments supplement AUF's comments filed on February 26 and March 4, 2010.

² *In re: Proposed Rule 25-30.0371, F.A.C., Acquisition Adjustments*, 02 F.P.S.C. 7:326; Docket No. 001502-WS, Order No. PSC-02-0997-FOF-WS (July 23, 2002).

not intended to alter the fundamental purposes and policies of the Rule described above. Instead, staff's proposed changes were designed to clarify and simplify language in the Rule, and address unique circumstances where rigid application of the existing Rule could award a "windfall" to an acquiring utility that was able to negotiate a purchase price that is substantially below the net book of the acquired utility system. AUF agrees with staff's proposed changes to the Rule, and applauds staff for providing additional clarity to the Rule while preserving its fundamental purposes and honoring the statutory directives of the Florida Legislature.

Comments by the Office of Public Counsel

During the workshop, the Office of Public Counsel ("OPC") orally proposed two changes to the Rule, both of which would contravene existing regulatory policy. First, OPC proposed a new subsection (6) to the Rule that would require that all " transaction or transition costs incurred in connection with the acquisition of the system shall be expensed and not capitalized as part of rate base. " This proposal would contradict the directives of the National Association of Regulatory Commissioners ("NARUC") Uniform System of Accounts, by which AUF is required abide pursuant to Rule 25-30.115, Florida Administrative Code. Specifically, NARUC's Uniform System of Accounts requires that transition and transaction costs associated with the acquisition of utility plant must be charged to a capital account [Account No. 104] and not expensed as proposed by OPC. NARUC Accounting Instruction No. 21 specifically provides:

A. When utility plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, the costs of acquisition including expenses incidental thereto properly includable in utility plant, shall be charged to Account 104 – Utility Plant Purchased or Sold. (Emphasis added.)

Furthermore, in NARUC Accounting Instruction No. 21.B, NARUC has outlined how original cost of the plant, Accumulated Depreciation, CIAC, and amortization is transferred out of

Account No. 104 and closed to another capital account-- Account No. 114 - Utility Plant Acquisition Adjustments. OPC's proposal to require that transaction and transition costs of an acquisition be expensed and not capitalized would require an amendment to the NARUC Uniform System of Accounts and Rule 25-30.115, which is far beyond the purpose of this proceeding.

Second, OPC orally proposed at the workshop a new subsection (7) to the Rule which would read as follows:

(7) Notwithstanding any provision to this Rule to the contrary, if the Commission determines that the acquired utility system is neither financially nor physically distressed, the Commission may require full recognition of a negative acquisition adjustment for ratemaking purposes.

Under both the current Rule and staff's proposal there is a real incentive for the acquiring utility to negotiate the best possible purchase price for its customers. Indeed, staff's proposal makes it abundantly clear an acquiring utility would not be required to record a negative acquisition adjustment so long as the purchase price was at least 80 percent of the net book value of the acquired system. However, OPC's proposal would eliminate that cost saving incentive unless the purchasing utility could prove that the acquired system was "financially or physically distressed." By injecting this vague and undefined burden of proof, OPC's proposal fosters rather than diminishes controversy in acquisition proceedings and would inevitably increase the costs of such proceedings. That result subverts a fundamental purpose of the Rule which is to minimize controversies in, and reduce the costs of, acquisition proceedings. Final Order at 3. Moreover, if OPC's proposal is adopted, it is reasonable to expect that the purchasing utility could seek to avoid those increased costs simply by paying full rate base for the system. Thus, OPC's proposal could have the perverse result of increasing the purchase price of the system, which increase would ultimately be borne by the customers. Furthermore, by prompting the

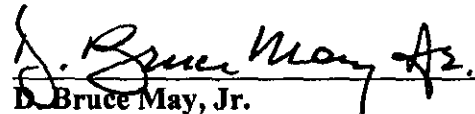
utility to purchase another utility system at full rate base, OPC's proposal will heighten the need for rate relief which would undermine any incentive to delay a rate case filing. This again directly contravenes a fundamental policy of the existing Rule which is "to provide an incentive for a purchasing utility to refrain from filing a rate case." *Id.*

For the foregoing reasons, AUF would respectfully ask that the Commission not adopt OPC's proposals to include new subsections (6) and (7) to the Rule.

* * *

AUF is hopeful that the Commission will find the foregoing comments constructive and useful. AUF appreciates the opportunity to participate in this process.

Respectfully submitted this 21st day of June, 2010.



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1 **25-30.0371 Acquisition Adjustments.**

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

7 (2) Positive Acquisition Adjustments. A positive acquisition adjustment shall not be
8 included in rate base absent evidence supporting the adjustment, including the anticipated
9 improvements in quality of service, anticipated improvements in compliance with regulatory
10 mandates, anticipated rate reductions or rate stability over a long-term period, anticipated cost
11 efficiencies, and other relevant factors. If a positive acquisition adjustment is approved, the
12 Commission shall consider evidence such as the composite remaining life of the assets
13 purchased, and the condition of the assets purchased in determining the appropriate
14 amortization period. Amortization of the acquisition adjustment shall begin on the date of
15 issuance of the order approving the transfer of assets. ~~proof of extraordinary circumstances.~~
16 ~~Any entity that believes a full or partial positive acquisition adjustment should be made has~~
17 ~~the burden to prove the existence of extraordinary circumstances. In determining whether~~
18 ~~extraordinary circumstances have been demonstrated, the Commission shall consider evidence~~
19 ~~provided to the Commission such as anticipated improvements in quality of service,~~
20 ~~anticipated improvements in compliance with regulatory mandates, anticipated rate reductions~~
21 ~~or rate stability over a long-term period, and anticipated cost efficiencies.~~

22 (3) Negative Acquisition Adjustments. If the purchase price is greater than 80 percent
23 of net book value, a negative acquisition adjustment will not be included in rate base. When
24 the purchase price is less than 80 percent of net book value, a negative acquisition

25 CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

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1 adjustment shall not be included in rate base and will be equal to 80 percent of net book value
2 less the purchase price. Amortization of the negative acquisition adjustment shall be pursuant
3 to subsection (4)(a) or 4(b) below, unless there is proof of extraordinary circumstances or
4 where the purchase price is less than 80 percent of net book value. If the purchase price is less
5 than 80 percent of net book value then the inclusion of a negative acquisition adjustment shall
6 be calculated pursuant to paragraph (b) below.

7 ~~(a) Contested. Any entity that believes a full or partial negative acquisition adjustment~~
8 ~~should be made has the burden to prove the existence of extraordinary circumstances. Under~~
9 ~~no circumstance, however, shall the purchaser be required to record on its books more than 70~~
10 ~~percent of a negative acquisition adjustment. In determining whether extraordinary~~
11 ~~circumstances have been demonstrated, the Commission shall consider evidence provided to~~
12 ~~the Commission such as the anticipated retirement of the acquired assets and the condition of~~
13 ~~the assets acquired.~~

14 ~~(b) Uncontested. If the purchase price is less than 80 percent of net book value, then~~
15 ~~the amount of the difference in excess of 20 percent of net book value shall be recognized for~~
16 ~~ratemaking purposes as a negative acquisition adjustment. The negative acquisition adjustment~~
17 ~~shall not be recorded on the books for ratemaking purposes or used for any earnings review~~
18 ~~unless the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814,~~
19 ~~367.0817 or 367.0822, F.S., that will be effective during the amortization period. The negative~~
20 ~~acquisition adjustment shall be amortized over a 5 year period from the date of issuance of the~~
21 ~~order approving the transfer of assets.~~

22 ~~(4) Amortization of Negative Acquisition Adjustment. Amortization Period. The~~
23 ~~appropriate period over which to amortize a negative acquisition adjustment shall be~~
24 ~~determined as follows:~~

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1 (a) If the purchase price is greater than 50 percent of net book value, the negative
2 acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the
3 order approving the transfer of assets. In this case, the negative acquisition adjustment shall
4 not be recorded on the books for ratemaking purposes or used for any earnings review unless
5 the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814, 367.0817 or
6 367.0822, F.S., that will be effective during the amortization period.

7 (b) If the purchase price is 50 percent of net book value or less, the negative
8 acquisition adjustment shall be amortized from the date of issuance of the order approving the
9 transfer of assets as follows: (i) 50 percent of the negative acquisition adjustment shall be
10 amortized over a 7-year period; and (ii) 50 percent of the negative acquisition adjustment shall
11 be amortized over the remaining life of the assets.

12 ~~In setting the amortization period for a Commission approved acquisition adjustment pursuant~~
13 ~~to (2) or (3)(a) above, the Commission shall consider evidence provided to the Commission~~
14 ~~such as the composite remaining life of the assets purchased and the condition of the assets~~
15 ~~purchased. Amortization of the acquisition adjustment shall begin on the date of issuance of~~
16 ~~the order approving the transfer of assets.~~

17 (5) Subsequent Modification. Any positive full or partial acquisition adjustment, ~~onee~~
18 ~~made by the Commission pursuant to (2) or (3)(a) above,~~ may be subsequently modified if the
19 conditions upon which the decision to approve the position adjustment extraordinary
20 ~~circumstances do not materialize or subsequently are eliminated or changed within five years~~
21 ~~of the date of issuance of the order approving the transfer of assets.~~

22 Specific Authority 350.127(2), 367.121(1)(f) FS, Law Implemented 367.071(5),
23 367.081(2)(a), 367.121(1)(a), (b) FS. History--New 8-4-02.

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